

## Notes for RNZ slot from Ursula Cheer (Associate Professor) Canterbury University, 7 September 2011

1. Today I am going to talk about how the Daily Mirror and the Sun published appalling stories about a man called Christopher Jefferies and were later convicted of contempt and had to pay out significant damages for defamation as well.
2. Essentially, it's about what the media can do during that time after a suspect has been arrested but before trial, perhaps even before the police have laid a charge.
3. This case arose after a young woman, Joanna Yeates, was killed in Bristol in December 2010. Her landlord, Christopher Jefferies, was arrested on 30<sup>th</sup> December on suspicion of her murder. He was released from custody on unconditional police bail two days later. Near the end of January another man, Vincent Tabak was charged with the murder. On 4<sup>th</sup> March Mr Jefferies was informed that he was released from police bail. Just over a month later, Tabak admitted in court that he was responsible for killing Miss Yeates, and pleaded guilty to her manslaughter. He denied murder on the basis of diminished responsibility and was committed for trial on the murder charge, the trial to be heard about now.
4. Therefore, we know who killed Miss Yeates and that Mr Jefferies is innocent. He was never charged and therefore could never be tried. As the judge said: 'As a matter of fact and reality he is innocent. He is not facing trial, and he will never face trial.'
5. The murder was very prominent and excited a lot of media attention around Christmas time. The Sun and the Daily Mirror ran a number of stories on it. For example: On the front page of the Daily Mirror, in what the paper called the "Jo files" was a headline alleging that "Jo suspect is peeping Tom". It was also asserted on the front page in large print:

"Arrest landlord spied on flat couple", followed immediately below by:  
"Friend in jail for paedophile crimes", followed immediately below  
by:

"Cops now probe 36 -years old murder."

Here we have a positive suggestion that Mr Jefferies was a voyeur, and the impression conveyed on any objective view is that he was somehow linked with not one but two awful, crimes additional to the murder of Ms Yeates - paedophilia and an older murder.

6. The articles inside contained more detail, such as: an allegation that the plea of a young couple "to protect their privacy was apparently refused by the eccentric landlord". The implication was that Mr Jefferies was a peeping Tom. The linking of a paedophile named Johnston with Mr Jefferies, by an account of how Jefferies bought his flat when the "paedophile moved" out, and second by a reference to the fact that they were teachers at the same school at the time the paedophile offences were being committed. The fairly lengthy text does include "...although there is no suggestion Jefferies was involved". On other pages there was a bold headline referring to "the nutty professor", with a reference under an exclusive banner to "bizarre past of Joanna Yeates murder suspect", followed immediately by: "Posh ex-teacher who was 'arrogant and rude'".
5. As to the Sun: its pages contained allegations that Mr Jefferies had stalked a woman similar in age and appearance to the victim, with particular emphasis on the fact that they were both blondes, and that he did so in a manner which was highly disturbing for the woman in question. The allegation was combined with a suggestion that Mr Jefferies was over-familiar with tenants and given the nickname of the notorious but fictional serial killer, Hannibal Lecter.
6. The UK law of contempt is in statutory form - the Contempt of Court Act 1981 - but the provisions are similar to our law which is judge-made. At the time the articles complained of were published, Mr Jefferies was under arrest. For the purposes of the Act proceedings against him were what were called active even though he had not been charged. Contempt can attach to this period in the UK. In NZ, our equivalent period is called the sub judice period and although the issue of when this period begins is not without difficulty, and the media is quite keen to push the boundaries, the safest approach is to recognise that where the commencement of criminal proceedings is highly likely the courts have inherent jurisdiction to prevent or punish the risk of contempt of court. Arguably, arrest is an indication that a charge and proceedings will follow and so the highly likely test is met.

7. Mr Jefferies of course, was an exception to this generalisation. He was arrested at the time of the articles, but before very long he would be entirely exonerated though no-one was to know that. So although criminal proceedings were highly likely, they did not, in fact, eventuate. This meant the articles complained of did not have and could not have had any impact whatever on a trial of Mr Jefferies, because there would never be one. But that was irrelevant to the court making its decision as to contempt. And the decision of the court shows how careful you have to be.
8. The defendants argued that the articles did not create substantial risk of serious prejudice to any trial of Mr Jefferies which might take place in the future, which would be probably some 9 months or so after publication. In other words, the effect of anything read at the time by anyone who would in due course become a member of the jury which would try Mr Jefferies would have faded from the memory, and that taken with the appropriate judicial directions, the trial would have proceeded in the usual way and the jury would have returned unbiased verdicts in accordance with the evidence before them.
9. The Attorney-General argued two things in response: the course of justice in the proceedings would be seriously prejudiced, and that it would be seriously impeded by the publications. The first is a pretty standard argument, but the second has received little attention. The second argument was successful.
10. The risk to the course of justice has to be substantial and it must be assessed at the date of publication. This means the test is predictive, which is why the fact that no charges were laid and no trial later held for Mr Jefferies was irrelevant to the contempt charge. This is also why it is possible for a court to find a contempt from coverage pre-trial based on risk at the time of publication, but a later appeal court may not overturn an eventual conviction as being unsound because of the same publicity.
11. What really stood out about the judgment was that the court found the vilification of a suspect under arrest can be a potential impediment to the course of justice in the sense of preventing a defendant from answering the charge, or putting forward a proper defence if charged later. This is because publication of such material may deter or discourage witnesses

from coming forward and providing information helpful to the suspect, which may, (depending on the circumstances) help immediately to clear him of suspicion or enable his defence to be fully developed at trial. Witnesses may be reluctant to be associated with or perceived to be a supporter of the suspect, or, again, because they may begin to doubt whether information apparently favourable to the suspect could possibly be correct. It is not an answer that on the evidence actually available, the combination of the directions of the judge and the integrity of the jury would ensure a fair trial. The problem is that the evidence at trial may be incomplete just because its existence may never be known, or indeed may only come to light after conviction.

12. The material in the Daily Mirror publications was found to be extreme. The court thought that taken on their own the articles would have provided Mr Jefferies with a serious argument that a fair trial would have been impossible. But they thought that argument would probably have been rejected on the familiar grounds of jury integrity and the fade factor. The court also thought that if he had been convicted, he would have argued on appeal that the trial was unfair because of the publicity. Again, it thought that any such appeal on this ground alone would have failed, although making the arguments would have been entirely justified and the courts would have had to address them with care. Therefore the criminal justice process would have been held up and delayed. This was what the court meant when it referred to a potential impediment to the course of justice.
13. Together with this, and probably of more weight, the court thought Mr Jefferies' ability to prepare his defence was definitely affected. The articles vilified Mr Jefferies long before the fade factor began to operate, and the risks to the preparation of his defence were serious. The impact of these articles on potential defence witnesses would have been extremely damaging to Mr Jefferies. The court thought reluctant witnesses would have been even more reluctant to come forward, and witnesses who might have been prepared to come forward may very well have assumed that anything helpful or supportive they might have said about Mr Jefferies could not be right.

14. The effect of the Sun articles was not as grave as that of the articles contained in the Mirror, but the vilification of Mr Jefferies also created a very serious risk that the preparation of his defence would be damaged. The court concluded that at the time when the edition of the Sun was published it created substantial risks to the course of justice.
15. The Daily Mirror was fined £50,000 and the Sun £18,000.
16. Eight national newspapers made public apologies to Christopher Jefferies for the libellous allegations made against him. The Sun, Daily Mirror, Sunday Mirror, Daily Record, Daily Mail, Daily Star, The Scotsman and Daily Express also agreed to pay him substantial libel damages, thought to total six figures.
17. The Court in the contempt case also pointed out it was irrelevant that the way in which some elements of the media treated Mr Jefferies may justify a substantial award of damages for defamation. This was a criminal prosecution for contempt of court, not an analysis of any possible civil claim by him for compensation.

**Ursula Cheer**