Adam Speker

Press and Privacy: Is law the answer?

Despite the overtures from New Labour Britain is still divided. Not between Europhiles and Eurospectics but between the Eights and the Tens. Eights like privacy and secrecy and support article 8 of the European Convention on Human Rights (ECHR). They tend to be civil servants, ministers, members of the security services and famous people with something to hide. Their zenith was the Spycatcher case. Tens like openness and freedom of expression and are champions of article 10. They tend to be journalists, broadcasters, intellectuals and liberals. Their defining moment was meant to be the incorporation of the ECHR, entrenching human rights into British law.

The Great British Public moves between the two groups; the jury box often providing an indication of where they are at a particular time. When they are Tens they stand up for freedom as in the Lady Chatterley trial or the Ponting case. When they are Eights they punish newspapers by awarding the likes of Elton John, Jeffrey Archer and Sonia Sutcliffe massive settlements in defamation actions.

For much of the time they are Tens revelling in stories of mischief and scandal amongst the rich and famous. At present though, we are in what Lord Macaulay described as a periodic fit of public morality. So the public are Eights. The death of Princess Diana and the widespread coverage of her hounding by paparazzi photographers has revolted the public and reopened the debate on the role the press should play in today's Britain. As ever at such times the "something must be done" brigade has been active in calling for a privacy law. Just as the House of Lords

decision in the Spycatcher case converted many to the article ten cause; Fleet Street excesses have convinced many natural Tens to decamp to the Eights.

Whilst public opinion may at present be in favour of introducing a privacy law Parliament has sensibly resisted such a proposal. The judiciary, however, seems to have other ideas. Lord Bingham has announced that by introducing the ECHR into English law the judges will develop a privacy law on a case by case basis. Such a statement should not be alarming. Judges everyday balance conflicting rights depending on the facts of a particular case. But the announcement is worrying for a number of reasons. Firstly, it is Parliament's express intention not to introduce such a law; secondly, the codified and abstract nature of the Convention leaves judges with a great deal of room for interpretation; and thirdly, such a statement suggests that senior members of the judiciary are in the Eight camp: the right to privacy being deemed more important than that of freedom of expression before any case involving the new Act has come before them.

Many who are campaigning for a privacy law do not understand the legal minefield that British journalists already have to negotiate. At present they are restrained by a wide range of restrictive laws such as contempt of court, obscenity, breach of confidence, trespass and libel; as well as by a code of conduct set out by the Press Complaints Commission (PCC). Furthermore, seeking injunctions to try to stop newspapers publishing a story is a common tactic in libel and alleged breach of confidence cases, especially where national security is concerned. Injunctions, although difficult to obtain if the defence argues justification, do result in some stories

never seeing the light of day.

All these restrictions on reporting serve to limit the activities of legitimate investigative journalists whilst not being able to stop the actions of those at the lower end of the market. Nor would a privacy law. It would mean a long and expensive trial which would take place years after the alleged breach and only serve to remind the public of something they had long since forgotten. Not only is the remedy unpracticable but legislation will hinder the ability of the press to perform its essential role in a democratic society: to provide a check on those in power and inform the public so that we are able to make informed choices about those who govern us. A solution which further penalises the quality press but just serves to make their naughtier brethren find new ways to misbehave is thoroughly undesirable. It should not be forgotten that France has very strict privacy laws which did not help Princess Diana but do help corrupt and unwell French politicians shield themselves from the public.

That does not mean, however, that journalists have the right to behave in a manner akin to stalkers and intruders. There must be limits on the way they pursue their stories. The Protection from Harassment Act 1997, a law which is already on the statute book, although some parts are not yet in force, may be a sensible solution to the problems of an intrusive few. Those who knowingly and unreasonably pursue "a course of conduct which amounts to harassment of another" will be liable for either a civil tort or a criminal offence, punishable by imprisonment. This can be used against those whose actions are excessive. As for the PCC Brian MacArthur wrote in *The*

Times on 28th November, that Lord Irving has suggested that it "could become a privacy tribunal if it set up a fund for victims of press intrusion and thereby sidelined the threat of judges assuming the task." If a journalist is convicted he should be fined or have his presscard confiscated by the PCC.

No law should be introduced either by judges or through Parliament which would be unworkable; disrespected by those who are expected to follow it; and riding on the back of public indignation over extremely unusual events. For too long the Eights have presided over British public life well aware of what Hobbes meant when he wrote "knowledge is power." In a democracy that power should rest with the public. A situation which can only exist if the press is free to inform.