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Headline: Legal big stick threatens freedom of the press

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Article: SOMETIMES the law is extended, sometimes it extends itself. This week, Scotland's most senior law officer threatened editors with proceedings for contempt if they continued to investigate the circumstances of the Dunblane massacre. As though to sharpen the point, the Crown Office said the remarks of Lord Mackay of Drumadoon, the Lord Advocate, were themselves "not for publication or broadcast". The curb on reporting is not to be reported.

At first sight, the Lord Advocate's note might seem reasonable enough. Speaking of Lord Cullen's tribunal of inquiry into the events at Dunblane, it records that he "has noted with concern the publication of newspaper articles exploring and attacking the conduct of individ-uals, including police officers, councillors and local authority officials, whose actings may be the subject of scrutiny at the inquiry and who may themselves require to give evidence to the inquiry; in certain cases such articles have appeared after intrusive personal approaches to these individuals".

Lord Mackay, the note continues, "has raised concerns with Lord Cullen, who has agreed that any further instances of harassment of potential witnesses by the media or publication of any material which might impede the investigation or interfere with the giving of evidence to the inquiry should be referred to him", at which point Cullen could initiate proceedings for contempt.

This, in itself, is not actually a crime; it is merely treated like one. The 1981 Contempt of Court Act, and all the legislation which preceded it, is intended to deal, in an old defi-nition, with "conduct which challenges or affronts the authority of the court or the supremacy of the law itself". Thus, improper behaviour in court, the slandering of judges, prevarication or perjury by witnesses, witnesses refusing to answer relevant questions, to take an oath or affirm, or fail even to attend the court, are all species of contempt.

For our purposes, however, other forms become important. It is contempt to prejudice a fair trial by publishing statements which might impede a fair trial, for example. It is also contempt to interfere with the investigation of a crime. Newspapers guilty of such offences are liable to heavy fines, and their editors to imprisonment. That, many might say, is as it should be.

But think, if you still can, about Dunblane, and about what actually happened there. Think of what the public most wants to know about the causes of that inconceivable event. Remember that Thomas Hamilton, dead at his own hand, cannot be tried now, and that Lord Cullen is conducting a tribunal, not a trial. Remember, too, all the people who asked, bewildered, how a killer could lay his hands on so many guns, why

he eluded all controls for so long, and why the police were never once able to lay hands on him.

Be aware, further, that much of the investi-gative work into possible official failures attempted by the press in the aftermath of the massacre have proved fruitless, simply because the very sorts of people Lord Mackay now seeks to protect - police officers, councillors, and local authority officials - have taken cover behind Cullen. It seems the public interest, and the public's right to know, are to be allowed only one representative. Such are the number of potential witnesses to the long, squalid career of Thomas Hamilton, indeed, that the media need hardly now dare speak to anyone. Meanwhile, the police, the subject of most lay criticism, are given the job of investi-gating themselves.

If it seemed at all likely that the activities of the media might prevent Cullen from getting at the truth, that official culpability (if there was any) might somehow remain concealed because of the press, the Lord Advocate's attempt at censorship might almost be justifiable. But the reverse is more likely. By common consent, the media conducted themselves well, for the most part, in covering Dunblane. The press and television have investigative resources at least the equal of any police force. The real difference is that the media are not part of the system which failed utterly when it permitted Thomas Hamilton to live and die as he did.

Justice, if such a thing were even possible after Dunblane, is not at risk here. Only the truth is at issue. To claim, as Lord Mackay does, that media investigations would amount to interfering with witnesses is a juristical sleight of hand, only possible because tribunals have been granted the status of courts, and because the sub judice rules applied to them - albeit tightened in the aftermath of the Aberfan disaster - remain vague.

Thus, Lord Cullen's inquiry is not a court -how could it be, with the only accused dead? -but has the powers of a court where the press is concerned. It can wield the big stick of the contempt laws, says the Lord Advocate, even if this particular big stick looks suspiciously like a whole new weapon, so far does it differ from precedent. The suspicion grows, therefore, of an attempt simply to prevent the press from investigating what happened at Dunblane.

Interestingly, Mackay's note does not quote legislation when making its pre-emptive threats. Instead, the second Salmon Committee report of 1969 is summoned. This warned journalists against mounting any "parallel inquiry" and suggested that evidence could become "contaminated in media interviews".

"The only legal sanction to prevent the evidence from becoming contaminated", Salmon said, "lies in the law of contempt."

But what sanction prevents official failure, at any level? What scrutiny is there when the press is forbidden to look, far less to speak? What happens when a press that calls itself free is drawn into direct conflict with a legal system that calls itself just? The answer is that one or the other has ceased to live up to its name.

"Tribunals of inquiry," says one standard work, "are appointed to investigate serious allegations of corruption or improper conduct in the public service, or to investigate a matter of public concern which requires thorough and impartial investigation to allay public anxiety and may not be dealt with by ordinary civil or criminal processes."

Is it seriously proposed that the press could hinder the utterly impartial Lord Cullen? Conversely, are we expected to believed that public anxiety is allayed when the media is fettered? The only possible interpretation of the Lord Advocate's note is that policemen and officials have come complaining because the press is asking questions. How would the public feel if the press, after Dunblane, did not?

The massacre was unprecedented, as was the public's heartfelt response. Now the Lord Advocate steps forward to create a precedent of his own with a patchwork of law, administrative procedures, and jurists' reports. It is bad, it is dangerous, and it does not reflect well on a Scottish legal system whose pride and glory is the claim to proceed, always, from principle.

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