

## Chapter One

### Why is investigative journalism still relevant?

This chapter begins by looking at the genesis of the Watergate investigation itself and the outcome of the unlikely attendance in a Washington DC courtroom by Bob Woodward.

One of the key scenes in the Woodward and Bernstein narrative<sup>1</sup> explains how Woodward decided to attend the courtroom hearing after five men were caught in the act of burglary at the Watergate building. This is a role in line with classic press watchdog principles mentioned in, for example, Kovach and Rosenteil.<sup>2</sup> No other members of the Washington press corps were present. This small detail was important, since the roots of the *Washington Post's* coverage of the burglary lie in the sole presence of Woodward in the courtroom and recording the events which unfolded. Woodward's eyewitness reporting allowed him to gain advantage over press competitors and to see firsthand the suspects, their countenance and hear their answers to the judge's questions.<sup>3</sup>

This chapter presents a case-study which indicates that the press often omit coverage of potentially important subjects of public concern through the common practice of not supporting or allowing reporters to visit courtrooms on a speculative basis.

Because one of the aims of investigative journalism is to bring to the public's attention a story which would normally remain hidden, this is exactly

<sup>1</sup> See Woodward and Bernstein, *All the President's Men* (Touchstone: New York, 1994) P16.

<sup>2</sup> See Kovach and Rosenstiel, *The Elements of Journalism* by, (Crown Publishers, New York, 2001)

<sup>3</sup> See Woodward and Bernstein, *All the President's Men* (Touchstone: New York, 1994) P18. Including the testimony of James W. McCord Jr., who answered a question from the judge about his employment history with the devastating reply that he was a recently retired former-employee of the Central Intelligence Agency. This information caused the judge to 'flinch slightly' and reporter Woodward to exclaim 'half aloud' his reaction of 'Holy shit... the CIA'

the kind of effect which practitioners of investigative journalism hope to achieve and is in line with the stated goals of the earliest professionals involved with the activity.<sup>4</sup>

The case in question typifies a reality which the news organisations often miss on a daily, weekly and monthly basis. Choosing a court case is a straightforward way of beginning this discussion since each town and city in the UK has a courtroom and legal cases of varying outward degrees of seriousness, being processed daily. One of the signs of a democracy is the ability for any citizen and/or journalist to be able to walk into a court and report (within reason and legally acceptable limits) the dispensing of justice occurring therein. Dictatorships and countries ruled by autocrats often feature ‘show trials’ or ‘secret trials’ held out of the public eye and away from media scrutiny. Developed countries pride themselves in having legal systems which operate at the opposite end of this spectrum. The USA routinely allows televising of trials and the vast majority of all UK court cases are open to scrutiny. On any given weekday however, it is possible to walk into any court in either country and find that there are no members of the press present. The reasons for this are complicated. Most news organisations would not spend money sending a reporter to a court unless a ‘newsworthy’ case was being heard: the definition of ‘newsworthy’ varies widely and differs from one news group to another. Dedicated news reporting services employ reporters to attend courts regularly, but even so, Glasgow-based reporters have told this author they only select a few cases to follow. The range of cases they select tend to fall into the ‘extraordinary’ category (i.e. contain features that are exceptional). They

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<sup>4</sup> Refer to Chapter Two of this study for case-study examples of this, especially those connected with US-based journalist Bob Greene.

deliberately avoid ‘run of the mill’ cases because they are considered boring and contain no unusual factors. This means that justice is dispensed without any media oversight in the overwhelming majority of courts in both the UK and USA. In most cases, such a lack of press presence is probably (although we cannot definitively prove this) meaningless to the court business at hand. But, in a certain number of cases, a press presence in the court could have made a difference (again, this is not definitively provable). What is clear is that a reporter ability to take down an independent record of events in certain court cases, would have added another record, dimension and interpretation to the wider picture.

In the case that follows, the presence of a journalist – in this case, the author of this study - in the courtroom at the appeal case, alerted the judges that the wider public could be made aware of their decision and legal justifications. Crucially, the author was in court as part of his professional mission as an investigative journalist. This particular role ensured his presence because it differentiates its own mission and tradecraft from other journalists who follow different aims and use different – but related – methods in their pursuit of them.

It is also a partial answer to the title of this chapter, providing us with information which shows why investigative journalism needs to exist in order to make the public fully aware of important issues and matters happening in their midst and in their name, which otherwise would go unnoticed. In the case which follows, matters concerning police corruption and malpractice were raised, involving senior officers in one of the UK’s largest police forces. As in the case of the initial processing in court of the five Watergate burglars had the author not been present to represent the press, the reading public would only have had

the official version of events, prepared by a court-reporting service which had no in-depth knowledge of the events behind the case and no intention of following the case up afterwards, to base their opinion on.

This is one argument, which suggests there is a strong necessity in society for investigative journalists.

The case-study which follows, seeks to amplify this and explore further related issues, and is told from the subjective viewpoint of the author.

### **Case-Study: Stuart Gair appeal<sup>5</sup>**

On July 11<sup>th</sup> 2006, the author of this study attended the Court of Session in Edinburgh, Scotland. The attendance was to hear the findings of three senior Scottish judges sitting as an Appeal Court in the case of *Stuart Mitchell Gair against Her Majesty's Advocate*.<sup>6</sup>

The author – in my capacity as an ‘investigative journalist’ (a term discussed in detail in the next chapter) – was attending court to witness the final act in a drama which had begun almost seventeen years earlier for Mr Gair and nearly eight years earlier for myself.

The background to this case was that in August 1989 a 26 year-old Scottish man named Stuart Mitchell Gair was convicted and sentenced to Life imprisonment for the murder of a 44 year-old male named Peter Smith in Glasgow’s city-centre. The crime had occurred on the evening of Tuesday 11<sup>th</sup> April 1989 and Gair was convicted of killing Mr Smith with a single stab wound to his chest, causing the 53 year-old victim to bleed to death some days later in hospital. By the time of Mr Smith’s death, Mr Gair was already in police

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<sup>5</sup> See Appendix for details of this case study.

<sup>6</sup> For full Court transcript of the finding see:  
<http://www.scotcourts.gov.uk/opinions/2006HCJAC52.html>

custody and was already charged with the attack – the death of the victim transformed the case into a murder inquiry and Stuart Gair was charged accordingly.

An unusual feature of this case however, was that from the outset Mr Gair denied any involvement in the crime he was alleged to have committed. He claimed that a series of witnesses who supposedly could identify him and place him at the scene of the crime were all lying. The police, however apparently took the claims of the young men found near the murder scene – a well-known public lavatory notorious for its gay ‘rent boy’ activity – seriously and pressed charges against Mr Gair. Another piece of the puzzle seemed to emerge over the summer of 1989 when detectives continued to investigate the Peter Smith murder. Damning forensic evidence from two top Scottish forensic pathologists linked a knife found amongst Mr Gair’s possessions to the murder.

Despite the seemingly overwhelming evidence – forensic, eyewitness and Mr Gair’s own criminal past – against the accused which might have led an unwitting spectator to be convinced of his guilt from the outset, the court case itself in August 1989 however, was not without drama and peculiarities.

Firstly, there was the fact that the Crown witnesses had seen TWO men attacking Peter Smith. Therefore, until a short time before the trial, Mr Gair had a co-accused – a 25 year-old self-labelled ‘vulnerable’<sup>7</sup> man named William MacLeod who was stopped by officers in the city-centre, shown a photofit image and then taken into custody. Within hours of being in police custody, Mr MacLeod was weaving a bizarre tale that placed him and Gair at the crime scene. But Mr MacLeod was persuaded by prosecution lawyers to turn Queen’s Evidence and give incriminating testimony against his co-accused Mr Gair. This

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<sup>7</sup> As described by William McLeod in an interview with the author, September 1999.

evidence comprised of a series of statements taken from MacLeod by the police after he was stopped in public in a Glasgow bus station and asked if he thought he resembled a photo-fit image of a male seen at the murder scene. MacLeod claims he was pressured into making this evidence up. Crucially, it also implicated Stuart Gair in the murder itself and characterised MacLeod as the innocent of the two parties. It also mentioned someone named 'Charlie' a third man allegedly at the murder scene. MacLeod later claimed, in statements to me and his lawyer, that this was all lies. Secondly, during the case itself, Mr MacLeod, the co-accused who now incriminated Stuart Gair, entered the dock and then changed his evidence no less than *six* times, repeatedly telling the jury and the sitting judge that he had been pressured into lying by the police detectives who had cut a deal with him and that he'd no knowledge of either Mr Gair or indeed the murder of Peter Smith.

The final scene in this drama was played offstage however and involved the alibi which Stuart Gair maintained he had for the crime he was accused of. On the night of the murder of Peter Smith, Mr Gair alleged he'd spent the evening in a hostel on the other side of Glasgow. This alibi was backed up by a witness named Hector Wood who gave a statement to police which supported Mr Gair's claims and thus provided him with an alibi. One might have reasonably assumed that Mr Wood's evidence would have formed a key in Mr Gair's defence. However he was never called to give evidence and instead of being presented as the main alibi witness, Mr Wood was inexplicably left to sit alone on a bench in a nearby waiting room for over four hours. His important evidence was never aired in court and the jury were left with the impression

Stuart Gair had no alibi to counter the claim he had been in Glasgow city-centre on the night of 11<sup>th</sup> April 1989.

The jury spent only 42 minutes considering its evidence and at 5.09pm on August 30<sup>th</sup> 1989, they delivered their verdict against Stuart Gair: he was found to be guilty of the murder of Peter Smith.<sup>8</sup>

The press presence in the court during the original murder trial of accused suspect Stuart Gair was conspicuous by its absence.

No proceedings of the court case, including the claims of violence and corruption against serving senior detectives in Strathclyde Police were ever published as a matter of record. Only the final day's proceedings which culminated in the guilty verdict against Mr Gair were noted by Glasgow's *Evening Times* newspaper, a publication with a wide- readership in Scotland's largest city. In this sole account the fact that two of the jury members burst into tears when the verdict was delivered, seemed to dominate the report. Nothing was mentioned about the controversial nature of the case nor the claims and counter-claims about police intimidation and witness tampering which had been aired in court. The *Evening Times*' focus on the tearful-juror incident at the culmination of proceedings added a melodramatic edge to what seems to have been perceived as an unremarkable Glasgow murder case.

Almost a full seventeen years later and history was, in a sense, repeating itself.

As the author sat in Court Two of the Court of Session in Edinburgh, waiting on the three senior judges who formed the Appeal Court, delivering

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<sup>8</sup> A fuller account of this case follows later in this study. A published account of the author's first investigation into the alleged miscarriage of justice in the Stuart Gair case may be found online at: <http://www.eamonnoneill.net/articles/GAIR.pdf>

their finding on Stuart Gair's appeal case, the press was again conspicuous by its absence. The author of this study was the only journalist present.

Elsewhere in the Court of Session, over two dozen journalists from all sections of the media – print and broadcast, tabloid and broadsheet – were attending the defamation case involving a well-known Scottish MSP named Tommy Sheridan, and the UK's best-selling Sunday tabloid newspaper *The News of the World*. The contrast between the coverage of these cases is striking. The Gair case raised vital issues which were hardly recorded since press coverage was almost non-existent; the Sheridan case was flooded by press coverage, much of which focused on the sexual-innuendos of the case and which by nature of the blanket coverage was repetitive in detail and content.

### **The 'mother of all stitch ups'**

The Sheridan case happened in tandem with the Gair appeal case.

The tale of Scottish MSP Tommy Sheridan's alleged trips to orgies in swinger's clubs in the north of England, and his supposed encounter in Aberdeen hotels with hired prostitutes who he wooed with champagne and strawberries, attracted journalists from across the UK and abroad. The MSP denied these charges which were printed in the *News of the World* in 2004 and a libel action followed: he later referred to the stories as being 'the mother of all stitch ups'. This meant that every piece of evidence gathered by the tabloid in its pursuit of this 'investigation' would and could be trotted out in open court as a way of defending itself and the 'truth' of its claims and in the process, tar Mr Sheridan's reputation.



Thus, on the same day that a solitary journalist covered the outcome of one of the longest and most controversial miscarriage of justice cases in Scottish legal history, frustrated members of the media informed the author that there was a waiting list of no less than twelve reporters hoping to get a place inside the steamy and seedy atmosphere of Court number nine instead.<sup>9</sup> Whilst there is no denying the colourful nature of the case for predictable and colourful popular-culture reasons, the scale of the press coverage of the case was remarkable. Indeed, to cite just one example, the national broadcaster, BBC Scotland, produced coverage that was so extensive that its own radio editor felt the need to explain herself in her online blog to angry and concerned license-fee payers during the case.<sup>10</sup>

Every section of the press reported the Sheridan case with breathless urgency and in impressive forms of almost forensic detail. The well-worn technique of broadsheets ‘reporting-the-reporting’ – meant that they too could inform their readers of the goings on in this saucy politics and sex scandal – whilst tying it into an under-addressed self-representation in court legal angle. *The Guardian*, for example, managed to have it both ways by covering the court case whilst simultaneously distancing itself from the tabloids which formed the most energetic frontline coverage.<sup>11</sup>

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<sup>9</sup> The sheer scale of the coverage given to this case can be indicated by the space allocated by the BBC to what it termed ‘Sheridan’s Court Battle’, on its website:

[http://news.bbc.co.uk/1/hi/scotland/glasgow\\_and\\_west/5194588.stm](http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/5194588.stm) Every day of the case was covered in-depth on TV, radio and online.

<sup>10</sup> See: [http://www.bbc.co.uk/blogs/theeditors/2006/07/taste\\_and\\_decency.html](http://www.bbc.co.uk/blogs/theeditors/2006/07/taste_and_decency.html) - Apart from twisting herself in intellectual knots trying to justify the coverage of this politics and sex scandal, the editor singularly omits to mention that the scale of the coverage – and the detail of it – meant other important stories are by definition not covered. The impact of her decision is therefore never addressed.

<sup>11</sup> See: <http://media.guardian.co.uk/presspublishing/story/0,,1823948,00.html>

The Gair case however, also had drama, albeit of arguably a more sobering and substantial kind. The proceedings in the Appeal during the previous twelve months had, for example, included: allegations of police brutality against vulnerable witnesses; dramatic testimony from four Crown witnesses who testified that their evidence at the original 1989 trial had been lies which they were forced to tell on pain of having their sexuality ‘outed’ by police detectives; written admissions from the senior forensic pathologist who had originally linked Mr Gair to a knife in 1989 admitting that this evidence was completely mistaken (this followed withering written criticism from two senior forensic pathologists about the unorthodox methodology used by the key pathologist in 1989); evidence that the main detective in the Gair investigation had personally removed all the case files a decade after the murder conviction, an illegal act which was described in court as ‘highly irregular’ for reasons which remain obscure to this day; related evidence to the latter action whereby the same retired-policeman also illegally retained his police notebooks for seventeen years; and the peculiar timing of the same ex- senior detective’s abrupt ‘retirement’ in 1999, when a complaint about his conduct in this case was formally lodged with Strathclyde Police.

Although the Appeal Court judges were loath to acknowledge the credibility of many of the main witnesses who had claimed they had been forced by the police to lie in 1989, the stark fact remained that these witnesses – now adults – swore on oath in late 2006, that they had indeed been forced to perjure themselves. Such serious claims simply had to be addressed and dealt with by the judges. Additionally, some of these witnesses claimed that violence and psychological pressure in the form of threats to their families had been

applied over the previous decade. They all claimed police procedural rules were consistently violated including, for example, identification parades being deliberately manipulated by detectives to ensure evidence pointing to Gair's guilt was secured. If true, these allegations revealed a case where an innocent man was framed for a serious crime he did not commit by seemingly corrupt detectives determined to secure a conviction at any costs.

Eventually, after much of this evidence was considered by the judges in the Appeal Court, Stuart Gair's conviction for the 1989 murder of Peter Smith was finally overturned. The judges' however chose a crucial but nevertheless narrow, point of law to base this damning decision upon.

The point of law on which the Appeal Court judges based their decision to quash the conviction concerned the issue of non-disclosure of Crown evidence in 1989 to the defence. This was an important legal issue – important enough to have Mr Gair's murder conviction thrown out some seventeen years after his original trial and protestations. The actual finding of the judges ran to only 22 pages – a short finding given the length and history of the appeal, and the volume of evidence in submission form and witness statements, the appeal had generated. Within two hours of this finding, a court news service had distilled the 22 page finding down to a page and a half, thus reducing the main points of the judges' findings to what was considered to be a readable form and length.<sup>12</sup> No context, history or indication of the dramatic evidence the appeal

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<sup>12</sup> This practice occurs every working day in courts throughout Scotland – and in English courts in other parts of the UK also. In the Sheriff Court of Glasgow and Strathkelvin, for example, there are eighteen courtrooms. Although these hear cases which can last for many days and weeks, including many featuring arcane aspects of Scots law, there is only one court 'reporter' covering the entire building's collective proceedings every week. This individual is employed by a private court reporting business which generates copy for daily and weekly newspapers throughout Scotland. I was told in 2006 by the current reporter that it was 'impossible' to cover in any kind of appreciable detail many important cases. Instead he explained that he tended to go for the 'unusual, man bites dog' kind of cases for their novelty value. When major cases do occur, many other members of the press arrive *en masse*. But this approach virtually guarantees that the vast majority of cases, if not picked up by

had thrown up were provided for news organisations, editors and/or journalists who would receive this information. The impression was created that the non-disclosure issue was the sole – albeit crucial – point which freed Mr Gair and overturned his conviction. In law, this was technically true. But the disturbing allegations and facts the case had thrown up were also important since it had shown the inner-workings of Scotland’s largest police force, Strathclyde Police, in relation to this particular case to have been flawed, corrupt and predatory. No wide and in-depth scrutiny by the press meant that interest in the case simply waned in the following days. In turn, this meant the lawmakers and opinion-formers in the country didn’t pick-up on the issues raised and couldn’t press the police force for answers to the uncomfortable issues mentioned. It also meant that the detective at the centre of the case, who had rather conveniently and mysteriously retired in 1999, could not be asked to account for his actions and central role in a dreadful miscarriage of justice.<sup>13</sup>

The connection to the impact of investigative reporting technique derived from the Watergate narrative is that in that case, Woodward was attending an apparently routine processing of five burglars in an almost empty courtroom. On paper, such a procedural matter was apparently inconsequential. Similarly, the Gair hearing was a seemingly unremarkable case involving a drug addict with a criminal past who was attempting to have a serious conviction overturned in the face of long odds. The presence of the media however, meant

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overworked, overstretched and often ill-led full-time court-reporters, remain stubbornly under the radar and thus well-away from wider public understanding, never mind, scrutiny.

<sup>13</sup> This ex-detective’s identity is known to the author . This outcome in the Gair case is far from unique in the annals of British-wide miscarriage of justice case history. In fact, to date [2009] not *one* single police officer who has been implicated in causing a miscarriage of justice case in a capital case, and whose likely corrupt conduct has been found to be causally linked in the appeal case hearing to the wrongful conviction of the individual concerned, has ever been successfully tried and convicted for their criminal actions.

that the important background to each case was scrutinized and publicised in subsequent articles.

The resultant media coverage of the Gair appeal during the 2005-6 timeframe in the Scottish press in the immediate aftermath of the murder conviction being overturned was revealing.

In the 24 hrs after Gair's successful appeal, his case was covered in broadcasting, print and online media. The coverage was not wide, nor in-depth. Instead, as is the custom and practice in many cases of this type, the news aspect of the appeal decision was the item which attracted most attention. In other words, the court's decision to overturn the conviction based on non-disclosure was reported as 'news' on the day it happened, whilst other disturbing issues which formed the backdrop to the appeal, weren't covered widely in print or broadcast.

The author monitored, researched and collated coverage for the purposes of assessing the quality, depth and nature of that material.

This involved taping all Scottish radio and television broadcast and then viewing and transcribing their script contents. For press coverage, all the main newspapers were collected and studied for their content and coverage of the Gair case. Online reports were also studied and collated for their content. Brief notes were also taken on the textual nature of the material, including impressionistic elements like headlines used and photographs featured.

The radio and television broadcasting coverage was immediate and featured short items of around 1 minute duration and were included in lunchtime and evening broadcasts. Since the TV stations had not prepared for the appeal decision in any way and did not have crews ready to speak to Mr

Gair, and since he was too emotional to wait on them, these broadcasts were cursory and they only referred to the non-disclosure point as being the main feature of the entire case and therefore the sole reason why the case had been overturned.<sup>14</sup>

In terms of pictures, the footage of the case provided viewers with only the briefest of clips of a stunned Mr Gair leaving the precincts of the Court of Sessions in Edinburgh.

The online coverage also consisted of the summary of the non-disclosure finding as provided by the legal news service.<sup>15</sup> Again, no context or background information was provided for visitors to the site. Earlier filed reports were available on the right hand-side of the website however, and these allowed visitors to click on them to access previously filed information. Their effectiveness was undermined however by the contents of one of the reports containing poorly sourced and unbalanced information relating to a conviction Mr Gair managed to incur whilst on bail. The image accompanying this report was a 'grab' or still-image taken from another report showing worried-looking Mr Gair entering the court on a prior occasion in relation to his appeal case.

Newspaper coverage was, in terms of space allotted, proportional but not extensive, for example *The Herald* newspaper based in Glasgow, gave a full page to the case, yet *what* that page consisted of is extremely interesting: the main page was dominated by a large photograph of Mr Gair taken some years before when he was released from jail on bail; the uppermost parts of the page consisted of approximately 1200 words, ninety per-cent of which was the news

<sup>14</sup> As Mr Gair left the court in an emotional state having just had his murder conviction overturned after a seventeen year battle, an STV cameraman attempted to persuade him to, in his words, 'hang about' in the vain hope that STV's on-screen reporter attending the Mr Sheridan sex libel case, might eventually emerge and speak to him. Mr Gair refused and immediately left the court precincts.

<sup>15</sup> See here: [http://news.bbc.co.uk/1/hi/scotland/glasgow\\_and\\_west/5168386.stm](http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/5168386.stm). This matched in content and material to copy which ran in other Scottish newspapers.

service story used widely by other media outlets; beneath was a comment-like feature written by the author. The latter featured the only interview with Mr Gair and his lawyer after the former had been released. The original text provided by the author to the newspaper had been heavily edited by the news editors until no revelatory context existed in any shape or form. Some brief comments from Mr Gair's lawyer indicated that he'd been convicted erroneously as the result of a concerted and 'malicious' police conspiracy which amounted to a 'railroaded conviction.' The article didn't explain how Mr Gair's lawyer, a seasoned Glasgow-based solicitor named John McAuley, arrived at this damaging conclusion. Readers were not made aware of the serious accusations of corruption made against officers in Strathclyde Police and unanswered questions relating to these claims, which had surfaced throughout the appeal case.

At first glance however, the space allocated to the coverage of the case indicated in-depth and wide coverage in terms of background and reporting resources committed to this one story. Some comments from this author were included, albeit in shortened form. But the actual details and manifestly important issues, for example the allegations of witness tampering and illegal removal of the murder's case papers by a senior detective were never mentioned at all.

It could be argued that whilst being able to claim that they'd covered the case, editors at the main newspapers had in fact, missed some of the most vital – and disturbing – elements which formed its context. This was a pity, since in doing so they'd not only given their readers something of a red-herring version of the reasons for the conviction being overturned (what American novelist and

sometime-commentator on global media affairs has called ‘junk food journalism. Empty calories...’<sup>16</sup>) they’d also failed to address the issues the case had thrown up which might have been of real concern to readers and Scottish society in general, namely the full story of how an innocent man was framed by Scotland’s largest police force without anyone being held accountable and/or punished.

Meanwhile, over the same time-frame, ongoing detailed coverage of the Tommy Sheridan MSP sex libel case continued unabated and was featured heavily in every section of the Scottish media. In printed and broadcast word terms, it generated a 15-1 ratio in comparison to Mr Gair’s seventeen year battle to clear his name. The estimated resources its comprehensive coverage commanded from media outlets were considerable.<sup>17</sup> This indicates a clear picture of current 21<sup>st</sup> century news values at work in the Scottish and wider UK media. The conjunction of political drama, compelling and contrasting courtroom testimony, engaging and charismatic central characters and alleged sexual shenanigans, provided a powerful attraction for news editors.<sup>18</sup> The criteria for what constitutes ‘news’ on any given day within a broadcast, print or

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<sup>16</sup> See Michael Crichton’s prescient and controversial speech to the National Press Club in April 1993, entitled ‘Mediasaurus: The decline of conventional media’ at: [http://www.crichton-official.com/speeches/speeches\\_quote02.html](http://www.crichton-official.com/speeches/speeches_quote02.html)

<sup>17</sup> Each reporter’s wages averaged at £100-£150 per day; a total of 12 journalists attended daily with at least half that number hopeful of being allotted a slot; two TV cameramen attended daily; and approximately six photographers also; not forgetting the ever-present court news agency reporter too. An approximate total cost of £5000 per day was therefore spent on covering this case: not including per diem expenses. It ran for 5 weeks – Mr Sheridan sacked hi legal team and defended himself successfully – meaning a total media spend of around £200,000-£250,000 was incurred, including an estimate for satellite feeds etc for ‘live’ coverage of the case.

<sup>18</sup> The author sought comprehensive viewing figures and readership figures from BBC Scotland and Scottish TV on ITV, as well as *The Daily Record*, *The Daily Mail (Scotland)*, *The Sun*, *The Star*, *The Daily Express*, *The Herald*, *The Scotsman* and *The Mirror (Scotland)*. None could provide specific enough figures to indicate whether choosing to cover the Sheridan case meant a rise in audiences. Anecdotally, the author was privately told that online analysis of website visitors and some limited newsstand sales figures did show a modest lift in figures. Across a range of telephone and email replies to requests for more detailed statistics were mostly refused on the general grounds that daily sales figures from what was considered a micro-period over less than one month were ‘commercially sensitive’.



online newsroom, is a set of pre-determined and floating value-tests which differ from operation to operation depending on a wide range variables such as, for example, which country and cultural backdrop the news team is working in, who the editor is and what views does this person bring to the job, and which marketplace the news operation is aiming to provide content to. Many text books about this most basic of journalistic skills (i.e. how to gauge on a daily basis what news is) have been written for undergraduate students studying in UK and US universities.<sup>19</sup>These range from wide multi-country analysis by Galtung and Ruge in their groundbreaking 1960s research, to more recent analyses put by journalists Kovach and Rosentiel.<sup>20</sup>The list of suggested news values is seemingly never-ending and the debate about their relevance, especially to working journalists, seems set to continue in the foreseeable future, especially as new working practices (e.g. podcasts by Mobile Journalists using digital cameras), new contributors with varying degrees of educational and/or professional training (e.g. Citizen Journalists and Bloggers) and new information sources (e.g. Crowd Sourcing using online social networks, e.g. Facebook and online group edited resources like Wikipedia) become integrated into the average journalist's working day.

Most of the copy<sup>21</sup> in the Sheridan case, like most other court cases was very similar in content and presentation and mostly consisted of legal transcript

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<sup>19</sup> Brighton and Foy's recent *News Values* (London: Sage, 2007), convincingly deconstructs the work of Norwegian social scientists Galtung and Ruge, challenging their conclusions about what news values are.

<sup>20</sup> Kovach and Rosentiel *The Elements of Journalism* by, (Crown Publishers, New York, 2001).

<sup>21</sup> The traditional press term 'copy' (*noun*) is used throughout this study in line with its meaning denoting written material produced by journalists for publication. This is usually meant to infer material supplied by journalists in draft-form which then goes on to be edited and/or polished by sub-editors and senior-editors before being submitted for final publication at press time. The term is also used in other areas of the media too and some broadcast journalists use terms like 'script' and 'copy' interchangeably, especially if the individual in question has had a print journalism professional background.

and reporter-witness court-activity generated press copy. Little background material of an original investigative nature was mentioned in any coverage, since the ongoing case rendered such material potentially *sub judice* under Scots law affecting the media. Given the nature of the case, where orgies ‘swingers clubs’ and use of prostitutes formed the detail of daily evidence being heard in open court, it is unlikely that most readers would relate in a first-hand, knowledgeable way to these fringe sexual adventures, however in a salacious and old-fashioned seaside-postcard ‘nudge-nudge, wink-wink’ kind of way, the case certainly provided interesting material for readers during an unusually hot-spell of weather at the beginning of what’s known in the media as ‘silly season’.<sup>22</sup>

The surreal and mildly dramatic nature of the case was only heightened when the seemingly indefatigable MSP sacked his legal team and represented himself in court on day eleven of proceedings.

### **Press coverage of two cases**

It could be argued that both cases, Gair’s miscarriage of justice case and the Tommy Sheridan libel trial, should have been covered equally since coverage of the pair of them might have provided both news and entertainment to readers, viewers and listeners.

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<sup>22</sup> This term ‘silly season’ is of unknown origin yet its usage is annual and its meaning and power considerable. It alludes to the traditional time when summer public offices and PR companies which usually generate daily news material go on holiday. News content therefore allegedly dries up. Thus, ‘silly’ stories are encouraged especially those with ‘legs’ which can ‘run and run’ and fill space in the papers – not because they’re important or relevant, but because they simply exist and provide readable copy. John Pilger has critiqued the weekly version of this in his book *Heroes* where he refers to the oft-mentioned ‘slow news day’. This is when the desk-bound journalists find little to cover because for whatever reason, the usual official sources have not sent PR releases or copies of ministerial statements etc – thus, little of substance appears in print. Both practices can be critiqued on a number of grounds, the most obvious being they result in lazy and reactive, not to say passive journalism, open to manipulation.

Given the serious nature of the revelations concerning police corruption aired during his appeal case, it can be argued Gair's case, in terms framed by Ettema and Glasser for example merited at least one day of in-depth, serious and, above all revelatory coverage in the Scottish media.<sup>23</sup> The most appropriate time to have done this would have been at the very end when he the conviction was quashed and he was finally exonerated. His case brought to the fore issues that arguably could be said to be of major relevance to the average citizen in Scotland, since at its heart it showed how an innocent man could be framed for a crime he did not commit, a fear and fate which has featured heavily in the annals of many literary and non-fiction works globally through the ages.

Merely reporting the outcome minus any serious background coverage of an in-depth nature fails one of the litmus tests of journalism's claimed goal of aiming to tell the wider 'truth'.<sup>24</sup> Whilst the accuracy of the reporting of the outcome of the case is not being challenged, the context which gives meaning to those facts, wasn't, it would appear, fully presented. Consequently, in this case, it might be argued, that facts were recorded and reported, but through lack of deeper and wider coverage, were robbed of their power, in that sense, possibly, a 'true' picture wasn't given. It also failed to reach the mark set by one investigative reporter from the USA, Pulitzer-Prize winner Marimow, who claimed that investigative reporting was a form of reporting which went "beyond the information that is released in a news conference."<sup>25</sup>

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<sup>23</sup> This would have, at least, fulfilled the role assigned to press coverage by Ettemer and Glasser as 'custodians of public conscience' since the law of averages would support the idea that a percentage of the population would surely have been interested in reading about acts of police corruption effective enough to frame an innocent man for over a decade and a half.

<sup>24</sup> See Kovach and Rosenstiel, especially Chapter Two in which they discuss the intricate arguments down the ages – from the Bible onwards – regarding the shifting religious, philosophical, scientific, legal, journalistic etc, attempts to define the nature of truth. Suffice to say it is impossible to reach a definition suiting everyone. However the different criteria presented therein does reach conclusions which journalists should at least be aware of.

<sup>25</sup> Bill Marimow, in *Custodians of Conscience* (New York: Columbia University Press, 1998), p10.

One of the main points Kovach and Rosenstiel make is that ‘news’ – meaning reported facts emerging from an event like a car crash; earthquake; war etc – doesn’t always equal ‘truth’. The colourful and convenient example they provide, and which I recount on the next page of this study, to illustrate their argument could be applied to the flaws in the coverage of the Gair appeal case:

“A journalist at the *New York Times* told us the other day that the New York Giants lost a football game by a score of 20-8,” journalist and press critic Richard Harwood told us at one committee forum. “Now that was a small piece of truth. But the story of why the Giants lost can be told in a hundred different ways – each story being written through a different lens that is fogged over by stereotypes and personal predilections.”

The same could be also said to be true of the reporting of the culmination of the Gair appeal case by the Scottish – or indeed, Scottish-based UK – press in July 2006. Anyone who read articles after the appeal case knew why Scots law had decided to overturn his conviction but few would have understood what had happened in court to cause this to occur. An array of terrible revelations about the framing of this innocent man had been aired in open court yet because the press weren’t present, they had not been recorded them for public consumption. The only source for the full court transcript was the lawyer representing Gair but these voluminous documents were his property. Other revelations were gathered by the author for investigative articles in the printed press since the 1998 time-frame but these appeared, on average, once or twice per year over an eight year time span. The coverage of this case was therefore infrequent.

The claims made by the author were supported by additional material which emerged in open court during the appeal case and which I also retrieved

from the massive court transcript. But, for reasons which will be discussed later in this work, few Scottish editors expressed enthusiasm about printing such findings at this stage of this particular case.<sup>26</sup>

In other cases, examined in later chapters of this study, media outlets, in both broadcast and print, were very receptive to this kind of original, in-depth and revelatory investigative journalism. But on this occasion and regarding the Gair case, no such platform existed. The reasons for this situation are myriad but some responses were notable.

The author often heard editors state, for example, that the case had been ‘covered’. By this assessment, they meant they had run a single article about an aspect of the case prior to the appeal hearing. Other editors simply felt the case was not compelling enough for readers to be interested in it. The most common reaction received by this author was that the allegations against the police of framing an innocent man, was not something their readers were interested in. No evidence was ever supplied which supported this assertion and no statistical data (e.g. a poll of readers which clearly showed they didn’t value a newspaper which covered alleged miscarriages of justice) was ever shown to exist which would have explained why editors took this decision.

Consequently, the dreadful nature of his story remained largely untold and the accurately reported damning details unearthed during several investigations, remained concealed from public and wider scrutiny. Only at a later date when terrible personal tragedy struck in relation to Stuart Gair, did

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<sup>26</sup> Editors often express the oft-heard phrase ‘what’s new here?’ News, by its nature, focuses on fresh events. Some editors translate this approach into a spiralling mantra which means they exclude any story which fails to provide fresh material in an easily identifiable way. In consequence, the unearthing of small but key facts the significance of which can only be appreciated when an entire re-telling of a complex story is undertaken, sometimes fails to engage editorial and commissioning attention. This problem bedevils many detail-focused journalists who seek backing for investigations.

some of the damaging details about the conduct of detectives from Strathclyde Police involved in his case finally see the light of day.<sup>27</sup>

### **Watergate lessons used in Gair case**

Articles related to this case which were written by the author are contained in the appendix. These were written before, during and after Mr Gair's appeal case in July 2006.

These articles represent several months work in total and are the result of a mixture of standard 'investigative'<sup>28</sup> journalistic approaches and specific Watergate-related techniques: initial scrutiny of existing documents; examination of ongoing press coverage; discovery of official contacts (e.g. lawyers and other connected parties involved in the case); tracking down new witnesses; interviews with those same individuals for publication; sourcing, scrutiny and assessment of case documents; field-trips across the United Kingdom to speak to witnesses who had never given press interviews before; consultation with forensic experts to assess specific areas of the case which caused concern; final editing and legal appraisal of completed draft of article prior to publication. Almost ten thousand published works in magazines in both Scotland and the rest of the UK, meant that Mr Gair's claims of innocence reached a wide and varied readership. New material and on-the-record evidence was discovered during these investigations. The outcome was not only exposure of the case to UK readers but also impact in legal circles which raised the

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<sup>27</sup> Stuart Gair died on Tuesday October 30<sup>th</sup> 2007 after a life-support system was switched off following a series of sudden heart-attacks the previous week which had left him in a coma. The author of this report wrote about his death and its implications from the two main Scottish broadsheet newspapers, *The Scotsman* and *The Herald* and these are discussed in greater depth elsewhere in this work.

<sup>28</sup> A definition of 'investigative journalism' is discussed at length in Chapter Two of this thesis.

profile of the case amongst those who could help Mr Gair achieve his stated aim of overturning the alleged wrongful conviction against him.<sup>29</sup>

The articles represent the use of techniques and strategies derived from close study of the Watergate case. The fifteen points mentioned earlier in this chapter all played a part in helping the author identify how to go about producing reports on this case.

Not all cases produce such outcomes however. Ironically, as we have seen at various points in this chapter, the Gair case itself failed to secure backing and coverage towards its conclusion. But not all editors would have made this decision to run only press agency-generated material on Mr Gair's case. Others might have chosen to invest in deeper and arguably more revelatory coverage. The fact they didn't reveals not so much a moral or professional failure, as possibly an indication that investing finances in investigative projects is a risk many editors simply won't take. This is because investigative journalism has been always seen as a resource-heavy initiative, a concept discussed more fully later on in this study. Investigative projects often don't work out and some editors see this as money wasted. Even if the stories do result in a publishable story, one of the most common goals of any editor – increased sales – is not always met. Therefore, to fully support investigative projects, editors need to believe it has intrinsic value to the publication, audience and even wider society.<sup>30</sup> Even the most well-intentioned editors sometimes stop believing such projects pay the dividends they'd hoped for. One

ex-editor of *The Herald* recently admitted in an article that the history of

<sup>29</sup> See letters to editor of *Esquire* magazine Jan-Feb 2000 edition. The author of this study published an investigative article into the Gair case which was published in the *Esquire* December 1999 edition, which in turn provoked Mr John Scott, then Director of the Scottish Centre for Human Rights to write to the magazine praising the article and noting its journalistic depth, well-researched findings and positive impact on bringing the case to the attention of readers.

<sup>30</sup> These concepts are discussed in later chapters.

investigative journalism is filled with teams who failed to come up with enough scoops to justify their existence and succeeded only in annoying colleagues by being a "newspaper within a newspaper". He also commented: "When I was at the Sunday Standard the defunct liberal broadsheet we had an investigative team made up of Roddy Forsyth, George Hulme and David Scott. All great journalists but, for some reason or another, they did not produce one outstanding story."<sup>31</sup> This comment can be applied more generally across the board. It means that hiring a journalist with a reputation for producing investigative pieces does not guarantee that such articles will appear. There are numerous obstacles between initially spotting a potentially viable subject for investigation, and finally seeing a finished article appear in print, online or broadcast forms.

This thesis tries in part, to understand what the genre of investigative journalism is, identify the institutional and professional reasons why this kind of response to an important issue, like the Gair case, happens frequently within an industry which still regards the Watergate scandal reporting of Woodward and Bernstein as both a benchmark of excellence and something to be proud of. Indeed, one US editor, addressing his workers at a staff meeting, has recently stated that: "The highest calling of this profession is well-done investigative journalism."<sup>32</sup>

Despite the high-esteem the Watergate investigation is still held in by many journalists and editors on both sides of the Atlantic, it seems the tools and techniques it bequeathed us are best understood against the historical context of

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<sup>31</sup> See 'Scottish newspapers accused of shirking investigative duties' by Peter John Meiklem in *The Sunday Herald*, 6<sup>th</sup> July 2008.

<sup>32</sup> See *Red Dawn in Dallas* Columbia Journalism Review (Issue 3, May/June 2004).



the wider nature of investigative journalism and with particular focus on the original Watergate investigation itself.