

This is the final version of Madeleine Foundation's written submission, originally made on 7 January 2009, but revised on 6 February 2009, to the current enquiry by MPs on the Department of Culture, Media and Sport into Press Standards, Privacy and Libel.

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# The Madeleine Foundation

Asking the questions about what really happened to Madeleine McCann

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## Submission to the Parliamentary Select Committee on Culture, Media and Sport: Chairman, Mr J Whittingdale

PRESS STANDARDS, PRIVACY AND LIBEL: NEW INQUIRY

### Executive Summary

**The Madeleine McCann case has been unique. It would be unwise to change existing media procedures based just on this one case. Different considerations apply to the libel of Robert Murat and to the alleged libel of the McCanns.**

**'Abduction' has frequently been claimed by parents of young children when it later turns out that the child has died and the parents are responsible, whether the child has died as the result of an accident, negligence, neglect or deliberate act. It is important that the media are able to engage in reasonable and fair discussion of the weaknesses of any particular claim of abduction, without fearing the consequences of a possible expensive libel action.**

**This new submission, dated 6 February 2009, replaces our original submission dated 7 January 2009. It has been amended, on advice from the Committee Clerk, primarily to remove any references in our submission which could be construed by some as being defamatory**

1. The Madeleine Foundation welcomes the opportunity to comment to the Select Committee on issues of privacy, libel and the Press Complaints Commission's role, whilst at the same time believing that the Madeleine McCann case is unique and deserves special consideration in its own right.

2. We wish to offer observations and comments on the following matters on which you are seeking views:

- (a) Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case;
- (b) Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime;
- (c) The interaction between the operation and effect of UK libel laws and press reporting;
- (d) The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the Internet;
- (e) What effect the European Convention on Human Rights has had on the courts' views on the right to privacy as against press freedom;
- (f) Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory; and
- (g) Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one.

3. Given our area of interest, we shall focus on (a), (b) and (c). The Madeleine Foundation was formed at a public meeting in January 2008. Our aims can be viewed on our website: [www.madeleinefoundation.org](http://www.madeleinefoundation.org). We campaign on the obvious child neglect issues raised by the Madeleine McCann case - and seek to assist in finding out what really happened to Madeleine McCann. To this end, our Secretary Mr Tony Bennett has written a book on the case: "What Really Happened to Madeleine McCann? - 60 Reasons which suggest she was not abducted". Reference will be made to passages of that book in this submission. A copy of the book accompanies this submission and we will supply a copy to each member of the Select Committee if required.

**The truth about the disappearance of Madeleine McCann, and how that truth will shape the conclusions of the Select Committee**

4. We cannot begin to discuss the role of the libel laws and the Press Complaints Commission in a case such as that of the 'disappearance' of Madeleine McCann unless we first take account of the context. Supremely, that context involves recognising that there are two very opposing views of what really happened to Madeleine McCann in Praia da Luz in May 2007. We shall set out those two views in a moment.

5. We would suggest that a major function of the reporting news media - radio, TV and newspapers - is to give us the facts, the truth - allowing us to draw our own conclusions. It is often said, however, of certain newspapers, that they 'don't let the facts get in the way of a good story'. And in the context of newspapers losing sales to the internet, and TV-viewers switching to the internet for news, the pressure to increase sales or viewers, and 'tell a good story' at the expense of staying true to the facts, is growing stronger.

6. The Press Complaints Commission's primary role is to ensure 'fair' and 'accurate' reporting, as its Code provides. This, we acknowledge, is a particularly difficult task when a factual issue is hotly contested and also becomes one of worldwide media interest, as was - and remains - the case, with the Madeleine McCann mystery. Here, then, is a summary of the two main views on the case, with a brief look at who supports each view.

**Viewpoint A: Madeleine McCann was abducted at round about 9.15pm on Thursday 3 May while her parents and their friends were dining at a Tapas bar 120 yards away**

7. This has been the claim of the McCanns from their first announcement that Madeleine had been abducted at around 10.00pm on Thursday 3<sup>rd</sup> May 2007. The 'fact' of the abduction was put into the media with lightning speed. The *Daily Telegraph* had an online article, reporting the 'fact' of the abduction, filed at 00.01am on Friday 4<sup>th</sup> May. TV and press reports giving details of how and when Madeleine was supposed to have been abducted circulated and multiplied rapidly.

8. During the course of 2007 it became clear that the McCanns were claiming the abduction took place at around 9.15pm on 3<sup>rd</sup> May 2007. In September 2007 Dr Gerry McCann - as several papers reported - [passage deleted] publicly suggested that the abductor might have been in the apartment with him as he was checking the children between 9.05pm and 9.10pm. What we claim is the weakness of the evidence for the abduction is the focus of our booklet: "What Really happened to Madeleine McCann" and the Committee is respectfully referred to the facts and arguments there.

9. Those who hold that Madeleine was abducted view all discussion of an alternative view with hostility. The McCanns' press spokesman Clarence Mitchell, together with unnamed legal 'sources' who advise the McCanns, have characterised such views as 'libellous'. They have gone further and described the original senior investigator in the case, Snr Goncalo Amaral, as guilty of deliberately attempting to smear them, and to fabricate evidence against them, whilst at the same time failing to conduct a proper search for the alleged abductor.

**Viewpoint B: Madeleine McCann died in Apartment 5A some time before the evening of 3<sup>rd</sup> May (for reasons that no-one can yet be sure about) and that the McCanns and some of their friends have helped to cover this up by removing and hiding the body**

10. This, crucially, was the clear view of the Senior Investigating Officer, Snr Goncalo Amaral, who directed the investigation until removed from it on 2 October 2007. It was also the view of his team. We shall say more about the circumstances of Snr Amaral's removal from the investigation and how he himself has been treated by the British media in a moment.

11a. Leicestershire Police [passage deleted] in conjunction with the Portuguese Police made a joint decision to call in the services of the cadaver dog-handler, Martin Grime. Uniquely in a case such as this, due to Portuguese laws which now allow the publication of selected material from a police investigation when an investigation is suspended, videos of these dogs in action, allegedly scenting the smell of a corpse in nine different locations, can be viewed on many websites and have been seen by hundreds of thousands already.

11b. The blood-hound Keela also alerted to blood in several of the same locations. *The Sun* newspaper published a link to the 'cadaver dog videos' on its internet edition. Other newspapers have since done so. The cadaver dog evidence is discussed on pages 6-9 of our booklet. Given the claim by the dog-handler and his senior officer, Mark Harrison, that the cadaver dog Eddie who detects the smell of human corpses had never once given a false positive in 200 previous outings, it was scarcely surprising that the British media sought to give prominence to the dogs' findings. *They should not be criticised for that.*

12. We admit that if viewpoint 'B' above is true, it necessarily follows that the McCanns have been trying to deceive us all about what really happened. It is a sad fact, as we explain in the very first section of our booklet, that in many cases over the years, parents of 'missing' young children have claimed abduction, only for the truth later to emerge that they themselves were in some way responsible for the child having died, whether by accident, neglect, negligence or deliberate act. We list many such examples.

**A summary of media coverage of the Madeleine McCann case**

13. Before going on to discuss the implications of the media coverage, and the libel actions, the implications on all of that for free speech and a free press, and before presenting our recommendations, we will review, chronologically, the main elements of the media reporting of the case:

14. **Phase 1 - May to July 2007:** Massive coverage of the search for Madeleine; huge coverage of the McCanns' visits to the Pope, the White House, Morocco, Germany etc.; acres of newsprint about new alleged 'sightings' of Madeleine in many countries; some interviews with the McCanns; little coverage of the child neglect aspects of the case; much coverage of

the activities of abductors with liberal references to ‘gangs of paedophiles’, ‘international networks of paedophiles and child traffickers’ etc.; many references to Robert Murat behaving ‘suspiciously’ and to him being made an ‘arguido’

**15. Phase 2: August 2007 to February 2008:** First doubts about the McCanns’ abduction claim surfaced at a press conference in Germany in June. Doubts grew as the press in Portugal and Spain in particular reported on leaks from the Portuguese Police about such issues as DNA and the scent of death allegedly found at the McCanns’ apartment and in the hired Renault Scenic. There was huge reporting of the McCanns being made suspects, and lengthy interviews with the McCanns, their content being tightly controlled by the McCanns’ PR team, Clarence Mitchell for example laying down a condition that they would require a minimum of two hours’ notice of all questions. Many more reports of ‘sightings’ followed, including massive coverage on nearly all front pages of a blonde girl being carried on the back of a Moroccan peasant, later proved to have been her own child. Attacks on the ‘sacked’ and ‘disgraced’ Snr Amaral built up as he was accused of having beaten a confession out of Leonor Cipriano in 2004 (In September 2005, Ms Cipriano, along with her brother, were both convicted of the murder of her 8-year-old daughter Joana, having initially claimed that she had been ‘abducted’). A one-hour Panorama documentary on the case on 19 November 2007 discussed the case but the lead interviewer, Richard Bilton, did not probe or test the claim of abduction. It should be noted here that at the time Madeleine ‘disappeared’, the McCanns’ spokesman, Clarence Mitchell, held the post of Head of the Media Monitoring Unit for the Central Office of Information, and was therefore close to the very heart of the government’s ‘spin’ operations.

**16. Phase 3: March to July 2008:** More reported ‘sightings’. The first of three sets of libel proceedings was concluded, with huge awards being agreed by the defendant newspapers, in turn, to the McCanns, to Robert Murat, and finally to the friends of the McCanns, known popularly as the ‘Tapas 7’. On 19 March, the press announced that the McCanns had agreed £500,000 libel damages; on 17 July Robert Murat settled for £550,000 (and two others, Sergei Malinka and Micahela Walczuch, were said to have settled for £200,000 between them). Finally the ‘Tapas’ 7’ settled for a further £375,000 on 15 October. The first of these awards - to the McCanns - unquestionably put an end to speculative stories about the McCanns’ possible involvement in the death of Madeleine and/or in a cover-up of her death.

17. These massive libel awards contributed towards the process of ending all debate in the mainstream media on how Madeleine McCann went missing. Then in July 2008 came the announcement by the Portuguese judicial authorities that there was ‘insufficient evidence’ to charge anyone with a crime. If she had been abducted, the abductor had not been identified and there were no leads on him. If Madeleine had died in Apartment 5A, for which there had seemed to be at least a good range of circumstantial evidence, then there was not enough forensic evidence to lay charges, whether for causing or allowing the death of a child, preventing an inquest, or perhaps perverting or interfering with the course of justice.

**18. Phase 4: August to December 2008:** The suspension of the investigation into Madeleine’s disappearance meant that interest in the story plummeted. There is no real sense that the police are likely to, or even want to, turn up new evidence. Yet, arguably, some of the most sensational evidence in the case has now been made publicly available, namely with the systematic release by the Portuguese police of large chunks of the evidence collected by the police in the case - something which of course could not happen in the U.K., as the integrity and confidentiality of an investigation is normally stoutly protected e.g. by exemptions in the Freedom of Information Act 2000.

#### **Evidence that Madeleine was not abducted**

19. For those who may not be aware of it, thousands of pages of evidence and exhibits on the case have now been disclosed by the Portuguese police. They include dozens of witness

statements, including those by the McCanns and their friends, from we say it is possible for example to identify significant contradictions and changes of story. [passage deleted] All of this evidence has been placed on several of what might be termed 'McCann-sceptic' internet forums, the leading one of which, for over a year, has been 'The 3 Arguidos'. Here, videos can be viewed, original documents in Portuguese are being translated, and the evidence discussed. The 3 Arguidos, incidentally, has as its strap-line: "Because we do not believe in our press!", and many contributors on that site explain how they have ceased to buy British newspapers because they are offering no discussion whatsoever of the evidence that Madeleine was not abducted.

20. In addition to all of that, we have a very comprehensive book by Snr Goncalo Amaral titled 'La Verdada de Mentira' ('The Truth about a Lie'), in which he gives an investigator's-eye view of the evidence and presents a convincing case that Madeleine McCann died in Apartment 5A (probably as the result of an accident, he says) and that the McCanns did indeed cover up her death. His first print-run of 200,000 copies has already sold out in Portugal and been translated into German, Danish and Norwegian. It is being translated into several other languages and English translations are available on the Internet. There is widespread discussion of its contents on the continent. But not in the U.K.

### **The impact of the libel awards on freedom of the press and free speech**

21. This is what Mr Justice Eady said when announcing, in the High Court, the decision of *Express Newspapers* to agree to pay £550,000 damages to the McCanns:

"The general theme of the articles was to suggest that Mr and Mrs McCann were responsible for the death of Madeleine, or that there were strong or reasonable grounds for so suspecting, and that they had then disposed of her body; and that they had then conspired to cover up their actions, including by creating 'diversions' to divert the police's attention away from evidence which would expose their guilt. Many of these articles were published on the front pages of the newspapers and on their websites, accompanied by sensational headlines".

22. Because of that libel award, and the other two, there is a reluctance to even discuss the mystery of Madeleine's disappearance. There appear to be - we say contrary to the evidence - a general acceptance by the mainstream media that she was abducted, though we note that many newspapers take care to use phrases such as 'disappeared', 'went missing' or 'reported missing', rather than 'abducted'. Discussion of the evidence emerging from the Portuguese police files has thus been stifled. On October 26, *The People* ran a short piece referring to The Madeleine Foundation's website. It ran:

QUOTE

#### **McCanns fury over 'neglect'**

Exclusive by Marc Baker -- 26 October 2008

Missing Maddie McCann's furious parents have vowed to sue a lawyer who suggests they are guilty of child neglect. Anthony Bennett, 61, is urging the Government to bring in a "Madeleine's Law" making it a criminal offence to leave children under 12 on their own. His website attacks doctors Kate and Gerry McCann, both 41, over the disappearance of Maddie, now five, from their holiday flat in Portugal last year. McCann spokesman Clarence Mitchell said: "Our lawyers are watching him. They are constantly monitoring his claims, which we consider are libellous." A legal source close to the McCanns, of Rothley, Leics, said: "They are more than annoyed and deeply offended. They say enough is enough. All they are trying to do is get their daughter back."

UNQUOTE

23. That newspaper article very nearly caused us to abandon plans to publish: “What Really Happened to Madeleine McCann?” If the country’s top newspapers, and SKY News, had paid out over £1.6 million in libel damages, if the McCanns were ‘vowing to sue’, and if their spokesman was announcing to the world that our comments were ‘libellous’, we were clearly at risk if we dared to discuss, as we do in our book, any alternative view of the case. Despite the right to ‘free speech’, we feared the consequences of proceeding. Yet we have done so because we were confident about the facts stated in the book and the arguments that we have used to question the abduction claim.

### **Clarence Mitchell’s speech to the *Society of Editors*, November 2008**

24. Before drawing conclusions, we will briefly refer to parts of the speech given by Clarence Mitchell to the *Society of Editors* in November last year, just before the Select Committee set up the current enquiry.

25. Here are extracts from what he said: “Speaking at the Society of Editors conference in Bristol yesterday, Mitchell told delegates that he faced the daily problem of dealing with inaccuracies created by a hungry British press pack. He added that 99% of the stories coming out of the local media in Praia da Luiz were ‘totally inaccurate lies’. Mitchell said: ‘The British press out there in Portugal were lazy. The Portuguese police hid behind the law of judicial secrecy saying they weren’t able to comment...but that didn’t stop lots of information finding its way from police files into the Portuguese press. However, when the British press made inquiries they came up against a stone wall, so they resorted to sitting in the local bar, which had the lethal combination of free Wi-Fi and alcohol. They then sat every morning just going through whatever had been leaked to the Portuguese papers, 99% of it totally inaccurate lies, 1% distorted or misunderstood. This was then put to me, I would then deny or try to correct it, that would be a quote from me, ‘Mitchell’s balanced it’, that was balanced journalism, and off it went’. He added that British newspapers put reporters under pressure to come up with new angles and exclusive stories... ‘I had certain reporters from certain groups almost in tears some mornings saying, ‘If you don’t give me a front-page splash by 4pm I’m going to be fired’... Things that were allegations or suggestions in the Portuguese press were hardened up into absolute fact...”

26. But despite Mitchell’s claims, much of the Portuguese material now being disclosed and translated confirms the accuracy of many of the 2007 press reports, especially regarding the evidence of the cadaver dogs and the contradictions and changes of story from the McCanns and their friends. We concede that some those 2007 reports were factually incorrect. No doubt they contained much speculation. There was sensationalism in the tabloids. But Mitchell’s bold claim that 99% of the leaks were ‘totally inaccurate lies’, and 1% ‘distorted or misunderstood’, was itself a gross misrepresentation, given all the information the Portuguese police have now allowed us to see.

27. We need to deal with one other matter. One person whom we believe was seriously libelled by many sections of the British press was the Senior Investigating Officer in the case, Snr Goncalo Amaral. He was frequently described in sections of the British press as a ‘disgraced cop’. The reason for this was partly over claims that he was removed from the Madeleine McCann enquiry because of unwarranted criticisms of the British government, but more because he was being accused of having ordered his officers to beat a confession out of Leonor Cipriano, the convicted murderess of her own daughter (see paragraph 15 above). At the time of submitting our report to the Select Committee, Snr Amaral is on trial in respect of this allegation in the court at Faro. He is thus innocent until proven guilty. To call Snr Amaral ‘the disgraced cop’ on the basis of this allegation was no better than if the British press had referred to ‘the disgraced McCanns’ after they were made suspects. In fact, the court proceedings in Faro are indicating, as many believed, that there is no substance to these allegations. We cannot really say more, as the proceedings have been mysteriously adjourned several times and are not yet concluded. If, as we expect, Snr Amaral is exonerated, we trust

that those sections of the British press who have labelled him ‘the disgraced cop’ will have the decency to apologise and correct their statements. That is a matter that may yet come before the Press Complaints Commission.

## Conclusions

28. How members of the Select Committee approach the first two issues in their list will depend, therefore, on whether they believe *either* that there is only one permitted view on the case - the view now promoted in all Britain’s mainstream media - namely that Madeleine McCann really was abducted, *or* whether they believe there may be an alternative explanation for her ‘disappearance’. The question therefore may be put like this: is it right and proper that the British media (and others) should be perfectly free to discuss the evidence which points *away* from abduction without fear of another libel action? It must be borne in mind that the evidence now made available to us from the Portuguese police files is evidence not previously made public. In our view it strongly merits discussion. Yet debate is stifled, suppressed. The British public does not even get a glimpse of an alternative view, because the British media has collectively closed discussion on the case.

29. Responding to the first issue: ‘Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case’, we say that the Madeleine McCann case is unique in many ways. For that reason alone, it would be unsafe to make important changes in procedures and practice because of it.

30. In a case like this, where the abduction claim may turn out to be false, we believe it was - and is - in all our best interests that there is full and frank discussion of the evidence in the case, notwithstanding that the police are not actively pursuing any lines of enquiry, so far as we know. Indeed, in some respects the *Express Newspapers Group* did a good job in the summer and autumn of 2007, to the extent that we now know that they were using accurately-sourced leaks from the Portuguese police - whether authorised or not. If they were embellishing and sensationalising, that is another matter. But if we now look at the *Express Group*’s articles on the cadaver dog evidence, these have since been proved to have been both fair and accurate. The Press Complaints Commission could have no complaint about those.

31. The Press Complaints Commission has a reputation of being ineffective. The main author of this submission has had previous experience of such ineffectiveness, notably when it took the PCC months to investigate a biased article by *The Sun* in January 2006 on the evidence in the Stuart Lubbock case. It took nine months before *The Sun* reluctantly agreed to allow his father, Terry Lubbock, to write a 150-word letter of correction to the article.

32. In a fast-moving story of world-wide significance, the Press Complaints Commission is nowhere near equipped to act promptly or effectively. If they had had to adjudicate back mid-2007 on an article about the findings of the cadaver dogs, for example, what could they have done? If a news article is unfair or inaccurate, the complainant should be able to get a near immediate response from the newspaper. Failing that, he should then get an immediate response from the PCC. Then, if appropriate, an apology, correction, explanation or a statement by the complainant should be published. If there had been such a mechanism in place, any embellishing or sensationalising by the *Express Group* could have been dealt with effectively.

33. Now the second question: ‘Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime’. We say it indicates that the newspapers involved did not take sufficient care in writing their stories or in checking their sources. For example, it is one thing to say, as we do in our book, that there is little or no evidence that Madeleine was abducted. But it is quite another thing to say - which incidentally we do not say in our book: ‘The McCanns killed

Madeleine'. If any newspaper put it like that, without a sufficient foundation for doing so, they have only themselves to blame if they are then successfully sued for libel.

34. So far as the Robert Murat libel is concerned, different considerations apply to the alleged libels of the McCanns and the 'Tapas 7'. In Robert Murat's case, initial lurid and wholly unjustified suspicions by Lori Campbell in the *Daily Mirror* were seized on and multiplied by other newspapers, and so far as we can see these stories were wholly without foundation. In that case, the newspapers were justly punished for running riot against Robert Murat with little or no factual basis.

35. With the McCanns and their 'Tapas 7' friends, the issue is, we say, very different. There may be forensic and circumstantial evidence that Madeleine McCann died in Apartment 5A. Many of the stories that appeared in the British press about them were sourced from official or unofficial leaks within the Portuguese investigation and run in Portuguese and Spanish newspapers. Again, if certain newspapers embellished or exaggerated the factual information they had got, they have only themselves to blame for having to pay out large libel payments. In the case of *Express Newspapers*, had they waited until the Portuguese police had released the files from August onwards, before printing their doubts about the McCanns' abduction claim, they might well have been able to defend the McCanns' action against them.

36. We do not say therefore that this case necessarily indicates a serious weakness with the self-regulatory system, except the case of Robert Murat, where, so far as we can see, the relevant newspapers deserve to be sued.

37. We now turn to: The interaction between the operation and effect of UK libel laws and press reporting. Here we say that there has been a very negative action on freedom of the press, which has been harmful. One of the main problems with our laws of libel is the fact that the libel courts are only available to the rich and powerful. The McCanns may not be wealthy themselves but they were doctors, one worked full-time as a cardiologist and the other as a part-time G.P. However, they clearly now have access to major sources of funding, for example from Richard Branson and Brian Kennedy, who have both given large sums of money to the McCanns, some of it perhaps to help them initiate legal action against sections of the British media. The McCanns may have also used money from the Helping to Find Madeleine Fund - a fund that, sadly, has not merited investigation or even questioning by journalists despite many and serious questions about its operation. The libel laws are not available to those on mild and low incomes. In this case, the McCanns would appear to have successfully stifled debate about the fate of Madeleine McCann - and that, we assert, is not in the public interest.

38. Now we turn to: 'The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the Internet'. This is a complex subject, but as we understand the basic rules, it is something like this: if a criminal investigation is under way, you can report matters connected with the case, but with caution in case a future trial may be prejudiced. However, once a person is charged, there is very little you can report on, apart from formally reporting proceedings or other procedural developments or pleadings in the case and perhaps giving context and some background facts to the case. The courts cast a jealous eye over anything that could prejudice a 'fair trial'.

39. [passages deleted] It is highly unusual for suspects in a case to successfully sue newspapers for libel. It may be that *Express Newspapers* got carried away and went beyond what has turned out to be quite a lot of reliable information they were given, e.g. about the cadaver dogs. In that case, they deserved to be sued. They should have been more cautious, more circumspect, in what they have written, and the fact that they have had to pay out hundreds of thousands of pounds in damages will certainly teach them a valuable lesson.

40. [passages deleted] Whilst we all must note that the Portuguese investigation into how Madeleine McCann went missing is suspended, or closed, due to insufficient evidence, it is

also true that there is no imminent prospect of charges and therefore there should be press freedom to discuss the many and varied aspects of this case. The Portuguese Police, after all, took the view in September 2007 that there was sufficient evidence by then to make the McCanns 'arguidos', or 'provisional suspects' (which appears to be the best translation of 'arguido'). There have of course been cases in the past where a serious crime has been committed, but those who have committed it present a plausible alternative scenario to the public. If a suspect has money, or access to money, he can afford to sue for libel. If the papers slip up at all, the suspect, or potential defendant, can afford to run to the libel court and try to suppress reasonable discussion about the case. In the McCanns' case, we say there is clear evidence that the press and media feel unable to discuss or report on the weaknesses in the claim of abduction by the McCanns. All kinds of fascinating material currently coming out of the Portuguese police files is worthy of reporting, public discussion and analysis. Yet none of this taking place in the mainstream press, substantially we think because of their fear of further libel action by the McCanns, who now appear to be backed by massive financial resources.

41. Two lessons must be learned. First, those who make allegations must take care about how these are framed. Second, the size of libel awards may deter free speech and a free press. We have certainly seen examples of how wealthy people who have done wrong have unfairly been able to silence the press; the cases of Jonathan Aitken and Lord Jeffrey Archer come to mind. In the Madeleine McCann case, serious discussion of the case has migrated to the internet. That is an inevitable consequence if the main media refuse to discuss a subject of real interest to a very significant section of the public.

42. The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials does not seem to need reforming. So far as 'the expansion of the Internet' is concerned, there are indeed risks of allowing wholly free speech on the Internet. Just as, away from the Internet, people must not incite violence or racial hatred, display images of child abuse or other grossly obscene images, or libel people, this should not take place on the Internet either. Sadly all these things occur on the Internet from time to time, subject to the right of complainants to contact hosters and Internet Service Providers to control what is said.

43. We see no need by reason of the McCann case to control any further what is said on the Internet. No-one has been charged in the case. The police are no longer actively pursuing their investigation. Abduction of young children by a stranger from inside a family home almost never happens. Usually we find out later that the child is dead and the parents were in some way responsible. In those circumstances, free discussion of a case should be permitted, so long as people's comments are moderate and do not stray into making libellous claims. There should be no attempt, for example, to restrain anyone on the Internet (or elsewhere) from saying: "There is little or no evidence that Madeleine was abducted" - and from going on to say why. By contrast, to say, with no reasonable basis, "The McCanns deliberately killed Madeleine", would be libellous. If said on the Internet, it can be dealt with under existing procedures. If approached, any hoster would promptly remove such a comment. If the McCanns found out that that was being said, or other libellous comments about them, they could easily notify the hosters of those websites and ask for those comments to be removed.

44. Finally, we treat the next three matters together: What effect the European Convention on Human Rights has had on the courts' views on the right to privacy as against press freedom; Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory; and Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one.

45. This issue seems largely to concern the recent ruling in the High Court based on interpretation of the European Convention on Human Rights in the case of Max Mosley,

whose practice of sado-masochism was exposed in the *News of the World*. This is an issue we do not wish to comment on generally, except to say that where well-known people indulge in practices which many would find distasteful, they should not be too surprised and concerned if these activities become public knowledge from time to time. The main relevance we see here to the Madeleine McCann case is that here is a couple who have, ostensibly in trying to find their missing daughter, succeeded in attracting massive publicity to themselves, continually presenting themselves in a positive light. Whilst they and others might regard the term as distasteful, they have made themselves ‘celebrities’.

46. The Press Complaints Commission has frequently - and we say rightly –ruled that those who make themselves celebrities can expect the press to report on aspects of their private lives. Thus we say that it is legitimate for the press and the media to analyse, examine, explore and comment on the McCanns’ claims, as they are so much in the public eye. To give one specific example [long passage deleted], it was no doubt a breach of privacy for a bank employee to have revealed to a newspaper that the Helping to Find Madeleine Fund had on two occasions in 2007 paid the McCanns’ monthly mortgage payments. That breach of privacy may have been personally embarrassing to the McCanns, but there can be little doubt that it was in the public interest that this ‘private’ matter be brought to light. Many expressed great concern that public donations to ‘find Madeleine’ were being used for this purpose, and the McCanns and the trustees of the Helping to Find Madeleine Fund immediately announced that no more mortgage payments would be made from the fund.

47. To sum up, it is still a mystery as to how Madeleine McCann went missing. Some newspapers may have libelled the McCanns in specific ways and, if they did, they deserve to have been sued. But given the available evidence in this case, which is still emerging from the Portuguese police files, against a background where young children allegedly snatched from their own homes usually turn out to be dead and have been hidden, we suggest the British principles of free speech and free discussion must be upheld - so long as people take care in their comments and analysis of cases like the Madeleine McCann case not to make inaccurate statements and to make only fair comments based on the available evidence.

49. We think the Law Commission should again examine carefully whether large libel payouts to people still under active suspicion of committing a serious crime are in the public interest, unless the libel is very grave and the people’s reputation is seriously damaged. Otherwise, the rich and powerful who are accused of a crime under a cloud of suspicion in relation to an incident could use the libel laws to suppress reasonable, free discussion.

50. Madeleine McCann remains, officially, a missing person. But although there appears to be insufficient evidence at present to prosecute any person in either a Portuguese or U.K. court in respect of her disappearance, the McCanns have emphatically not been exonerated. We all - and especially the media - need to fully retain the right to discuss, in a fair and temperate manner, why she ‘went missing’ in the first place.

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