

LAW

DOCTOR'S BETRAYAL

DAVID HOOPER SAYS THE KELLY CASE DEMONSTRATES THE IMPORTANCE OF JOURNALISTS PROTECTING SOURCES

FEW WILL come out well from Lord Hutton's inquiry into the death of Dr David Kelly. Lord Hutton's experience as Lord Chief Justice in Northern Ireland should enable him to cut through political cant and dubious claims of national security. The Commons Foreign Affairs Select Committee may do well to remember that there is more to cross-examination than examining crossly. The committee's failure to ask Dr Kelly the blindingly obvious question of why he did not recognise the BBC journalist Andrew Gilligan's comments as being based upon their conversations was one of their more remarkable achievements.

Among the matters on which Lord Hutton may wish to rule is whether Dr Kelly was unfairly outed as Mr Gilligan's source and whether improper means were used to attempt to get the BBC to expose its source. Was the BBC at the outset right to try to protect Dr Kelly as the source? Could the BBC legitimately say that it would scarcely be doing so if it had, at the Government's request, to eliminate the handful of potential sources one by one?

Under the National Union of Journalists' code, a journalist "shall protect confidential

sources of information". The balance between protection of sources and the protection of confidential information is struck by Section 10 of the Contempt of Court Act 1981: "No court may require a person to disclose the source of their information unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

The burden on the person seeking disclosure of the source is a heavy one. "Necessary" has been equated with "really needed" or "some-where between indispensable on the one hand and really useful or expedient on the other". With ever-increasing sums spent on spinning the news, the protection of those who do not toe the party line becomes even more important. This is, after all, the Government which passed the Public Interest Disclosure Act 1998.

We do not yet know the full facts which led to the death of Dr Kelly — but the early indications are that this was an instance where the source should have been protected. Allegations that spin-doctors were "sexed-up" dossiers seem a world away from the grounds for ordering the BBC to disclose its source.



Outed: Dr David Kelly being questioned by MPs about the "sexed-up" dossier. He was later named as a BBC source

In May 2003 the Court of Appeal took a very robust line against disclosure of sources in the case brought by the Mersey Care NHS Trust against Robin Ackroyd, an investigative journalist. The House of Lords had ruled that *The Mirror* should disclose to Ashworth Hospital the identity of the source from whom it had obtained clinical notes relating to Ian Brady, the Moors murderer. *The Mirror* disclosed that its source was Ackroyd, who was then sued to obtain the name of the mole. To the hospital's dismay, the Court of Appeal overturned the judge's decision ordering disclosure. The court accepted that Ackroyd had an arguable case that he had acted in the public interest to disclose alleged hospital mismanagement and excessive forced feeding; the court noted that

without protection of journalists' sources people might be deterred from assisting the press on matters of public interest, adversely affecting the press's ability to provide accurate and reliable information.

Some may have found Andrew Gilligan's reporting on Iraq unpalatable, but disagreeable reports go with the territory of journalists seeking the truth. Whatever ought, with hindsight, to have been done differently in the period leading up to the death of Dr Kelly should not allow us to forget the importance of protecting journalists' sources.

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