

# Redefining Trial by Media

*Towards a critical-forensic  
linguistic interface*

SIMON STATHAM

DISCOURSE APPROACHES TO  
POLITICS, SOCIETY AND CULTURE 67



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Simon Statham

Queen's University Belfast

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## Redefining Trial by Media

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## **Volume 67**

Redefining Trial by Media. Towards a critical-forensic linguistic interface  
by Simon Statham

## Introduction

This book applies critical linguistic perspectives and methodologies to reassess the participation of media discourses in the operation of criminal trials by jury in Great Britain and the United States. Trial by media has been traditionally perceived as an infrequent and high profile phenomenon which is regulated by statutes and conventions operational in these legal arenas. This book develops a critical-forensic linguistic interface, applying critical discourse analysis to media representations of crime alongside forensic discourse analysis of the linguistic renderings of the courtroom trial, to redefine trial by media as a systematic and routine process. Systemic functional linguistic analysis of media portrayals of crime demystify ideologies that are retained when readers become courtroom jurors.

The critical-forensic interface reconceives the role of the media in the courtroom on a Spectrum of Trial by Media. Trial by media is reshaped as three simultaneous processes by this restructuring. Direct Trial by Media analyses the theoretical function of courtroom jurors coveted for the 'community values' they bring to the trial process. These 'community values' are recast in light of critical awareness of discourse as operating to construct and maintain ideologies of crime for readers and potential jurors. Enhanced Trial by Media combines a thorough forensic linguistic examination of the discursive vulnerability of jurors in court with critical discourse analysis of the media-made crimes which fill the resultant comprehension gap. Reinforced Trial by Media examines the language strategies of courtroom advocates in constructing crimes for jurors already reliant on these media-made pre-trial conceptualisations. Analyses of news data and trial language reveal a conceptual mismatch between legal definitions of crime and the ideological interpretation frames possessed by lay participants in court, and indeed in society in general. The critical-forensic interface utilises cognitive linguistic models to circumvent institutionally imposed restrictions on research into the jury.

This book therefore establishes that media constructions of crime are present at varying levels of the trial process. It is demonstrated that the trial by jury system itself, as well as the specific linguistic and discursive renderings of the trial in court, and the participants herein, accommodate, enhance, and reinforce the systematic process of trial by media.



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## CHAPTER 1

# Defining the scope of the inquiry

### 1.1 Introduction

This book examines the language of the media and the language of the law, analysing the role played by media discourses in the arena of the criminal trial by jury. The development of a *critical-forensic interface* of analysis, examining news discourse alongside the language of the courtroom, enables the redefinition of the process of 'trial by media'.

Analyses will focus on media and legal discourses in the Common Law jurisdictions of the United Kingdom and the United States, and so the purpose of this opening chapter is to set central concerns in this context, and to introduce the theories, analyses and methodologies used throughout the book.

A central thrust of this work is to expose the shortcomings in how the process of trial by media has been constructed by dominant legal discourses, namely as a phenomenon which is infrequent and well regulated. Analyses will focus on crimes ideologically and routinely constructed in the discourses of the press, and demonstrate that the impact of these constructions reverberates both in society at large and in the criminal courtroom.

#### 1.1.1 Trial by media: First impressions

One of two dominant traditional perspectives of trial by media is that participants can be represented ignominiously by the discourses of the press and are hence exposed to 'the court of public opinion'. An abundance of critical linguistic research into the media (Fowler et al. 1979; Fowler 1991; Fairclough 1995; Machin and Niblock 2006; Richardson 2007; Mayr 2008) has established the guiding hands of ideology and routine practice in the construction of institutional news narratives, and that crime stories are not neutrally constructed resonates in this research. News discourse must be examined as not merely biased, slanted, or politically skewed. It must be recognised as underpinned by dominant routine practices essential for the construction, maintenance and consensual acceptance of its influential position, and the ideologies which it propagates. These are fundamentally



important to the fuller conception of trial by media built by this book. Machin (2008) notes:

News should be understood not as a simple window of the world and should certainly not be judged in terms of whether it is accurate or biased, as this overlooks the fundamental way that the institution of the news organisation and news gathering procedures themselves shape what becomes news as much as the events themselves. (Machin 2008: 63)

This book examines the relationship of the ideologically loaded language of the media with the operation of the criminal trial, and questions the effect of the interactions of these powerful discourses upon the administration of justice itself. Lord Diplock, the late English Law Lord, stated:

Trial by newspaper, or as it should be more compendiously expressed today, trial by the media is not to be permitted in this country [...] the true course of justice must not at any stage be put at risk.

(Lord Diplock *A-G v English*, 1983. Corker and Young 2003: 250)

This work will re-contextualise such perspectives by analysing the media's ideological discourse construction of crime, and demonstrating that certain participants in the trial process provide a conduit through which these constructions can be active participants in the jury trial. Critical Discourse Analysis of crime in the news will interface with a Forensic Linguistic approach to the trial in showing the extent to which trial by media is routine and systematic rather than merely sensationalist and infrequent.

Participants may certainly be 'tried' in the pages of the press, as it were, and critical research into language in the media has established the ideological nature of these portrayals. Machado and Santos (2009), for example, analyse the media presentation of Gerry and Kate McCann, parents of British toddler Madeleine who was abducted whilst on a family holiday in Portugal in May 2007. The McCanns were briefly made official suspects in the abduction of their daughter but no official charges were brought, and they were exonerated and returned to England only two days later. This case won't be reviewed in full in this introduction, but rather it stands here as an example of an established lay impression of trial by media, in which defendants or suspects are exposed to 'tabloid justice' as separate from actual legal realities in a high profile case.

Cases which culminate in actual trial proceedings yield the second dominant impression of trial by media, and the one with which this book is chiefly concerned, when it is invoked by defence counsel as an obstacle to a fair trial in high profile proceedings. The courts generally purport to regulate trial by media by a series of statutes and conventions, which will be discussed in relevant sections