

Investigative financial journalism: seminar report

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This report on the inaugural seminar for Polis/LSE seminars in Investigative Journalism and Law which considered the mechanics involved in the process of financial investigation is by **Nizar Manek** (nizar.manek@gmail.com), coordinator *Polis/LSE seminars in Investigative Journalism and Law*



'Tax, Financial Secrecy, and Investigative Journalism' was chaired by **Professor Gavin MacFadyen**, director of the **Centre for Investigative Journalism**, City University, and senior-producer director in over 40 documentaries from the 1970s to present, through World in Action to BBC Panorama, Channel 4 Dispatches and PBS Frontline.

In the days previous to the seminar, our two speakers had respectively been making submissions to the Paris **OECD Tax & Development Conference**, and publishing **front-page stories** in the Financial Times on the preparation by arms company BAe Systems to plead guilty to criminal charges and pay \$450m to end its long-running transatlantic bribery case:

Richard Murphy: CEO, **Tax Research LLP**; a founder of the **Tax Justice Network**; visiting fellow, Centre for Global Political Economy, University of Sussex; External Research Fellow, Tax Research Institute, University of Nottingham; co-author, '**Tax Havens: How Globalisation really works**'; author of the **Tax Research UK blog**.

Michael Peel: Financial Times' Legal Correspondent, a specialist in financial crime and corporate corruption, formerly West Africa Correspondent and Tax & Accountancy Correspondent; author, '**A Swamp full of dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier**', **short-listed** for the Guardian's first-book award.

Gavin MacFadyen introduced the newly established **Bureau of Investigative Journalism**, a UK-based not-for-profit organisation which aims to produce high-quality investigative journalism. The Bureau was officially announced two days after the seminar.

Gavin spoke on difficulties journalists encounter when trying to penetrate cultures of secrecy. He referred in particular to a case involving 1000 deaths in police custody, secret payments by BAe Systems, the UK's imperfect system of whistleblower protection, and the relative power of the **U.S. Senate Permanent Sub-Committee on Investigations** to cross-examine officials under oath, compared with equivalent UK enquiries, notably the Chilcot enquiry.

Richard Murphy provided analysis of the **Windrush Ventures No.3 Limited Partnership documents**, for his winning entry to the Guardian's December 2009 '**Mystery of Tony Blair's Finances**' competition, and spoke on the principle of financial secrecy.

Richard detailed his work for a **2006 Global Witness report** that changed the law in Liberia, with respect to transfer pricing, and foreign companies taking advantage of the regulatory void to plunder the country's iron ore and avoid tax. He spoke also of his **2009 report 'Where on Earth are You?'**, on rates of usage by major European companies of tax haven subsidiaries.

The Guardian had launched an online competition last December, offering a prize to the person who could 'shine the brightest light' on Tony Blair's 'Byzantine' and 'opaque' financial affairs, 'a complex web of structures involving 12 different legal entities handling the unprecedented millions he is receiving since he stepped down from office in

2007'. The mysterious, though not illegal, arrangements involved a Limited Partnership, with the former prime minister as ultimate beneficial owner of the parent company.

Richard identified how, having looked through Companies House records, the nature of the business – incorporated on 19 December 2007 – is not listed, with no requirement to file accounts, and he detailed the complicated ownership structure, unusual for its purpose, requiring at least £15,000 in auditing costs per year.

Windrush Ventures has two partners, one of which is an empty shell company, and has shareholders: the other, Richard explained, does not trade, and is there purely to make a partnership. Limited Partnership liability means there is a tax transparent limited liability enterprise – the entity itself is not taxed, and the revenue is allocated to the members.

Though Limited Partnerships are supposed to put their accounts on record, the accounts here end up in the names of two limited companies, with a significant difference between tax on 50% and 28%. The purpose of secrecy was achieved through a loophole in the rules of disclosure in the [Partnerships \(Accounts\) Regulations 2008](#) that an LLP did not have to append accounts when filing, much like having an offshore company.

As such, Blair navigated the rules by inserting a second partnership as one of the notional partners, in a way the regulations do not cover, and benefitted from the advantages of offshore 'secrecy jurisdiction'.

Michael Peel, the FT's Legal Correspondent, explained that the courts are 'a goldmine for stories', with much unexplored material readily available: evidence, affidavits submitted in cases, documents from court registries.

Financial crime stories often begin with a court summons in a magistrates' court, with information available on the public record, but with no publicity: a journalist would hear about such cases from those involved in the area, a prime example being last summer's [prosecution of Mabey & Johnson](#), a construction company lavished with government export awards but convicted of overseas bribery – the precedent-setting first UK prosecution for bribery.

Michael provided analysis of a recent [report](#) by the Senate Permanent Sub Committee on Investigations, about four African countries and the US financial system, which detailed how Teodoro Nguema Obiang, the son of Teodoro Obiang Nguema Mbasogo, the president of Equatorial Guinea, used lawyers, bankers, real estate agents and escrow agents, to launder over \$110m into the US, and highlighted his colourful relations with U.S. lawyer Michael Berger.

He explained the research methodology involved in two of his stories. ['SEC alerted about Stanford in 2003'](#) (February 26 2009), which alleged Alan Stanford's involvement in an illegal Ponzi scheme several years before it transpired to be the truth, involved a search of US records on Stanford in federal and state courts and regulatory agencies, and resulted in the finding of an important whistleblower who, without avail, had contacted the SEC five years prior making this very allegation.

['Doubts cast on Zardari's mental health'](#) (August 25 2008), though not a financial investigation, was another of Michael's stories which involved innovative use of the court system through a tip off and analysis of affidavits.

The Q&A raised diverse issues: the public interest involved in exposures of secrecy when secrecy in itself is not a crime; corporate lobbying; censorship and libel reform; accounting and text-based analyses of data in the production of stories; newsgathering from data held by Companies House; 'formulas' and research methodologies underpinning sophisticated financial journalism.

This seminar series, which intends to bridge the research divide between law and investigative journalism, and which will continue next academic year, is inspired by three principles:

First, from a well-known quotation from Balzac, that 'laws, like spider webs, catch the small flies, and let the large ones go free', that law in this general sense is a Pandora's box for investigative journalism. On one level, a journalist

might examine loopholes and principles being developed in unstable case law, and produce innovative stories *ex ante*, ahead of developments in law. On another, a journalist might examine legal black holes, and challenge institutional assumptions and distributions of power within a legal system, and so assist in the development of important and ignored legal principles.

Second, by a January 21 2010 story in the Washington Post, '[At SEC, the system can be deaf to whistleblowing](#)', which revealed that the U.S. Securities and Exchange Commission 'has no system in place to guide how officials should handle tips and complaints from outsiders'. The result of unheeded warnings has been a series of high profile frauds costing investors millions of dollars. In the absence of adequate whistleblowing procedures in both the U.S, and U.K., there is a strong public interest in journalists to bring this information into the public domain.

Third, by the Guardian's high-profile investigation into [Trafigura's](#) dumping of toxic waste in the Ivory Coast, and the ensuing compensation for 30,000 victims – a series which to this generation is what the Sunday Times Thalidomide stories were to the generation of the '70s. In a similar manner, the seminar series intends to inspire young journalists to consider collaboration with litigators and NGOs to produce such journalism in the public interest, to take advantage of technological innovations, and to push the boundaries of media law, immediately upon reform.

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