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The Court of Public Opinion: True Crime Podcasting as a Response to Prosecutorial Culture in Media

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Abstract

The focus of this research was to explore the mechanisms of the media and how it frames true crime cases in contemporary western society. This research makes use of two case studies including true crime podcasts that explore the prosecutorial culture of true crime media, court procedures and police conduct in the jurisdictions of Maryland (U.S.), the Republic of Ireland, and France. The aim of this research is to explore how the criminal justice system and the wider public feed into prosecutorial culture when evaluating prime suspects identified by policing bodies, and the role of factual evidence, DNA, and witness testimony in the formation of these perceptions.

The current research contains two strands of research. The first strand of research includes two case studies of true crime podcasts – ‘*Serial*’ hosted by Sarah Koenig and ‘*West Cork*’ hosted by Jennifer Forde and Sam Bungey. The case study analysis explored the individual consequences of each case, with results including cultural profiling based on racial stereotypes, lack of DNA evidence, reliance on witness testimony and circumstantial evidence, and prosecutorial media framing. In the second strand of research, a comparative approach is used to evaluate the legislation and court procedure of the three jurisdictions of the case studies. From this analysis, it became clear that the legislation is applied in court with the priority of conviction rather than establishing truth. Furthermore, it is highlighted in the discussion of this research that the legislation has become more symbolic than it is effective.

The primary theme derived from both strands of research related to the prevalence of prosecutorial culture fostered by media coverage of high profile murder cases, and in direct response to this, the podcasts under analysis are sophisticated, scientifically informed retellings with effective critical analysis to engage viewers in productive, active consumption which for the first time in media history, has positively impacted real life cases.

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List of cases and legislation

Legislation

United States of America

Juvenile Restoration Act 2021

Maryland Criminal Code Article 201 Section 1

Ireland

Criminal Justice Act 1964

Criminal Justice Act 1990

Defamation Act 1961

France

European Arrest Warrant

Code Pénal Article 113

Case Law

America

CA Vs OJ Simpson (1995)

Maryland Vs Sheinbein (1997)

France

Court D'Assises Vs Ian Bailey (2019)

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Chapter One

Introduction

“I’m certainly very influenced by what you would call ‘contemporary headline horror,’ stuff that is true crime or for one reason or another catches our attention in the media, those strange cases that we end up obsessing about. I’m always influenced by weird anecdotes and news.”

- Dan Chaon

This research investigates the sociocultural impacts of modern true crime podcasting. The study explores two famous podcasts, ‘*Serial*’ and ‘*West Cork*’. These case studies were analysed comparatively to explore the prosecutorial culture fostered by true crime media and media framing. This research also explores the existing legislation related to the crimes discussed in ‘*Serial*’ and ‘*West Cork*’, including first degree murder, juvenile sentencing, and defamation. Legislation in the United States, the Republic of Ireland, and France were explored with the aim of ascertaining the root of prosecutorial culture in high profile crime.

Ascertaining the definition of true crime has been a difficult task for criminologists and investigatory journalists alike. The definition of true crime operationalised for the purpose of the current study is described by Punnett; true crime describes “mass-mediated nonfiction murder narratives that often defy categorisation” (2018). Defining true crime has been a point of contention in many criminological studies and reviews, and the ambiguity of the true crime definition will be explored more in chapter two’s literature review. Punnett expands on their definition of true crime in recent literature by stating that true crime is “an occasionally controversial multi-platform storytelling genre that shares some common ancestral heritage with journalism, but is driven by different impulses” (2021). These impulses will also be explored in chapter two to inform the current study of the podcast audience dynamics that have brought true crime podcasting into the spotlight.

True crime, as a genre of non-fiction storytelling and journalism, has seen a significant resurgence in popularity within western culture in the previous ten years due to the popularisation of podcasting. Western society, for the purpose of this study, is an umbrella term that is synonymous with European society, and other societies settled by Europeans, such as

the United States of America, Canada, Australia, and New Zealand. The focus on western society as the setting for this research is contingent on the assertion that media as a whole has evolved as a result of globalisation, and thus, podcasting as a digitalised media format disseminates its publications to primarily western societies. For this reason, true crime as a genre was revived by the development of podcasting. Podcasting, a radiogenic and episodic series of narrations, is a relatively new media format. It's popularity spans just over a decade. Podcasting began in 2004, however the unprecedented popularity that follows it today was a result of the release of '*Serial*', a true crime documentary following the murder of Hae Min Lee, a Korean American 18 year old student, who was killed in 1999. Adnan Syed, her ex-boyfriend, was convicted of the murder in 2000, and remained in jail for over 20 years. The podcast, hosted by American journalist Sarah Koenig, was released in 2014, and podcasting's popularity rose exponentially ever since.

True crime podcasts have thematically expanded upon the media coverage of high profile murder cases, and have changed the way in which the story is told. Media was once convoluted and rooted in conjecture, rumours, and damaging stereotypical profiles of both suspects and victims. The podcasts discussed in the current research make use of expert witness testimony and delve further into court procedure, prosecutorial culture, and legislation that impacted the case, but never made headlines in traditional media. For this reason, the current research aims to assess the current definition of true crime, and how podcasting narratives have responded to this. In theory, the assumption that podcasting has become a direct response to glorification in the media is ambiguous. Sparse research exists in the context of how true crime narratives vary depending on the contemporary media formats that are widely available in western society today. Boling and colleagues point out how most forms of journalistic storytelling are subject to the injection of the author or host's personal opinion, and thus the narrative becomes subjective (Boling et al., 2019). This study will also endeavour to explore this statement, and to what extent, if any, does the sophistication of the podcasts in question combat subjectivity with expert testimony and demonstrate an awareness of scientific forensic evidence. The current legislation in place in the jurisdictions of Maryland, Ireland and France are applied to understand if the legislation has grown, if at all, to accommodate the crimes committed; first degree murder, defamation, and juvenile sentencing.

My research aims to examine a number of different elements of true crime media, prosecutorial culture, and legislative impacts through the comparative analysis of two case studies. Through this research I will aim to answer the following questions;

- 1) How has True Crime podcasting impacted contemporary western society's response to high profile crime?
- 2) How does the media impact the way in which podcasting audiences interact with criminal justice systems in different western jurisdictions?
- 3) Is prosecutorial culture a result of crime glorification?

Chapter two will discuss and synthesise the current literature surrounding the topic of true crime podcasting, true crime media glorification, and any known impacts of sensationalised cases within the relevant criminal justice systems. This literature review will also have a discussion on the problems relating to current research on the topic, the sparsity, and lack of context given to the phenomenon of true crime and prosecutorial culture within the criminological literature. Chapter three will outline the methodology involved in conducting this research and ascertain the justification behind these methods. The methodology involved is twofold – the first strand of research will utilise two case studies, and the second strand of research will be a comparative analysis, presenting findings in relation to the above research questions. Chapter four includes the presentation of both case study and comparative findings, with direct reference to original case files, podcast transcripts, and court documents that were made available through public domains. Chapter five contains an analysis of these findings and situates them in the context of the current literature discussed in chapter two, and how the main themes within the findings justify the current research. Finally, chapter six includes the conclusions drawn from the current study and how it may inform future studies of sociocultural phenomenon and legislation relating to high profile crime cases.

Chapter Two

Literature Review

Introduction

In order to answer the research questions of this study, the narrative, cultural, and psychosocial dimensions of true crime media must be explored. It is imperative to discern its origin and its existing literature. The survival and sequential flourishing of real life cases of egregious crimes in western society has given birth to one of the most compelling, lucrative, and influential media entertainment genres. For the purpose of this research, a focus on western society literature provides the scope for this analysis. Western globalised society, as previously mentioned, includes Europe, the U.S., Canada, Australia, and New Zealand within this scope. Throughout the last two centuries, the narrative of true crime and real life cases have permeated every known dimension of the media, including but not limited to documentaries, podcasts, movies, biopics, TV shows, radio features, magazines, news articles, investigative journalism, and literature (Murley, 2008). In the 21st century, a prolific volume of research has emerged surrounding true crime and its source of intrigue to the public. It has been argued that the core of the now multifaceted genre of true crime is a societal endeavour to ‘make sense of the senseless’(Murley, 2008, p.2). It aims to transform much of investigative journalism, for one, into a more psychologically sophisticated effort to make inferences and speculations about the unknown thoughts and motivations of killers.

This offers a reasonable explanation for the glorification and misrepresentation of facts and criminal evidence within the media. Biressi (2001) argues that crimes, victims of crime, and those involved with the criminal justice system are depicted based on an already recycled, secondary narrative created from the existing reportage and anthologies of said crime. The link true crime creates between an audiences’ natural fears, theories, and fantasies around crime and the secondary analysis of those crimes leaves room for fictitious elements to be represented as facts. With this, the experience of violent and serious crime within western society has become naturalised and glorified. Thus, prosecutorial culture has been fostered within the popular media and press. Prosecutorial culture, akin to the most recent study on the phenomenon, describes how ministers of justice and the public alike rely on outdated, racialised notions of

criminality, and strive for convictions over truth (Lowens, Paul & Terry, 2021). The timelessness of egregious criminality tends to be mythologised as it aims to capture the unique experiences and strange but alluring psychosocial development of its perpetrators.

Furthermore, the general consensus from true crime literature argues a fundamental change in the world's consumption of news and entertainment – with new media forms developing every decade, the boundaries between consuming news and consuming entertainment blur. News and entertainment now share multiple platforms wherein they arguably should not, as facts do not change their objectivity based on their capacity to entertain. The western public exist now in a highly technological society with a variety of options and information outlets on crime that allow us to form our ideas. Thus, the normalisation of crime develops a proclivity for entertainment value over objective information delivery (Dowler, 2006). In order for these media outlets to succeed and survive in contemporary society, capturing the audiences' attention with compelling reports, while not necessarily factual, is crucial. Interestingly, Wiltenburg discusses the findings of a report conducted to analyse news viewers and the accuracy of their societal perceptions. It was found that heavy watchers of news and crime reports grossly overestimated the incidence of crime in their area, and increased consumption of true crime media outlets decreased the public's objective knowledge of crime as a whole (Wiltenburg, 2004). Dowler goes on to argue that most media outlets are inundated with 'knowledge of true crime', and thus forming opinions based on the facts becomes subjective and convoluted (2006, p.1). For the purpose of this research, true crime podcasting, a media outlet that increased in popularity exponentially in the last decade, will be analysed to gain an understanding of how true crime media and the criminal justice system engage in prosecutorial culture amidst glorified media campaigns.

The Origins of True Crime in Media

As mentioned previously, true crime began to emerge in media in the mid twentieth century (Smith, 2008). The topic of true crime is of timeless interest, especially to women. The genre has developed based on narrative components that are popular and successful with audiences, shining light on what can only be described as shockingly violent behaviours that not only push society to question itself, but its' very humanity (Di Carluccio, 2022). The seemingly natural interest in deviancy is argued to stem as far back as gothic literature (~18th century Europe), however its origin of sophistication and beginning of modern true crime as a genre of popular culture can be identified in 1940's America. Murley argues the emergence of modern true crime

begins with the *True Detective Magazine* during the 1940's and 1950's. A breed of writing sensitive to context and social scientific knowledge emerged, which allowed for what was believed to be sophisticated conjecture. From this time onwards, the media became inundated with narratives of unsolved cases, inviting the public to interact with crime prevention techniques such as 'call-in tips', leading not only the average person to feel complicit in solving real life cases, but domesticating forensic practice. Retrospectively, the narrative used in *True Detective* provides little more than speculation and a nation of pseudo-experts (Di Carluccio, 2022; Murley, 2008).

In 1988, the first true crime documentary, *Unsolved Mysteries*, was released (Walters, 2021). The documentary adopted a re-enactment approach, and also marked a monumental departure from the typical trope of narrating solved cases, as was popular at the time. Instead, the documentary made use of unsolved cases and 'mystery' narration. Di Carluccio argues the merit of such narratives to be considered non-fiction, as the depictions are mere interpretations of reality and utterly open to interpretation to the viewers (2022). This mode of narration within the media became popular and successful as a mimicry of reality, a narration that is explored in the present study in the development of true crime media. Tropes within the previously mentioned media forms, such as male on female crime, have become so widespread that even today, a subconscious social commentary of women being unsafe alone, at night, with strangers has been accepted without the statistical context representing reality (Hargrove, 2010). Hargrove contends that this disparity of representation in victims' gender has elevated female anxieties and their anticipation of real life crime. This holds true for modern day true crime consumption. What draws female audiences to true crime is hypothesised to be an 'endemic and paradoxical' response to their higher levels of victimisation in violent crime (Boling & Hull, 2018, p.4). It is imperative to understand not only the origins of true crime infamy, but the audience's demographical reasoning, which is inherently a culmination of human curiosity and female self-defence (Vicary & Fraley, 2010).

Evolution of True Crime Media Forms

The survival of true crime as a genre of popular culture over the last two centuries is due to its success in navigating sociocultural and technological shifts of media format. As previously mentioned, the earliest true crime publications are associated with gothic literature of the 18th century, literature and writing being the sole form of publication of the age (Di Carluccio, 2022). The twentieth century experienced technological advancements at exponential levels.

Through the globalisation of the western world, western societies have become interconnected by media broadcasting; the 1920's were characterised by their use of radio and television, with cinema at the root of the growth of mass media within the next few decades (Dunaway & Graber, 2022). Before the 1990's, mainstream media systems in western societies were mostly national in scope (Matos, 2012). Since this period, the development of technology has allowed for a globalised and interconnected media chain. A surge in all forms of media consumption, including but not limited to true crime publications, podcasts, films, TV shows, documentaries, and live court streamings became commonplace.

The infamous court trial of OJ Simpson, following the gruesome murder of his ex-wife Nicole Brown, and her friend, Ronald Goldman, monopolised many national television channels in America, including live streaming on ABC, NBC, CBS, Fox News, CNN, Court TV, the E Channel, ESPN and ESPN2 throughout 1995 (New York Times, 1995). Thus, the true crime movement evolves from the confines of literature, newspapers and magazines, and becomes a domesticated topic of conversation in widespread society. Additionally, the unprecedented global audience that followed the duration of the case is argued to have given birth to a new generation of courtroom and true crime television, with a profound effect on society's perceptions of violent crime and political framing (Leitner, Lowry & Nio, 2006). The accessibility and infamy of OJ Simpson's case polarised much of America and escalated racial tensions between the African American community and police, and what began as a live streaming of a murder case became a personal and political matter for millions (Brown, Duane & Fraser, 2009). Brown and colleagues conducted research into both the 'beneficial and detrimental' effects of the mass coverage of the trial, and found that those who had strong belief in the American criminal justice system were more inclined to believe the 'unrestricted access to media coverage of the trial' (Brown et al., 2009, p. 1). In recent years, the trial's infamy has been preserved in innumerable interviews, podcasts, and the true crime anthology television show *The People Vs OJ Simpson* (2016). The latter amassed 144 million hours of streaming, equivalent to 259 billion digital streams. In modern media, true crime cases are now accessible on virtually every media form. Those interested in true crime are encouraged to subjectively frame the case with the information provided to them, and also enact the role of a co-investigator, propelling the genre through entertainment media (Vitis, 2022).

True Crime, Capitalism, and the Consumer

As mentioned previously, the true crime genre of media and popular culture has created a domesticated, entertainment niche for the wider western public. Horeck (2019) argues that the socially engaged viewer obtains the power of persecution, deciding who is guilty and who is innocent through a phenomenon, termed by Dean (2010), called ‘communicative capitalism’. Communicative capitalism is what Dean describes as a neoliberal fantasy, that recycles information in the mass media to such an extent that the facts lose their visibility. Profit, through the making of entertainment based off mass media recycled conjecture, is made in its billions. For example, leading true crime podcasts such as True Crime Obsessed makes \$1.2 million a year (Brinsen & Lemon, 2022).

In the realm of true crime cases, a breeding ground for conjecture, the intrigue of the genre alone has allowed for the entertainment business to capitalise off of egregious and violent crimes that become circulated in the media (Horeck, 2019). Removing the moral obligation to consider the reality and traumas caused by the crime and the criminal justice system only furthers the desensitisation of viewers towards crime as a whole (Bordás, 2023). Many ethical concerns in consuming true crime media are outweighed by the sociocultural intrigue, entertainment industry profit, and globalised media creating access to endless case information. Some of the ethical concerns associated with consuming true crime from the mass media are the psychological and emotional triggers that are unavoidable when discussing violent crimes such as murder, rape, and domestic violence (Wright, 2020). Wright goes on to argue that ethical standards for criminologists, investigative journalists, and all scholars of the various social sciences must endeavour to avoid, as much as reasonably possible, causing ‘indirect or direct harm to the subject or the readers’ (2020, p.13). Wright identifies the origin of true crime in literature, and contends that is the most realistic medium to start with in terms of upholding ethical standards. However, through the decades of adapting to mainstream media, the genre has prioritised retelling of true crime for entertainment instead of spreading awareness. The global success of true crime within the entertainment industry becoming one of the most lucrative, the likelihood of ethical standards being upheld in favour of entertainment value, sales, and streams, is arguably negligible.

Horeck (2019) contends that the media profits from the manipulation of true crime audiences through narratives that implore viewers to make judgements based off of strong emotional reactions to egregious crime – an ethical standard, in accordance with Wright and colleagues,

that is wholly violated. Once more, the producers of true crime publications and media of any form utilise societal intrigue and emotion to create controversy, conversation, infamy, and revenue, at the cost of the viewer and subject. *Dahmer – Monster: The Jeffrey Dahmer Story* (2022), was a sensation overnight, surpassing one billion streaming hours in its first debut months, earning millions in revenue for Netflix. After its release, producers of the show were called into question for ‘retraumatising victim’s families’ and ‘making money off of tragedy’ (Isbell, 2022, p.3). The case of Jeffrey Dahmer will be central to this argument, as it is one of infamy that dominates the current literature for its longitudinal infamy, and remaining relevant in contemporary analysis of true crime media.

Sociocultural Harms of True Crime Glorification

Various scholars aforementioned such as Jean Murley, Anita Biressi, and Mark Seltzer have collectively endeavoured to define true crime. However, their definitions have yet to consider the implications of the genre’s popularity in acting as a ‘vehicle’ to articulate sociocultural issues during a certain time (Horeck, 2019, p.84). Also neglected within the current literature are the sociocultural harms of that popularity, and the bidirectional harm true crime media can create. Bidirectional harm relates to the manner in which true crime media is glorified to the public, and in return, the public glorify crime. This is especially true for true crime podcasting and film. As of 2022, there were over two hundred true crime podcasts on the Apple Podcasting app (Winter, 2022). As true crime becomes more mainstream in film, TV shows, and podcasts, more communities are being reached and included in public spectacle and debate. There is no doubt that true crime media began as a response to human curiosity, a desire to understand history, to help someone feel prepared, and understand the psychology of a perpetrator (Winter, 2022). However, as the genre forsakes spreading awareness in favour of adapting to mainstream media entertainment, glorification permeates every aspect of true crime retellings.

Bidirectional harm as this research suggests, is found to be true in true crime podcasting. Wright contends that a reciprocal and complex relationship exists between most true crime podcasting hosts and their audience (2022). In a study by Boling and colleagues (2019), it was found that most true crime podcast hosts do not have concerns in retelling crime to their audiences as they believe their research on the topic is adequate. It was also found that most podcast hosts inject their personal opinions and speculations into their retellings. Plausibly, the host’s opinion, while arguably informed, strays from the facts of the case and ignites hot debates in the court

of public opinion. The credibility of podcast hosts will be explored in this study, and the mechanisms in which they inform themselves of high profile crime.

The creation of armchair detectives is not only an injustice to the case and those affected, but again raises ethical concerns about the prioritisation of entertainment, public opinion, and the potential glorification of the perpetrator (Wright, 2022). The production of true crime podcasting and other visual media retellings in comparison, often neglect the power they possess to truthfully shine light on crime and the injustice of the criminal justice systems of the world. In support of this argument, Wright calls into question *Extremely Wicked, Shockingly Evil and Vile* (2019), a Netflix special starring Zac Efron, which was widely criticized for its inaccurate portrayal of serial killer Ted Bundy's life, as well as neglecting to include crucial aspects of his violent crimes, including necrophilia. The portrayal of Bundy as a protagonist evokes sympathy from the audience, rather than depicting him accurately as a social antagonist and one of the most notorious killers in American history (Milde, 2021). Within cognitive film theory that analyses the relationship between the protagonist of the film and the spectator, it can be argued that media have evolved from portraying serial killers especially, as monstrous and evil, to portraying a 'pop-culture anti-hero', and arguably downplays the severity of the crimes committed. Thus, Ted Bundy and Jeffrey Dahmer become household names and a specific starting point for serial killer celebrity culture is identified (Milde, 2021, p.3).

Societal Responses to True Crime Media: Appropriation and Glorification

The exponential growth in true crime media has led to many aspects of social science, criminology, psychology, and forensic science to become domesticated and appropriated for media consumers and true crime fans. Research into the public understanding of science has yielded a social phenomenon termed 'The CSI Effect' (Cole, 2013). The CSI Effect, coined from researching viewers of the television program *CSI*, describes the unfavourable effects on the public understanding of forensic science and criminal investigation. It was found that the appropriation of forensic procedure in a distorted version of reality resulted in a surfeit of glorifying and trivialising imagery about forensic science. The *CSI* franchise gained global infamy and 'took dramatic license', emphasising storytelling to the point of what Cole describes as 'anti-realism' (Cole, 2013, p. 131). Similar shows began production in the wake of *CSI*'s success in the early 2000s, such as the British counterpart *Waking the Dead*, both fictitious shows about police drama. Interestingly, depicting forensic scientists as heroes within these shows altered public perception of forensic evidence to such a degree that jurors in real

life court trials tended to acquit if forensic evidence was absent – a detriment to prosecution teams and a benefit to defendants (Cole, 2013; Mopas, 2007; Franzen, 2002; National District Attorneys Association). Klugler contends that the public believed that ‘police labs can do everything TV labs can’, by which media outlets such as news articles began to highlight the *CSI Effect* as ‘jury incompetence’ (Klugler, 2002). Though fictitious shows, this effect will be explored critically in the examination of evidence collected in two high profile murder cases, and their subsequent role in fostering prosecutorial culture to an unprecedented level.

Moreover, glorification of violent crime perpetrators in particular, has yielded concerning popular culture trends in western society. Following the release of *Dahmer – Monster: The Jeffrey Dahmer Story* in September of 2022, one of the most memorable commodifications of the American serial killer became a Halloween costume sensation (Winston, 2022). The societal condition in which this occurs must be questioned – the profiting from infamous serial killers by commodifying their appearance and selling merchandise is a deep rooted desensitisation that violates every possible ethical standard in treating real life cases (McCain, 2022). Rarely do media forms prioritise dealing with true crime cases and information sensitively for the sake of victims, victim’s loved ones, and avoiding potential triggers. It is not enough to conclude the manifestation of serial killer infamy simply represents the perpetrator themselves, but society’s willingness to equalise celebrity serial killers with any normal household celebrity name (McCain, 2022).

Copy-Cat Crime, Fandoms, and Labelling Theory

The current literature has created a prolific analytic discourse of the growth, popularity and influence of true crime as a popular culture genre, but has left a significant dearth of research into specific criminal responses to this media. Fister (2005) discusses the role of true crime media fostering a marketplace of anxiety within the public. This argument discusses the manner in which true crime media taps into topical social concerns in order to appeal to public anxiety and intrigue surrounding crime.

To this extent, Gaither (2021) brings attention to the True Crime Community (hereby referred to as the TCC), an online community that displays a deep, arguably obsessive, fascination with criminal behaviour. The TCC, remarkably under researched, communicate within media forums that appear to encourage admiration for serial killers, violent crime, and copycat crimes (Gaither, 2021). However, due to the lack of research on this particular group and indeed

copycat crimes as a result of such media, scholars have yielded only a few mixed academic studies.

Gaither puts forward the argument of copycat crime as a direct result of the mechanisms of the TCC. Their analysis of the TCC yielded a strong argument that the TCC's behaviour towards true crime, glorifying the behaviour and expression admiration for perpetrators, seemed to isolate them on many media platforms such as Facebook, Tumblr, and YouTube. Additionally, while very few studies exist that effectively identify the causal factors of copycat crime, it was pointed out that many incidents of school shootings and those who claimed to enact acts of mass murder were TCC members, or at least displayed the proclivities for idolising previous perpetrators in their online forums before they themselves committed the crime (Gaither, 2021; Barnes, 2015; Daggett, 2015; Helfgott, 2015; Jenn, 2018; Langman, 2017; McMurdo, 2019; Raitanen & Oksanen, 2018; Rico, 2015; Thomas et al. 2014).

Furthermore, few studies exist following the release of high profile serial killer documentaries, podcasts, movies, and literature publications, which is argued to be a direct causal factor leading to copycat crimes in an attempt to 're-glorify' what was once a global tragedy (Helfgott, 2023). Research surrounding the Columbine school shooting in 1999 has yielded what Neklason argues to be a second wave of copycat crime, insofar as Dylan Kleybold and Eric Harris becoming 'role models for subsequent mass shooters' (2019). Media depictions of violent crime, and copycat crime, have developed its own unique online following (Helfgott & Parkin, 2022). Thus, the current portrayal of crime in the media - i.e., glorification of the perpetrator, 'meme culture', and celebrity status – is the focal point of current research aiming to understand the criminogenic impact that mass media has on the public (Helfgott et al., 2022, p.3). In contrast, some forensic psychologists have argued that copycat crimes based off of media releases such as *The Ted Bundy Tapes* and *Dahmer -Monster: The Jeffrey Dahmer Story* are not likely; instead this argument is a media driven effort to scaremonger audiences (Staunton, 2019). However, within the current literature, it is believed by the majority of scholars that the circulation of true crime media, especially those that glorify and sensationalise true events and the perpetrators, are a causal factor in the development of online followings that foster these behaviours (Gaither, 2021). According the FBI Uniform Crime Report 2019, there was an average drop of 1% in most violent crimes throughout America, with the exception of murder and nonnegligent manslaughter, which increased by 0.3% from 2018, and 11.6% from 2010. *The Ted Bundy Tapes*, released in January of 2019, were feared to spike copycat crime in the United States of America especially, however the correlation to the statistics do

not imply causation, as it would appear that murder and nonnegligent manslaughter have consistently been on the rise over the past decade. Some scholars contend that true crime media plays a role in reinforcing labels (i.e., ‘murderer’, ‘serial killer’, ‘criminal’), and apply classical Labelling Theory in conjunction with the accessible information of criminal techniques within the media as potential factors leading to copycat crime, however evidence that these factors are dominant sources of crime remain relatively weak (Greer and Reiner, 2013). What can be reasonably argued based on existing literature, however, is the portrayal of perpetrators of violent crime foster a discourse that could lead to communities such as the TCC, and thus indirectly foster those beliefs and behaviours.

Furthermore, the appropriation of inaccurate and unrealistic depictions of true crime cases and perpetrators have timelessly led to ‘fandoms’ or ‘cult followings’ (Barnes, 2015). The strange and compelling case of Ted Bundy led to countless young female ‘groupies’ gathered outside the courtroom during his trial, convinced of his innocence. These ‘fans’ go beyond the casual observation and become wholly engaged in web posts, fan art, fanfiction, and conventions. It was reported that a young woman sent a series of love letters to Ted Bundy while he was incarcerated, and Bundy became enamoured with having followers and support (Michaud & Aynesworth, 2000). Perception of reality becomes diminished, and the anti-realities proposed by the media are putting some consumers in a very dangerous reality. The lack of research in this area is imperative to this research as both the benefits and detriments of true crime media for society and the criminal justice system will be ascertained.

Framing Criminals in the News Media

Thus far, the existing research creates a generalised consensus of glorification across most media formats when framing true crime and its perpetrators, however, the news media remains distinctly in its own category of analysis due to its proclivity of situating famous criminals in a psychological context. For example, Hier analyses the news coverage of serial killer Peter Woodcock, and concludes that while most media coverage would highlight the egregious details of the ‘sadistic sex maniac responsible for killing three young children in the 1950’s’, news coverage tended to spotlight the killer’s allegedly traumatic upbringing (Hier, 2019, p.2). This is not an uncommon approach for news publications when creating narratives around true crime – the focus will gravitate towards the psychology of the perpetrator, which as has been ascertained in previous research creates a sympathetic audience. Another incidence of news

publications creating a psychological profile on famous criminals was released by the Daily Mail Ireland in 2022 following the release of *Dahmer – Monster: The Jeffrey Dahmer Story*. The headline read;

‘Why does Netflix’s No.1 Hit focus more on serial killer Jeffrey Dahmer’s troubled childhood than his victims?’ (Daily Mail, 2022).

Here, there is an identifiable shift from framing Dahmer as a violent, calculated ‘monster’ to a victim of social circumstance that negatively impacted his childhood. The psychological profiling that thus occurs in the media is based off merely what Santy argues to be guess work, predominantly during active trials, as police do not release evidence or information to then public until after the trial is complete, to maintain the merits of a fair trial (Santy, 2015). The case of Jeffrey Dahmer, while 32 years ago, has remained prevalent in the media following the release of the show, and the news article aforementioned highlights the show’s tendency to attempt to psychologically profile or explain why deviant behaviour develops, which does little to acknowledge the facts of the case, but reinforce popular psychology debates such as ‘nature versus nurture’. The article in question calls attention to one of the most overlooked parties within violent crime cases – the victim and their families. Such framing in biopics such as *Dahmer – Monster: The Jeffrey Dahmer Story* ignites a presumption that adverse childhood experiences (ACE’s) is not only a precursor for deviant behaviour but a prerequisite – this is not always the case (Santy, 2015). Little research exists that acknowledges the media’s role in psychological profiling of violent criminals, despite its critical role in shaping public perception of them, and thus their response. This research will aim to ascertain media framing’s role in how the public interact with true crime cases, and in some incidences, make a substantial change to cases.

Similar news reports were published in relation to the murder of Carol Voyce by Peter Woodcock in 1957 (Hier, 2019). Due to Woodcock’s psychiatric incarceration for 34 years, he did not commit another crime until his first day-release in 1991 with another past patient Bruce Hamill. The two men had planned to meet another patient in a secluded area on the grounds of Oak Ridge Psychiatric Hospital, where the latter was subdued, sexually assaulted, and stabbed to death by Woodcock and Hamill (Hier, 2019). Comparatively, it was found that the media reported very little on the murder in 1991 in comparison to 1957, and it was reported that the murder was only minimally mentioned as a means to discuss a new ruling by the Supreme Court of Canada in regard to detaining those found not guilty by reason of insanity. Rather than

glorifying the murders or Woodcock himself in the news articles, or drawing attention to possible psychosocial factors relating to his troubled childhood, the articles published in 1991 are seen to draw attention to the criminal justice system, policy, and sentencing outcomes in a much more subtle, but important way (Bourrie 1997; 1994). The current research aims to ascertain if contemporary true crime podcasting resembles this sophisticated narrative.

A Product of True Crime Media – A Public Jury

The above literature demonstrates the sensationalised and glorified narratives constructed by then media about high profile violent crimes, and the detriments those narratives can have to societal perception of perpetrators, crime itself, forensic and social sciences, and the criminal justice systems of western society. However, a dearth of research analysing the possible benefits and positive impacts media coverage can have on cases still exists. Some scholars have touched on the shifting news narratives as aforementioned from sensationalised, misinformed headlines, to critical pieces that acknowledge developing legislation in the wake of high profile cases (Hier, 2019; Wiest, 2016; Wilson et al., 2010; Bourrie, 1997; 1994). Wilson and colleagues argue that the relationship between the news media and serial killers calls for further investigation, as the Woodcock case is unique in nature. The news media framing, with specific reference to the publications in 1991, were greatly at odds with conventional criminological characterisations within the media. Over 30 years later, this remains to be true.

The current research aims to ascertain and understand this shift in the media's narrative and how true crime podcasts, as the leading true crime media outlet, had adapted to this narrative and raised significant awareness of violent crimes. Such an adaption in news media and podcasts *jurifies* the audience; this term, coined by Paquet, applies to consumers of true crime media (predominantly podcasts) which encourages a proliferation of online ecosystems of conjecture and research (Paquet, 2021; 2018). While not a new phenomenon, certain high profile cases have seen a unique audience engagement which is described as interacting with the audience to such a degree they become 'co-investigators' in a true crime case (Vitis & Ryan, 2021, p.15). Such an audience poses potential for beneficial true crime media consumption, in comparison to decades of glorification and appropriation, as highlighted in a plethora of true crime media research. Other media forms, such as films, biopics, TV shows, documentaries, and literature have been sophisticated, established forms of media for decades, whereas the rise in popularity in podcasting is a relatively new trend, which bears potential for a unique source of information that may inform the current literature about the current climate of true crime

consumers. The explosion of true crime podcasts has progressed not only the legitimacy of podcasts as a media outlet, but the genre of criminology has re-surfaced in popularity in the last ten years (Sherrill, 2020). This new wave of online communities has fostered a justified audience even beyond western society, and the globalised impact of the true crime cannot be understated, as the world becomes inundated with active co-investigating audience members.

The Origins of True Crime Podcasting

The media form under analysis for the current study are podcasts. Podcasts, a term that is a hybrid of the words 'iPod' and 'broadcast', are audio broadcasts that are distributed as MP3 files on the internet (Palenque, 2016). Podcasting, previously known as 'audioblogs', have roots dating back to the 1980's, however podcasts as we know them today began to take significant root in late 2004. In 2003, the pioneers of podcasting, Adam Curry and Dave Winer, created a podcast prototype; a software called '*Podcatcher*' that would automatically download audio files to his computer and then automatically synchronize them to his iPod (Bartos, 2009). The new media form began to accumulate a plethora of articles detailing podcasts on the internet, with 'podcasting' hitting 2 million hits on google search. Following the rapid rise in popularity, Apple integrated podcasting into their iTunes software, and from 2004 onwards, podcasting has become arguably one of the leading media forms in entertainment, education, and information distribution namely for its ease of access from a mobile device (McGarr, 2009).

Studies have been carried out to explore the impact of podcasting in the education system, and found that educational podcasts, especially those of short duration, i.e., 'condensed lectures on the go', had a positive effect in classroom settings, such as helping to differentiate learning and provide additional support to students with specific learning needs (Palenque, 2016; Powell & Robson, 2014; Cooper, 2008). The unique ease of access for podcasting as a media form set it apart from other media forms that had been established for decades, which can be generalised to all types of podcasting beyond educational media. Since its inception, podcasts have adapted to the changes and modernising of technology, and is accessible through smartphones, computers, and more. Podcasting has become established on most mainstream platforms such as Spotify, iTunes, YouTube, and Apple Podcasts. The current research indicates the ease of access of podcasts in the last decade have become the driving force behind their success, merged with the established entertainment value of the true crime genre in other media forms made easier again for public consumption.

True crime podcasting became popularised in 2014 with the release of *Serial*. The podcast, which made its debut in October 2014, was the first true crime podcast to go viral, reaching 1 million downloads per episode after the first month of publication (Boling & Hull, 2019). The podcast became a 12-episode series discussing the true crime case of Adnan Syed, falsely accused of murdering his high-school girlfriend in 1999. The podcast, a case study which will be explored at length for the purpose of this research, served as a pioneer in the genre of true crime in podcasting and all media forms, as it stands as the world's most popular podcast (Baelo-Allué, 2019). Following the debut of *Serial*, the true crime genre was firmly established within the podcasting format. As of 2023, over 200 true crime podcasts have been released in America. Arguably based on the success and popularity of *Serial*, true crime podcasts are consistently the most streamed genre of podcasts, making up for 24% of top-ranked podcasts (Pew Research Centre, 2022). What the current research neglects, however, are the impacts of true crime glorification and appropriation permeating this new media format, the motivations of the hosts and the audiences, the narratives commonly employed, and how the distributed information is being interacted with and used within society.

How True Crime Podcasts Differ From Other Media Forms

Many scholars have drawn comparisons between modern podcasts and radiogenic media (Bonini, 2022; Berry, 2016; Meduni, 2007; Berry, 2006). Comparisons have been made insofar as viewing podcasts as an evolved form of radio features, based on the audio focused quality of the media, however Berry argues that scholars stand to lose valuable insights by these comparisons as podcasts have unique qualities beyond 'an evolved radio iteration' (2016, p.2). This form of amateur radio goes beyond the confines typical radiogenic media in the sense that these low cost podcasts can be distributed on the internet, giving hosts a broader scope to cover any topic they choose (Hammersley, 2004). Hammersley also contends that podcasting fosters host-audience interaction; a unique feature that has not been seen previously in the consumption of media, much less true crime media (Berry, 2016).

A question imperative to ask about podcasting within the context of true crime popular culture is if the glorification and sensationalised narratives of real life cases have permeated audio-based podcasts, or if the entertainment factor has been eliminated to a degree. Scholars have argued that popularised YouTube true crime series such as '*Murder, Mystery, and Makeup Monday*' by YouTuber Bailey Sarian, who has amassed almost seven million subscribers, capitalise on combining true crime narratives with visual entertainment features to promote

views, sponsorships, and revenue (Hobbs & Hoffman, 2022). Hobbs and Hoffman argue that true crime is utilised in makeup tutorials, ASMR, and Mukbang videos to grab a wider audience's attention. The narration of true crime becomes the sub context of the video, rather than treating it as its own entity. Akin to aforementioned literature in regard to ethical issues within presenting true crime narration, using true crime as a subtext poses risks of information being left out of the narrative, glorification in favour of a more entertaining narrative, and trivialisation (Hobbs & Hoffman, 2022).

An example of this in Bailey Sarian's *'Murder, Mystery, and Makeup Monday'* videos is what some scholars, and members of the public, have argued to be a jarring change in tone when content creators go from promoting their video sponsorships to then discussing gruesome and egregious crimes (Fathallah, 2022). The associated 'self-glamour' of makeup tutorials within true crime videos is being described as the majority portion of true crime being exploitative and glorifying, rather than raising awareness and support for victims (Fathallah, 2022, p.12). This point remains robust especially considering the description logs of each video is saturated with links for beauty products and sponsorship deals, while links for victim charities and sources of information are only sometimes listed and often not pointed out to viewers in the video itself. The *'Murder, Mystery, and Makeup Monday'* YouTube video series has newly been transposed to podcast format on Apple Podcasts. The podcast formats have merely taken the audio recording from Sarian's YouTube videos and uploaded them to Apple Podcasts with the tagline *'Covering anything from cannibals to cover-ups. Join us on this journey. It'll be fun, we promise.'* (Apple Podcasts, 2023). There is no current research comparing transposed podcasts such as Sarian's to original podcast content, however it is deducible that the narrative remains as a glorified and trivialised narrative in audio format as it is with visual format.

However, other true crime podcasts, such as *Serial*, that are sophisticated, informed, and are primarily aiming to raise awareness, are argued to have a significantly more positive effect on audiences and the true crime narrative (Sherrill, 2020). Sherrill conducted a 'organizational ecology' approach to understanding both the growth and impact of true crime podcasts, and concluded that the *Serial* podcast was a pioneering podcast for a number of different reasons; the podcast's surge in audience members appears to have been a major factor in legitimising the medium of podcasting in its emergence, it is widely considered a referent for 'quality of true crime', indicating the calibre of narration true crime should uphold, and its infamous role in catalysing the process for Adnan Syed to obtain an appeal trial, and subsequently be acquitted for his accused crimes. The current research aims to expand on the effects of podcasts such as

Serial, and the potentially broadened scope of true crime as a genre and the proactive impact it can have on the public, evolving beyond the last century of passive consumption of entertainment.

The Organisational Ecosystem of True Crime Podcasts, Hosts, and Audiences

Sherrill's argument for an organisational ecology approach to understand the environment in which true crime podcasts exist is widely supported within sociological literature (Baum & Shipilov, 2006; Dimmick, 2003; Hannan and Freeman, 1989). From this perspective, scholars argue that the true crime population exist in a niche, like most populations exist in niches determined by their technological domains, such as literature and newspapers (Sherrill, 2022; Carroll & Hannan, 1989). True crime podcasts, however, are a digitalised media form, and thus this taxonomy has been convoluted. In comparison to older media forms, such as those aforementioned, digitalised media overcomes the constraints of geography in a global way, and thus the expectations of the audience are changed based on population demographics – age, gender, cultural backgrounds, and media producers such as podcast hosts must adapt to these expectations (Hannan and Freeman, 1989; Polos, Hannan, and Carroll, 2002).

A study by Boling and Hull (2018) aimed to explore this seemingly female dominated audience and what the social motivations of this may be. It was found that with the development of true crime podcasting, that a staggering 73% of true crime podcast audience is female, despite the audience demographics for all podcasting is 56% male. It was found that the 73% of true crime audience members are female, and their engagement with the podcast was rooted in three distinct factors – social interaction, escape, and voyeurism (Boling & Hull, 2019, p. 164). Male audience members, in contrast, were found to be motivated primarily by boredom, entertainment, and convenience. Based on the prolific research surrounding the gender disparities within all crime statistics and victimisation, women display more interest in true crime media due to the higher likelihood of victimisation of certain crimes, including but not limited to; sexual assault (11.3 times more likely than men), forcible confinement (3.1 times more likely than men), and criminal harassment (2.6 times more likely than men) (UNODC Homicide Statistics, 2013).

True crime podcast hosts have the moral obligation to produce media that is well informed, well researched, non-glorifying, clear, humanising, socially aware, unbiased, and non-sensationalist (Wright, 2020). While popularised podcasts such as *Serial* have been commended for their 'informative and entertainment value', the podcast has also been

described by scholars to be pedantic in its analysis – which arguably was a factor in its societal influence and success in uncovering new evidence that provoked a retrial (Haugtvedt, 2017). The audiences of true crime podcasts are unique in their interactions with the media presented to them – audience members are now proactively taking on what Vitis contends to be a ‘co-investigator’ type role, researching beyond the information presented to them in order to inform themselves of the criminal justice procedures and systems related to the subject crimes, the evidence of the case, and the perpetrators themselves (Vitis, 2022).

Scholars have found that when audience members independently research true crime cases, they become deeply justified, and the investigation they carry out have led, in some cases, to uncovering new evidence, police misconduct, court misconduct, and more. It is also important to consider the longitudinal research being carried out for these cases, as the crimes committed decades ago are now faced with modern investigative tools and procedure, such as DNA evidence (Raymond, van Oorschot, & Gunn, 2009).

The present research is contingent on public efforts to renew investigations as the predominantly unique societal effect borne of true crime podcasts, as well as the media’s common pitfall of glorified narration. For the purpose of the current study, I am going to contextualise the literature above to understand the sociocultural mechanisms of true crime podcasting as a new media format, and how it responds to glorification prosecutorial culture, and how it impacts the criminal justice system.

Chapter Three

Methodology

Introduction – Theoretical Perspective

My research included the selection and comparison of two true crime podcasts that have been widely disseminated across western society in the previous decade. Podcast transcripts, court documents, and related media publications are analysed from an interpretivist approach. Gray described the interpretivist approach as a system of “culturally derived and historically situated interpretations of the social life world” (Gray, 2009, p.56). The interpretivist approach is significant because I employed case studies, documentary analysis, and a comparison aspect to give an understanding of the cultural context in which both case studies function. It is also argued that the interpretivist approach analyses human society by going beyond empirical evidence and objectivity, and takes into account subjective values, opinions, and views within a society (Gillani, 2021). Thus, this approach allows the researcher to contend with the limitations that arise in the true crime media sphere; firstly, scholars continue to contend with a precise definition of true crime. The ambiguity that surrounds this genre of media has made quantitative methods alone less accurate when discussing and analysing social constructs akin to the present study. Secondly, the social constructs and interactions within the scope of this analysis are only partially represented in the current quantitative research such as audience demographic analyses. Thirdly, the topic of true crime media is still relatively new in the realm of social science, and a full picture of the societal mechanisms is not yet clear. The current research will aim to respond to this dearth by focusing on one format of media and its impact in two separate jurisdictions with different criminal justice systems in attempt to comparatively ascertain nuanced similarities and key differences in the societal response to true crime cases. Finally, it is not feasible to collect full and accurate data surrounding audience interaction with true crime podcasting, as podcast audiences are so vast and many members invisible. The current study would benefit more by being informed by previous studies that have also adopted the analytical approach, which yields the most nuanced commentaries on societal concepts and relationships (Hedström & Swedberg, 1998). The interpretation of both case studies within the parameters of the current doctrinal analysis is essential in understanding the societal complexities of true crime within modern media, and outside of it.

Research Design

Case Study Approach

This research uses a case study approach which examines two podcasts, ‘*Serial*’ (2014) and ‘*West Cork Podcast: The Unsolved Murder of Sophie Toscan Du Plantier*’ (2018; hereby referred to as ‘*West Cork Podcast*’). Comparative case study analysis is useful for small scale research which aims to investigate nuanced social phenomena in depth, akin to Geertz’ ‘thick description’. By using case studies, it allows the researcher to examine “subtleties and intricacies of complex social situations” by focusing on one specific instance of that phenomenon (Denscombe, 2008, p.6). By comparing one jurisdiction against another in the parameters of this phenomenon, patterns of socio-cultural factors such as personal values, beliefs, class, consumerism, and lifestyle can be identified. The case study approach was adopted in this current research which allowed the researcher to ascertain patterns in passive and active media consumption habits, decision making processes of the public, and its direct impact on prosecutorial culture during this time period.

The comparative case study approach when assessing true crime podcasts is a relatively new field of study, with a particular study by Boling and colleagues in 2019, wherein a qualitative semi-structured interview methodology was employed to acquire knowledge directly from podcasters through a socio-cultural lens, insofar as acquiring legal and journalistic expertise on crime cases as well as discussing media-specific topics. The current study does not employ this qualitative method. Despite the success of Boling’s study, which also took the podcast ‘*Serial*’ under the scope of analysis, the study did not make use of documentary evidence from courts or other media outlets, nor did it expand upon how podcasting has become the primary media tool for creating a ‘court of public opinion’ in most western jurisdictions. By using the comparative case study approach, the current research aims to respond to the dearth in research in previous true crime podcasting literature as well as ambiguity surrounding true crime as a genre, by using documentary analysis such as the relevant court documents and media demographics going beyond the analysis of interview transcripts, in attempts to create a fuller picture in regard to current cultural climate. Furthermore, the analysis of the podcast scripts themselves a secondary source of data aim not to discredit previous studies, but expand upon their findings to ascertain true crime podcasts’ impact on culture (western and prosecutorial respectively), society, political economy, public jurifying, and the commodification of true crime.

While the comparative case study approach is the most beneficial to this study, it is not without its limitations. The current study takes into account only two jurisdictions within western society, and therefore cannot give a global generalisation of true crime culture. It is also imperative to note that podcasting as a media format is relatively new and still in early development in comparison to other media formats, therefore the patterns of consumption and societal impacts may not suggest longitudinal patterns at this time.

Data Collection

United States of America

For the purpose of this study, information collection began with the reading and analysis of the court documents and briefings from Adnan Syed's 1999 trial and subsequent 2015 retrial. Both 1999 and 2015 court documents and briefings are publicly accessible through the State of Maryland Courts. A briefing of the 2015 retrial was also used in this analysis, published from Maryland Courts also, in 2018. The legislation in Maryland, Article 201-2, surrounding murder charges will be comparatively explored in the wake of Syed's murder conviction being reinstated in 2023. The podcast 'Serial' provides podcast transcripts using speech recognition software directly from its publication website, which will be analysed to ascertain the findings of the case and public opinion. To expand on this, media outlets such as national journalistic pieces will aim to provide a fuller picture of public opinion on the case, and the public's role in the case being appealed. Such pieces will include but will not be limited to Amditis' "An Ethical Review of Serial" (2016), Paul's "From Serial to In the Dark; the True Crime Podcasts that changed their subjects' lives" (The Guardian, 2022), and Blair's "How the Investigation of Syed became a Podcast Phenomenon" (NPR, 2022).

Republic of Ireland

For the second strand of the case study research, information was collected across two different jurisdictions – the Republic of Ireland and France. The unsolved case of Sophie Toscan Du Plantier in West Cork provides a unique insight into crimes against foreign nationals within another jurisdiction. The murder of Du Plantier, a French national, occurred in her holiday home in west cork, Ireland, yet the prime suspect Ian Bailey was subject to prosecution from

the French criminal justice system and the Irish criminal justice system. Due to the DPP (Director of Public Prosecutions) dropping charges against Bailey due to ‘insufficient evidence’ to proceed to trial, the legal documents analysed in this research within the Irish jurisdiction include a report from 2001 where the DPP explores the ‘lack of forensic evidence to link Ian Bailey to the murder of Sophie Toscan Du Plantier’. In conjunction with this, the exploration of the case and information suggesting Bailey’s guilt from the *West Cork* Podcast will be explored through podcast transcripts, directly accessible from the original publication source, westcorkpodcast.com (produced by Audible). Media publications such as ‘*Toscan du Plantier murder mystery: Is ‘West Cork’ podcast the next ‘Serial’?*’ (The Irish Times, 2018) and ‘*Murder, Mystery, and a Media Storm in West Cork*’ (The Guardian, 2018) will be explored to examine and infer how the podcast and journalism has impact and understood the Irish republic’s response to the case.

France

Bailey was convicted of murder by the *Cour d’Assises* in Paris, France in 2019, and sentenced to 25 years in prison. He was tried ‘*in absentia*’ following a successful legal battle against extradition. Thus, the EAW (European Arrest Warrant, 2004) litigation procedure and policy in this case will be under analysis. The EAW has been defined as a ‘simplified cross-border judicial surrender procedure for the purpose of prosecution’ which will provide a nuanced comparison to Syed’s case, which remains inside the legal parameters of the United States of America.

Data Analysis

The documentary evidence collected for this study were examined comparatively across three jurisdictions. Desktop research was used to collect and analyse secondary data such as journalistic reports. the use of desktop research allows us to look back in time, which is not possible through other forms of research (Judd, Smith & Kidder, 1991). The variance and efficacy of criminal justice systems surrounding high profile murder cases were researched to shine light on the social phenomenon of prosecutorial culture in western culture. The evaluation of US and European court procedure was useful in gleaning a deeper understanding of the response of the public through true crime podcasting.

Ethical Issues

The current research utilises documentary analyses and secondary sources as its main strand of data collection. All documents involved in this analysis are published documents within the public domain, including media analyses and reviews of published literature, and does not pose any ethical issues. The questions and aims of this research are within the scope and competency of the researcher and it not likely to cause the researcher any harm. No part of this research was in violation of the NUIM Code of Ethics in the Department of Law and Criminology.

Strengths and Limitations

There are important strengths and weaknesses to take into consideration whenever a study uses secondary research. This will also be analysed in chapter five discussion. Firstly, the accessibility of previous literature and documentary evidence is most attractive to academics (Noaks & Wincup, 2004). Vast amounts of research regarding multidisciplinary social science is widely accessible within the public domain. Secondly, the collection of secondary data and research is much more feasible and quicker than gathering primary quantitative or qualitative data, especially when analysing multiple jurisdictions. Collecting primary data, in addition, requires a time consuming ethical procedure, that in the case of the current research and its broad scope of analysis, goes beyond the timeframe of research. Tight argues that the collection of primary data is time consuming and also resource heavy, which is off-putting to some scholars (2019). The analysis of secondary data is a strong alternative when looking at topics that have not been extensively covered in the current research, with no financial implications (Yorke, 2011).

However, there are limitations to secondary data analysis in general that may affect the current study. There is a definitive lack of control over the data being analysed, insofar as the data may not be directly correlated nor relevant to the research questions stated. As stated by Yorke, “what is good enough for one purpose may not be good enough for another” (p. 257, 2011). Thus, the current study requires a degree of inference that is informed by the current academic literature set out in chapter two, which consequently justifies an interpretivist approach when considering social phenomenon and modern criminogenic theory.

Conclusion

To summarise, the theoretical perspective employed for this analysis is interpretivist in nature. The strands of research include two case studies that offer three jurisdictions for comparative

doctrinal analysis, in conjunction with documents, publications, and podcast transcripts available within the public (or academic) domain. The methods of research will thus comparatively analyse secondary data and present findings informed by desktop research of the current academic literature surrounding the topic of the present research questions; ‘How has True Crime podcasting impacted contemporary western society’s response to high profile crime?’ , ‘How does the media impact the way in which podcasting audiences interact with criminal justice systems in different western jurisdictions?’, and ‘Is prosecutorial culture a result of classical crime glorification?’. The next chapter will discuss the findings obtained.

Chapter Four

Case Study Findings

Introduction

In this chapter I will present the findings from the research gathered using the research methods previously mentioned in chapter three. There are two strands to this research and the findings have been compartmentalised accordingly. The first strand of research relies on two individual case studies, *'Serial'* (2014) and *'West Cork Podcast'* (2018). The podcasts were listened to and their transcripts analysed, and the findings presented are also informed by the surrounding legal documentation quoted in the podcast itself, or obtained from the public domain after the relative court trials took place. Media coverage, with particular commentary on the murder cases themselves and their coincident podcasts, were also analysed. This allowed me to analyse the patterns that emerged from the podcast narratives and the investigations they were based on, and how public opinions shifted with their publications. Through the reading of additional reports, the research is able to attempt to explain how these patterns came to be.

***'Serial'* (2014) – Hosted by Sarah Koenig**

The podcast *'Serial'*, released in 2014, was created and hosted by journalist Sarah Koenig, who was inspired to follow the case of Adnan Syed. The case of 17 year old Adnan Syed follows the story of his arrest and prosecution in 1999 for the murder of his high school girlfriend, 18 year old Hae Min Lee. The case was relatively dormant and unknown to many in America, including Koenig herself, until she received an email from Rabia Chaudry, a lawyer, who was a friend of Adnan Syed's. Koenig wrote pieces for *Baltimore Sun* surrounding a defence attorney in Baltimore, Maryland that was disbarred for mishandling client money. The same attorney was Adnan's defence attorney in 1999 and 2000, and Chaudry emailed Koenig in hopes she would research the witness Asia McClain, who alleged she saw Syed during the time of the murder, and thus providing his alibi and alleging his innocence. She was never called to testify. Thus, Koenig begins investigating the case alongside Chaudry at first, and the 12 episode podcast *'Serial'* was published in 2014.

The Making of 'Serial'

The podcast initially began with a small team who worked with Koenig to produce weekly episodes that investigated the discrepancies of the case wherein Syed was charged with life imprisonment for the murdering of Hae Min Lee on January 13th, 1999. The introduction of each episode begins with a recording of Koenig receiving a phone call from Syed from Maryland Correctional Facility. Koenig spent tens of hours speaking to Syed directly by phone to question him about the case, his whereabouts the day of the murder, and his experience of the criminal justice system. Syed could not provide many details about the day of the murder, as Koenig pointed out through a small social exercise in episode one, “it’s really hard to account for your time in a detailed way” (*Serial*, episode 1, p. 1). The discrepancies within the case, however, such as the ‘unreliable’ and ‘shifting’ nature of witness Jay Wilds testimony, were explored in conjunction with expert opinions such as those of Bill Ritz, one of the lead detectives on the case, and many of Woodlawn High School’s former students. For example, Ritz, known as a ‘meticulous and skilled investigator’, said the police believed Jay’s statement that Syed not only killed Lee, but coerced Jay into helping bury the body, because “we were able to investigate and corroborate what he was saying”. Later in the series, as the discrepancies in the case become more apparent, such as invalid cell phone tower records that allegedly put Syed at the scene of the crime were later discredited by FBI specialists in court. In episode 7, lawyer Deirdre Enright, with a 20 year career working for The Innocence Project, joins Koenig in the investigation with the professional input from her legal clinic, and deems the prosecution’s case ‘very, very thin’ (*Serial*, ep. 7, p.153). Enright also shines new light on the case entirely;

“I just kept going back to motive and thinking “that’s a big black hole” for me. I still don’t understand why you want this girl dead. Because she broke up with you? People break up with people all the time. I’m a little concerned about racial profiling here, you know?” (*Serial*. Ep. 7, p. 154).

Racial profiling dominated the appeal court trial for Syed, with both the prosecution and defence teams responding to their impacts on jury opinion with the precedence established by prosecutor Vicki Walsh; ‘we do not want another Sheinbein situation your honour’ (*Serial*, ep, 10, p.220). Walsh argued to the court that like Sheinbein, Syed had contacts in Pakistan and would attempt to flee the country, and prosecution, were he released from police custody. Koenig’s investigation, with the help of lawyers such as Enright and Chaudry, and witness

interviews such as that of Asia McClain and ‘Cathy’ (witness alias), the case seemed to be geared towards not necessarily proving Syed’s innocence, but shedding light on the prosecution’s weak case against him, with nothing but Wilds’ testimony to pin him to the murder. The lack of DNA evidence, reliable cell phone records, and positive character testimonies geared Koenig’s investigation towards courtroom malpractice and criticism of the state’s criminal justice system.

Cultural Profiling

As mentioned above, a strong narrative of racial profiling emerged not just within the court room, but in the media covering Syed’s trials. In episode 10, Koenig explores the dynamics of Syed’s culture, insofar as that he is a American-Pakistani Muslim, whose parents had immigrated to Baltimore decades before. Syed, raised culturally Muslim, came under fire for his heritage by prosecutor Casey Murphy;

“He became enraged, he felt betrayed that his honour had been besmirched and he became very angry and he set out to kill Hae Min Lee” (*Serial*, ep. 10, p. 222). ‘Besmirched’ and ‘honour’ were words that Koenig believed to be indicative of Muslim honour killings from ‘the old country’. Furthermore, a confidential report written for the lead detectives on the case in 1999, Detectives Ritz and McGillivray, was discovered by Koenig, titled ‘*Report on Islamic Fad and Culture with Emphasis on Pakistan, a Comparative Study relevant to the Upcoming Trial of Adnan Syed*’. The following quote is sourced directly from the report and quoted in episode 10 by Koenig herself;

“For her to have another man dishonoured both Adnan Syed and his belief structure, it is acceptable for a Muslim man to control the actions of a woman by completely eliminating her...within this harsh culture he has not violating any code, he has defended his honour.” (Consultant’s Report, 1999, p.7).

Mano Raju, San Francisco public defender, brought the presence of this racial profiling to light in the media in the aftermath of the appeal trial in 2022. He spoke to NBC News and stated, “it seemed like what the prosecution did is it made an intentional choice to substitute Islamophobia and racial bias for proof” (Raju, 2022). Interestingly, it was stated by a witness that the majority of the Baltimore community back in 1999 was indeed black;

“Woodlawn was a fairly black neighborhood, black community, black-- predominantly black high school” (*Serial*, episode 8, p.184).

It seemed to become clear within the parameters of Koenig's investigation that race and culture may not have had anything to do with the facts of the case, but everything to do with the court of public opinion, which the prosecution attempted to utilise against Syed.

Sensationalism and Glorification

The podcast *Serial* garnered infamy almost overnight, and in 2023, the streaming numbers now sit at 300 million downloads. Koenig's investigatory style of narration drew mass attention to the discrepancies of this case and raised important questions in the public domain about the investigation and court procedure in 1999 and 2000 when Syed was convicted with Lee's murder. For example, it was found that many felt the "noble" effort made by Koenig to include as many experts as possible and "dogged reporting were key to its success" (Barry Scheck, co-director of the Innocence Project to NPR, 2022). Scheck articulates that Koenig's "propulsive storytelling" and the audience hearing "her thought processes out loud" generated a public wide interest in joining her in the effort to co-investigate the discrepancies with Syed's case to determine his guilt or innocence, which he reckons is part of the phenomenon of this true crime podcast. It was also reported in the Guardian in 2022 that the transparent and fact-based investigative storytelling provided by Koenig ignited an "insatiable interest in true crime" cases, which transposed to other cases such as that of Gabby Petito, who disappeared in 2021. The sensationalism of the podcast seemed to produce overwhelmingly positive feedback and results from the public, and Koenig seemed to dexterously navigate the pitfalls of true crime storytelling in the media.

However, some findings have suggested the case of Syed became glorified in many ways. In the follow up episodes Koenig released to document the appeal trial in 2022, Koenig remarked in the second short update episode, following the court's introduction of the infamous cell phone records into evidence and whether or not they reliably pinpointed Syed's location at time of the murder and subsequent burying of Lee's strangled body in Leakin Park, that she was "drooling" from the excitement, and that her co-producer Dana Chivvis would have "eaten this up". While a small, nuanced detail not thematic to the original 12 episodes of the podcast, the remark reinforces the audience members that this highly sensitive and egregious case is potentially "appealing to people's baser instincts in terms of bloodlust" (Russell Moore, 2014). Media coverage on the podcast and its likeness to "it's almost like you are just watching a multipart drama without reminding yourself, no, this is a real murder that was taking place"

was not blamed on Koenig or her team, but more so on the fact that media publications are designed to bypass morality to provide a commercial product.

The Impact of Serial on the Criminal Justice System and Court Procedure

It was found that Koenig's *Serial* impacted the course of Syed's sentencing because the podcast's proclivity to raise important questions about Syed's defence attorney in 1999, Cristina Gutierrez. Gutierrez made the "strategic" decision to not call Asia McClain to testify on Syed's behalf and bolster his defence because she was deemed "unreliable". Expert witness for the defence Dave Irwin, a defence lawyer with a "distinguished career" stated in court that he could not understand how Gutierrez did not investigate Asia McClain as a witness, as he states that "if you have an alibi witness, which is the best possible defence you can have". Asia McClain never testified in Syed's trial in 2000, which many journalists and public members speculate as the reason Syed ended up in prison. *Serial* garnered attention for calling McClain a "star witness" that was never used, and how it was a "miscarriage of justice". It would appear that *Serial's* role in getting McClain to testify was instrumental in Syed's success and subsequent release. The podcast became a "cultural phenomenon" insofar as not only relying on expert opinion and professional investigators, but also the audience who could discover leads (Guardian, 2022). Furthermore, Asia McClain was a key interview in several of the *Serial* episodes, and even mentioned the influence the podcast has on her and the case in the 2022 appeal trial [following excerpt from the post-conviction court transcript of McClain's testimony];

"I just — I didn't think anything I had to say was important and come to find out after listening to the podcasts I realized that, you know, as Sarah said, in the podcasts, you know, well, maybe it is important. So definitely placed a greater weight on my heart so to speak as far as making sure all the information was available to both sides and making sure that, you know, justice could be fairly evaluated." (Asia McClain, 2022, p. 210-211). A line of questioning from the prosecution spanned ten questions about how McClain came to be featured on the podcast and the effect she perceived it to have on the importance of her testimony.

Serial, in its subsequent update episodes in 2022, also covered the crucial change in legislation in Maryland in 2021 called the 'Juvenile Restoration Act'. Bill 424 used in documentary analysis states;

“FOR the purpose of authorizing a court, when sentencing a minor convicted as an adult, to impose a sentence less than the minimum term required by law; prohibiting a court from imposing a sentence of life without the possibility of parole or release for a minor”.

Due to Syed being charged at the age of seventeen, this appeal was preceded by the new bill passing this act on the grounds that Syed could apply for an appeal. The change in legislation in regard to this case was disclosed during this podcast, which is argued to have also led to legal “re-examination of the facts of the case” (DEPAUW, 2022). This is a striking fact as it sees the evolution of legislation over the period of 23 years.

West Cork Podcast – hosted by Jennifer Forde and Sam Bungey

The podcast ‘West Cork’ was created and produced by journalists Jennifer Forde and Sam Bungey. The podcast first premiered in 2018 as an Audible Original, and was then widely disseminated in 2021. The podcast was critically acclaimed upon release; documentarian Louis Theroux described the series as “possibly the best true crime podcast of all time”, Nicholas Quah from *Vulture* stated “[West Cork is] vastly more soulful than its true crime peers”, and Una Mullaly from the Irish Times said, “The next Serial...maybe even better”. The podcast is a 14 episode series that follows the story of a well-known French film producer Sophie Toscan du Plantier, wife of Daniel Toscan du Plantier, who travelled to her holiday home in the rural Schull, West Cork, three days before Christmas in 1996, and wound up brutally murdered. Du Plantier travelled to Ireland alone, and was discovered on the morning of the 23rd by a neighbour, who rang An Garda Síochána after spotting Sophie’s brutalised body in the driveway. The podcast explores the mysterious case that led to significant questions being raised about the Irish police’s conduct and procedure during the case, and the campaign against Ian Bailey, their prime suspect. As the case is still open 27 years later, the reliance upon witness testimony became the crux of the case.

The Making of ‘West Cork’

Forde and Bungey began the production of the *West Cork* podcast in 2018 to highlight the mysterious case of Sophie Toscan du Plantier’s murder, and the discrepancies within the still-open case. The series of fourteen episodes is composed of narration from the hosts, and several interviews with the original witnesses in the case, including Marie Farrell and Martin Graham, alongside expert commentary from lead detectives Dermot Dwyer, Jim Fitzgerald and Eugene

Gilligan. The former DPP James Hamilton, refused to interview for the podcast, but his 44 page report outlining why the DPP did not press charges against the prime suspect Ian Bailey, were reviewed. The retired head of Garda forensics James Donovan also spoke to Forde and Bungey about the evidence of the case, or lack thereof. Forde and Bungey also centre many of the episodes around the interviewing of Ian Bailey and Jules Thomas, the prime suspect and his long term partner who was also arrested in relation to the crime. Forde in particular, notes that the case hinges almost entirely on the unreliable witness testimony of Marie Farrell, and investigates her claims that the statement was coerced by the lead detectives of the case.

“a year and a half after going under oath at the libel trial, she [Farrell] contacted Ian Bailey’s solicitor to tell him that her evidence against Ian was trumped up, complete fiction” (West Cork, ep. 11, p.1)

In the first episodes of the podcast, suspicion of the validity of the case against Ian Bailey is brought into question by Eugene Gilligan, scenes of crimes officer, who corresponded with former state pathologist Prof John Harbison, who is heard speaking on the call he received the morning Sophie was discovered.

“we went back to the station and I rang Doctor Harbison to explain the scene to him because we had been informed that he would not have been able to get down until the next morning. We – myself and my colleagues – saw it as totally unnecessary to leave a body for the pathologist to come” (West Cork, ep. 2)

Gilligan was overruled by the lead detectives who wanted Harbison to evaluate the body at the scene of the crime, despite the futility in determining a time of death because Gilligan discovered the body had been left for so many hours, the temperature of the body was nearly freezing. From here, Forde and Bungey begin to uncover some of the discrepancies not only within the investigation, but the facts of the case due to the lack in preservation of the scene. This was found to be a key element of the narrative in the ‘smear campaign’ against Ian Bailey, the self-proclaimed chief suspect (Irish Post, 2021).

Discrepancies of the Case

The strongest narrative within the case and the podcast related to the patterns of discrepancies within the case. From police misconduct to unreliable witness testimonies and an overwhelming lack of DNA evidence from the crime scene raised crucial questions about the investigatory process. Akin to Gilligan’s observations of the body being left at the scene for

nearly 20 hours before it was taken to Cork Hospital, the scene was not only poorly preserved, but little could be gleaned about Sophie's time of death. The Head of Garda Forensics, James Donovan comments;

"The last thing you want is any more evidence being added to a scene until it has been properly examined, you do not leave finger prints where there were no fingerprints" (West Cork, ep. 2)

Forde concludes this was the first of many mistakes made during the case;

"One of the first explanations you'll hear about why the case has never been solved is that the guards messed up that first day. That it took the experts too long to get there... local guards made mistakes that were impossible to take back...they destroyed whatever evidence could have been" (West Cork, ep.2).

It was found during the investigation that no DNA evidence or traces were found at the scene other than Sophie's, and a concrete block covered in her blood that the experts assume to be the murder weapon, or least one of them. Throughout the investigation, objects with traces of blood, such as the drive gate, were taken into evidence, but somehow lost during the investigation with no viable blood samples to test. Ultimately, with no hard evidence, the police turned to witness testimony.

Marie Farrell, who initially reported spotting Bailey near the victim's house on the night of the murder, came forward to testify that the Gardaí had coerced her to say the figure she saw was indeed Bailey, when she knew that it was not.

"When Marie threatened to go public with the truth, the Guards told her she would never have another day's peace in Schull...the guards had someone in mind and kept nudging her to change things" (West Cork, episode 10).

Farrell had testified in the 2003 libel trial [Bailey had sued several media publications for defamation] that the police coerced her to testify that she had spotted Ian Bailey on the night of the murder by promising her it would never be made public that Farrell was in the company of another man on that night, which was not her husband. The Guards has also coerced her to provide a false name [a dead man] for her companion, to ensure he would never testify. The DPP at the time, James Hamilton, had produced a 44 page report. Section 7, titled "Unreliability of Marie Farrell" states;

“Marie Farrell’s potential as a witness is diminished even further by memo dated 28 January 1997 wherein she says that the person she was with was an old friend. She has admitted to the Gardaí that this was a lie. She has informed them that she was with a lover and has refused to disclose the identity.” (DPP Report, 2001, Section 7, p.16).

Section 8 also discloses the circumstances in which Detective Garda Fitzgerald managed another witness, Martin Graham, and attempted to plant him as a spy on Bailey to obtain incriminating evidence;

“He [Detective Garda Fitzgerald] is also the officer alleged to have given cash, clothes and hash to Martin Graham in order to obtain incriminating evidence against Bailey.” (DPP Report, 2001, Section 8, p.16).

Graham spoke to Forde and Bungey for West Cork in episode 8. ‘The Bandon Tapes’ relate to wiretaps planted by both the guards and Graham himself, reveal this fact. In episode 9, it was also revealed that the same guards had attempted to recruit the Jacksons (Bailey’s neighbours) as spies but they refused. It is clear from the substantial findings that the guards in question were adamant Bailey was guilty of the murder, and had made every attempt to forsake the lack of evidence and substitute it with witness testimony through coercion and witness tampering. From listening to the podcast, it is never made clear if these Gardaí members were ever questioned, due to Bailey losing his law suit against “the Irish state for unlawful arrest, false imprisonment, and [being a] victim of a conspiracy to frame him” (The Guardian, 2018).

The Media Campaign Against Ian Bailey

Forde notes that the media frenzy surrounding the case and Bailey’s subsequent arrests that he became a national talking point in the first few months following the murder of Sophie Toscan du Plantier. Due to the wavering witness testimonies and lack of forensic evidence at the scene of the crime, the media became a divisive rumour mill, propagating stories that “had no basis in reality” (West Cork, episode 9). The media began to frame Bailey based on the history of domestic abuse with long term partner Jules Thomas, who he had brutally assaulted on three known occasions, leading the public to suspect he was an ‘eccentric madman’ with a propensity for violence. The Guardian published an article exploring the impact of the media on Bailey himself and the locals of West Cork. It is reported that the media surrounding Bailey and the case was unprecedented due to the it being “the most incompetent investigations of all time”. Public opinion was gathered for the West Cork podcast with over eight hours of interviews,

which concluded that the locals feel ‘there is no smoke without fire’, alluding to the wide belief that Bailey is guilty of the Sophie’s murder. The Guardian reports that Bailey now ‘lives on the margins’ as he has not moved out of West Cork. Upon the verdict of the French trial held *in absentia* found Bailey guilty of the murder despite no new evidence being admitted into the prosecution, this has been observed to have impacted the general belief surrounding Bailey’s guilt.

In episode 9 of *West Cork*, Forde comments on the malignant intrusion that Bailey faced;

“Everywhere he went he was being watched...at home his phone was being tapped, it was like he was being eaten alive, he later said in court. He was being scrutinised by his neighbours, the press, the guards...” (*West Cork*, episode 9).

His former neighbour Ceri Williams was also interviewed in episode 9, and stated; “his life was being destroyed”. Forde went on to comment in episode 13 that “Bailey was living in an open prison” (Southern Star, 2016). The media scrutiny had become so overwhelming that Bailey sued eight publication companies for defamation of character in 2004. He lost against 6 newspapers, and was awarded a sum of £5,600 for damages from articles published in the Irish Sun and Irish Mirror, “which claimed he had beaten his ex-wife” (The Guardian, 2004). However, the senior Judge Moran remarked that Bailey was a “publicity seeker and a violent man”;

“One can assume that Mr Bailey was a man who likes a certain amount of notoriety, likes to be in the limelight and likes a bit of self-publicity” (The Guardian, 2004).

Bailey himself commented on the final episode of *West Cork* that ultimately there was some truth to Judge Moran’s claims, in that he “played the media” because as a former journalist, “you never really lose that” (*West Cork*, episode 14). Members of the public felt that the “grandiosity” displayed by Bailey was “unforgiveable”, and made the notion of his innocence “hard to stomach” (*West Cork*, episode 13). Bailey’s identity is still well known 27 years later, as the case was renewed upon the French trial held in *absentia* in 2019.

Sensationalism and Glorification

The media scrutiny of Bailey’s case as represented in the findings above led to a common pitfall often observed in the media. Sophie Toscan du Plantier “faded into the background” as the Gardaí, the public, and the media focused on Bailey’s arrest, statements, and legal disputes (*West Cork*, episode 14). The life and death of du Plantier was not covered in the media beyond

the basics of her trip to Ireland and when her body was found on the 23rd of December 1996 until the French trial held in absentia. Friends and family were reported to have testified to du Plantier's character and career, her love of art and film, and her son Pierre Louis. In episode 14 of *West Cork*, covering the French trial, Forde described how "Ian's fate hung in the balance, and the focus shifted to Sophie". Sophie's long term best friend and work colleague Agnes Thomas and Sophie's cousin Frédéric Gazeau testified at the 2019 trial in France. Gazeau comments;

"I was very amazed by her. I was very, very proud to have a cousin like her. She has a lot of energy. And when she comes in a room there was electricity in the air. She looks at you when you are you. You. Feel that you exist." (*West Cork*, episode 14).

It has been noted by Sophie's immediate family that in the wake of the Irish publicity regarding Ian Bailey and the decision not to prosecute by the DPP, the French authorities had "all but forgotten, [until] Jean Pierre, Sophie's uncle, started a pressure group, pushing for an investigation in France" (*West Cork*, episode 14). The trial held in 2019 was felt by Forde to have been a platform to bring respect and attention back to Sophie – akin to the French system that allows a victim a day in court without the defence or suspect present. While the French authorities have failed to extradite Bailey to serve his 25 year sentence in French custody, the trial held in absentia served as a reminder that within the cogs of the criminal justice system, victims are too often overshadowed by either the circumstances of the crime, or in Sophie's case, the "self-proclaimed chief suspect", Ian Bailey (*West Cork*, episode 6).

Conclusion

Both '*Serial*' and '*West Cork*' have yielded interesting findings individually as case studies of true crime podcasting, and how they impact the cases they report on alongside the court of public opinion. The findings produced originated from the original podcast transcripts, original and official court documents and briefings pertaining to the case, transcripts of witness testimonies, and significant media publications that worked in tandem to produce a full set of data. The significant findings presented above were compartmentalised into subsections for the purpose of relaying them comparatively in my second strand of research. Each subsection is dedicated towards findings obtained from the podcast analyses that were reinforced by the findings within court transcripts, media publications, and legally official documentation. The findings here are limited, however, insofar as there is little to be found on statistical analyses nor quantitative measures in most regards, and the findings produced rely on existing literature

and publications. Human error on behalf of these authors as well as myself is a possibility, however the patterns obtained from analysing each podcast as an individual case study is substantial. The next section, my second strand of research, will take these case studies, and present findings obtained on a comparative level.

Comparative Findings

Introduction

The second strand of my research involves a comparative approach with findings obtained from the use of documentary evidence and doctrinal research. It became obvious in the case study research that the socio-cultural impacts of sensationalised crime media, with particular focus on podcasts ‘*Serial*’ and ‘*West Cork*’, can be severe and systemic. In response to this, this section will examine the findings from the current legislation that has come into effect in relation to these cases, and how that legislation developed in the wake of these egregious crimes and the infamy obtained through podcast investigation. Both cases evaluate the investigation into two murders, and the prime suspects’ journey through the criminal justice system, thus, I will comparatively explore the more extreme end of the spectrum in terms of violent crime: first degree murder and spontaneous homicide.

I examined the legislation through journals and evaluations relating to first degree murder and homicide in three jurisdictions; a) Maryland, United States of America, b) the Republic of Ireland, and c) France. The ‘*West Cork*’ podcast dealt with an extraordinarily rare case of a foreign national murdered in another country, and called extradition laws into question alongside the legislation of prosecuting murder in both Ireland and France within the one case study. The aim of examining this legislation is twofold; how did the relative legislation develop since the time of crime, and how might this impact the current cases and public reception. The comparison of these laws will also be an attempt to discover which aspects of this legislation is more effective, and if there are potential avenues for recommendation in modern context.

Maryland, United States of America

For the purpose of examining first degree legislation in Maryland, Section 2-201 of the Maryland criminal law code will be under examination. The Juvenile Restoration Act 2021 will also be analysed due to the developments of Syed’s case in 2022. The Maryland criminal code of law was obtained directly from Maryland General Assembly archives, as this was the most accurate resource available.

The Code of Law

Under the criminal code of law in Maryland, Syed was tried as an adult at the age of seventeen and convicted of first degree murder by a jury in the year 2000, and sentenced to life in prison plus 30 years. At the time of sentencing, capital punishment remained legal in the state of Maryland. Syed was also found guilty on the counts of false imprisonment, robbery, and kidnapping. The code of law, with particular reference to Maryland Criminal Law Section 2-201 states;

- (a) A murder is in the first degree if it is:
 - (1) a deliberate, premeditated, and wilful killing;
- (b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:
 - (i) imprisonment for life without the possibility of parole; or
 - (ii) imprisonment for life.

The law allows individuals to be charged with first degree murder if substantial evidence suggest the offence was not a spontaneous killing, but a premeditated and planned offence. The person who commits the offence can only be tried upon indictment, of which Syed was 17 years old at the time of his indictment, and tried as an adult due to the seriousness of the offence. His sentence of life imprisonment plus 30 years without the possibility of parole was appealed in 2003, but the conviction was upheld. *Samuel Sheinbein V The State* was used in court as a precedent for upholding Syed's conviction, akin to the possibility of not being able to extradite him from Pakistan should he choose to flee once granted parole.

The code of law in relation to first degree has not developed since this time, however the punishment and parameters of conviction have. In 2013, a bill, SB 276, was passed in 2013 to abolish the death penalty in the state of Maryland. The possibility that Syed's sentencing may have resulted in the death penalty was possible, as the protection for juveniles from the death penalty only came into effect in 2005. In terms of the parameters of conviction of murder in the first degree for minors, a development of legislation proved critical for Syed's appeal and subsequent release; The Juvenile Restoration Act (2021), which states;

- (a) this section applies only to an individual who:
 - (1) was convicted as an adult for an offense committed when the individual was a minor;
 - (2) was sentenced for the offense before October 1, 2021; and
 - (3) has been imprisoned for at least 20 years for the offense.
- (b) (1) an individual described in subsection (a) of this section may file a motion with the court to reduce the duration of the sentence.
- (2) a court shall conduct a hearing on a motion to reduce the duration of a sentence.

The Juvenile Restoration Act came into effect in 2021, and offered those sentenced to life in prison without the possibility of parole when the offender was under the age of eighteen at the time of the crime, grounds to appeal their conviction and have a court reduce their sentence. For Syed, this was found to be crucial in securing an appeal trial, as he had served 20 years of his sentence akin to the Act's statute of requirements.

Criticism

Since this time, the act has been an overall welcomed reform in the legislation, however it is not without its criticisms. Governor Lawrence J. Hogan Jr. announced a bill to veto the Juvenile Restoration Act in April of 2021 (the act had been in effect for three months). Hogan's bill suggests that a process would be established wherein juveniles sentenced as adults for serious crimes could seek consideration, however, as the bill states;

“...pertains to juveniles who have committed crimes so heinous that they are automatically tried as adults, including first degree murder, first degree rape, first degree sex offense, manslaughter, and certain offences with firearms” (Veto Letter, Hogan, 2021).

At this point, senate have overridden this veto and upheld the act since 2021, and Syed remains free.

A Jurified Public

In Koenig’s final update episode of ‘*Serial*’, the Juvenile Restoration Act is discussed in relation to Syed’s appeal, and how this precedent resulted in a successful motion to vacate his life sentence. Koenig states;

“Almost a year ago, a new law took effect in Maryland – the Juvenile Restoration Act...one of the factors she [Becky Feldman, Chief of the Sentencing Review Unit for the Prosecutors Office] has to weigh in deciding whether to support a sentence reduction under this new law is the facts of the crime”. (*Serial*, episode 13).

Feldman discovers new evidence in the Syed’s case file that substantially changes his level of culpability in the crime, insofar as discovering handwritten notes that pertain to “a potential alternate suspect in the case”. This was never admitted into evidence in the trial wherein Syed was convicted, nor had his new defence attorney Erica Suiter, ever seen them. A reinvestigation into the case was then underway and the motion to vacate Syed’s conviction was granted by the Baltimore State Attorney.

The public, however, have remained divided on the vacated sentence for a number of reasons. Journalist Drusilla Moorhouse writes an article about the newly jurified public, and states that many of Syed’s defenders believe that Syed should be certified as innocent, as it is “decades overdue” (2022). However, the vacated sentence and introduction of evidence involving alternate suspects does not declare Syed as innocent, just ‘not guilty’. Others, who were reported to have followed Koenig’s podcast investigation believe that Syed could still be found guilty in a new trial, due to inconsistencies in both Syed’s story and star witness Asia McClain’s testimony.

Many of ‘*Serial*’s listeners took part in a survey conducted by PR Newswire, wherein listeners were asked a series of questions about podcasts in general, and their interactions with Syed’s case. The survey was sent to 137,000 serial newsletter subscribers and the sample of 6,300 responses is stated to be statistically significant. The survey found that 93% of *Serial*

subscribers discussed the case with friends and family, and a staggering 78% of listeners went online to find out more information about the case. It was comparatively found that while 57% of podcast listeners pay full attention while listening to other podcasts, 93% of Serial listeners claimed to always give full attention to each episode. The level of engagement and research on behalf of the public is unprecedented, and the general consensus from a host of media outlets states this invisible network of “armchair detectives” to be instrumental in the success of Syed’s release and investigation.

Republic of Ireland

For the purpose of examining Irish legislation in relation to murder, the Criminal Justice Act (1964 and 1990) section 4 will be analysed. The Defamation Act 1961 will also be examined in the context of the case of Ian Bailey’s libel trial in the wake of the murder of Sophie Toscan du Plantier. All legislation was obtained directly from the digitalised version of the Irish Statute Book, which is published in the public domain.

The Irish Statute

Unlike Syed’s case in Baltimore, Ian Bailey, the prime suspect in the murder of du Plantier, was not prosecuted under Irish Criminal Law, despite both cases resting heavily on circumstantial evidence. The former DPP (Director of Public Prosecutions) James Hamilton did not proceed with the case as it was deemed the lack of evidence against Bailey was too significant to prosecute him. The Criminal Justice Act 1964 Section 4 wherein Bailey would have been charged under states;

4.—(1) Where a person kills another unlawfully the killing shall not be murder unless the accused person intended to kill, or cause serious injury to, some person, whether the person actually killed or not

(2) The accused person shall be presumed to have intended the natural and probable consequences of his conduct; but this presumption may be rebutted.

The Criminal Justice Act 1964 removed the death penalty from all offences with the exception of murder of a member of An Garda Síochána. In 1990, the death penalty was abolished in Ireland entirely. Now, similarly to the Criminal Code of Law in Maryland, the mandatory sentence for first degree murder is life imprisonment. The Criminal Justice Act 1990 states;

An act to abolish the death penalty and substitute imprisonment for life, to provide that a minimum period of imprisonment shall be served by persons convicted of treason or of certain categories of murder or attempts to commit any such murder and to provide for other connected matters.

Be it enacted by the Oireachtas as follows:

- 1.—No person shall suffer death for any offence.
- 2.—A person convicted of treason or murder shall be sentenced to imprisonment for life.

Upon review of the case file compiled by the Gardaí detectives in 1996, the DPP stated there was not a sufficient amount of evidence or case against Ian Bailey to warrant prosecution. Thus, 27 years later, Bailey has not been prosecuted under this act in the Republic of Ireland. However, unlike Syed's case, Bailey chose to sue eight newspapers for defamation of character when the case garnered nationwide attention. The Defamation Act 1961 Part II section 5 states;

5.—(1) On every trial of an indictment for making or publishing any libel to which a plea of not guilty is entered, the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue on the indictment, and the jury shall not be required or directed by the court to find the person charged guilty merely on the proof of the publication by him of the paper charged to be a libel and of the sense ascribed to such paper in the indictment.

Bailey lost six cases of libel, and was awarded £5,600 in damages in relation to publications regarding his pattern of domestic violence in the Irish Mirror and Irish Sun.

Criticism

The decision by the DPP not to prosecute Ian Bailey under the Criminal Justice Act was met with criticism from the Gardaí, who submitted the case several times over many years with additional circumstantial evidence, but was never successful. The French authorities, when later holding a trial of Bailey in absentia, objected the DPP's decision entirely. In response, the DPP stated in episode 13 of *West Cork* that the French criminal justice system displayed "contempt for the office of the DPP". He also notes that the French criminal justice system is geared towards putting suspects on trial, irrespective of evidence, which Hamilton states;

"putting a suspect on trial to satisfy public curiosity is a very irresponsible thing to do" (*West Cork*, episode 13).

Further comparative findings with the French Criminal Justice system and legislation will be presented in the next section.

A Jurified Public

The podcast '*West Cork*' focuses heavily on the media scrutiny surrounding Ian Bailey as the prime suspect in the case. As most of the evidence was circumstantial, such as Marie Farrell's now discredited testimony and Bailey's personal diary, the public reception to the case was divided. Episode 10 explores the diaries Bailey kept at the time of the investigation, which were kept in audio format;

"The reason why I'm doing it [suing for defamation] is because I want to put to death a dirty rotten stinking lie which was perpetuated and spread like a virus accepted gladly by the guards who wanted to find a victim, so here we go" (*West Cork*, episode 10).

Bailey has always maintained his innocence and being a victim to a smear campaign perpetuated by the police for 27 years. Filmmaker Jim Sheridan, who produced a documentary on the murder of Sophie Toscan du Plantier called '*Murder at the Cottage: The Search for Justice for Sophie*' (2021), stated;

"My conclusion is that in many ways Ian Bailey has been punished for this crime. He has been marked down as a killer for 25 years and found guilty in a French courtroom, so he has suffered, even if he never faced a jury in a criminal case." (Jim Sheridan, Sunday World, 2021).

Many of the locals in Schull testified that Bailey was a ‘madman’ who was often caught acting suspiciously in front of his neighbours, e.g., stripping his clothes off and howling at the moon. The nationwide hysteria based off these rumours have dominated Irish discourse, and unlike Adnan Syed who had many supporters, Bailey has become “ostracised in his local community, and work has dried up” (The Guardian, 2004).

France

The third and final jurisdiction under legislative analysis is France. For this purpose, Article 221-1 of the French Penal Code in relation to wilful killing will be examined. Article 113-8-1 of the French Penal Code will also be under examination in conjunction with the EAW (European Arrest Warrant) in relation to the attempted extradition of Ian Bailey to serve 25 years imprisonment in the French criminal justice system for the murder of French native, Sophie Toscan du Plantier. These articles and legislation were obtained directly from the Code Pénal, published within the public domain.

Code Pénal

Within the French criminal justice system, a system as former DPP James Hamilton described as being geared towards putting suspects on trial, allow for trials to be held even if the defence is absent. This nature of trial is called ‘*in absentia*’. This is unique to France within this analysis, as Adnan Syed made an appearance for all of his trials, as did Bailey for his libel trial. Similarities can be drawn between two mechanisms of defence strategy between Syed and Bailey however, insofar as Syed opted not to testify at his trial, and remain silent for its duration. Bailey’s absence in France allowed the French prosecution the same opportunity as the Maryland state prosecution, in the extent that both prosecution teams could rely heavily upon circumstantial evidence and unreliable witness testimony without obstacle or objection. The French prosecution was found to have not brought any new or additional evidence beyond the original investigation of An Garda Síochána, and tried Ian Bailey under Article 221-1, which states;

<p>The wilful causing of the death of another person is murder. It is punished with thirty years' criminal imprisonment.</p>
--

Bailey was found guilty under this act, and sentenced to 25 years in prison in France. In order for French authorities to punish a foreign national under French law, the offender must be extradited. Extradition is described in Article 113-8-1 of the Code Pénal, which states;

French Criminal law is also applicable to any felony or misdemeanour subject to a penalty of at least five years' imprisonment committed outside the territory of the French Republic by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or to a safety measure that is contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect the basic procedural guarantees and the rights of the defence, or because the matter in question shows the characteristics of a political offence.

However, French authorities failed to extradite Bailey to France, as Mr Justice Burns stated Bailey had “an accrued right not to be extradited as a result of a Supreme Court ruling in his favour” as reported by the Law Society of Ireland (2022). In comparison, extradition was used as prosecutorial precedent in Maryland to deny Syed parole, in the event that US authorities would not be able to extradite Syed from Pakistan under the same circumstances. The EAW litigation process began in 2010 to extradite Bailey to France, however it is seen as an “oppressive” system that subjects suspects to two national crime procedures (Shieber, 2020). Three instances of EAWs had been issued to Ireland to extradite Bailey, however Irish authorities denied each EAW on the basis that the requested jurisdiction (Ireland) would not prosecute Bailey for the same offence.

Criticism

Unlike the Irish case, the French police file compiled for Bailey’s trial in absentia, was compiled under the supervision of an investigating judge and independent prosecutor. It was found that the evidence provided by the Gardaí for the original case was tested for its credibility

before the trial began, and the trial itself relied almost wholly on witness statements such as those of Marie Farrell, which like Jay Wilds' in Syed's case, was largely discredited.

A Jurified Public

Unsurprisingly, it was found from the 'West Cork' podcast that the family of du Plantier, and the wider French public, became hostile towards Ian Bailey in the assumption of his guilt. In the final episode of *West Cork*, du Plantier's son Pierre-Louis is heard speaking at church mass in Cork;

"[I was]15 years-old when my mother was brutally killed. My mother Sophie is not a ghost. She's a victim of human cruelty and violence of a man who lives among you." (*West Cork*, episode 14).

In 2021, French President Emmanuel Macron, returned to France after the Irish High Court's refusal to extradite Bailey. The Irish Examiner reported that "his compatriots were hoping that he would return with Ian Bailey in shackles" (2019). Furthermore, the public media in Ireland have described Bailey as a "polarising figure", and he was becoming somewhat of an "OJ Simpson style of celebrity (The Guardian, 2019). While Adnan Syed faces cheers and support leaving the court room as a free man, Ian Bailey is the social pariah of not one, but two nations.

Conclusion

Some key similarities and differences exist between all three jurisdictions in these two case studies. The developments in murder legislation in Maryland have made significant impact on juvenile offenders. In the case of Adnan Syed, beyond the legislation, the prosecutorial culture from the public was found to be heavily influenced by the media framing at the time, highlighted in Koenig's podcast *Serial*. In the case of Ian Bailey, who was never formally convicted in Ireland for the murder of Sophie Toscan du Plantier, faced media scrutiny and prosecution within the media and the court of public opinion in two jurisdictions. One of the common criticisms in both cases is the overwhelming lack of forensic evidence to convict either of these men, and the reliance upon circumstantial evidence and remarkably unreliable witness testimony to win over jurors. While the legislation in these respective jurisdictions have caused contention with police forces [Maryland and Ireland], the podcasts *Serial* and *West Cork* have successfully engaged the public in active investigating into the facts of the case, and have encouraged people to engage critically with the criminal justice systems, and their shortfalls, such as holding trials in absentia, lack of evidence, and police misconduct. The next

chapter will contextualise these findings with the current literature set out in chapter two. The limitations of prosecutorial culture will also be contextualised inside and outside the courtroom, as prosecutions involve an enormous amount of resources, and the stake for obtaining a successful outcome seems to be much higher, even at the expense of the truth.

Chapter Five

Discussion

Introduction

From analysing the findings from my primary strand of research, two case studies of true crime podcasts ‘*Serial*’ and ‘*West Cork*’, some significant themes emerged that reflect many sociocultural elements found in the literature review. For example, two distinct themes within the findings from both case studies include the impact of media framing when convicting suspects inside and outside the criminal justice system, insofar as how jurors respond favourably to media profiling in lieu of evidence. Secondly, both podcasts were established to be sophisticated attempts at investigative journalism, but findings produced mixed results in terms of establishing a bidirectional harm in engaging their audiences with egregious crime. From the second strand of research emerged a very distinct theme of prosecutorial culture, which reflected many elements of established societal responses to crime as reflected in the literature review. While the findings have provided valuable insights into the mechanisms of true crime podcasting and media, the findings themselves are incomplete, as it is difficult to draw generalisations to true crime media as a whole, based on two very unique, very high profile cases from the 1990’s.

How Journalist Media Framing Glorified Public Perception of Suspects

As mentioned in the literature review in chapter two, one of the most substantial consequences of true crime cases reported in the media is the public discourse that follows (Murley, 2008). Hier made the observation that in most news broadcasting media formats, primarily radiogenic, television and newspaper publications, one of the strongest themes permeating true crime media narratives is spotlighting the criminal (Hier, 2019). From my research into the cases of Adnan Syed and Ian Bailey, arguably the main characters of ‘*Serial*’ and ‘*West Cork*’s narrative, the undivided attention from the media on these prime suspects supports this claim unequivocally. Fathallah argues the spotlighting of criminals sensationalises the case and victims fade from public consciousness over time (Fathallah, 2022). This emerged in the case of Sophie Toscan du Plantier especially, as it was found her life story and the circumstances of her murder ‘faded in the background’. Bailey, in contrast, remains a heavily criticised public figure within the media, and the podcast ‘*West Cork*’ features him and his battle with the media for the majority of the 14 episode series. While ‘*Serial*’ made every attempt to include Hae Min

Lee into the discourse, the dominant focus of the podcast was Adnan Syed and his battle against the justice system.

As discussed by Greer and Reiner, the public discourse that emerges following the labelling of suspects as egregious killers is stark (Greer and Reiner, 2013). Both podcasts explored the years in which Bailey and Syed had both been scrutinised in the media in a number of ways. Bailey for example, was found to have been lambasted by locals, and unequivocally suspected by An Garda Síochána of guilt. The lead detectives in Syed's case were also found to have led witnesses to assume Syed's guilt (Jay Wilds), and the harm created in the wake of the respective investigations fostered a passive public belief that both of these men were guilty, despite the lack of evidence to suggest such. Such discourse was found to have 'ostracised' Ian Bailey from the Schull community, despite not being convicted in Ireland. Furthermore, Fister argued that true crime media is a vital mechanism in stirring a marketplace of anxiety within the public by publishing topical true crime cases within a narrative that fosters both anxiety and curiosity (2005). Firstly, the phenomenon of glorification was found in chapter two to play a key role in sensationalising cases based partially on fact, and the embellishment of rumours. Santy had argued that most facts of true crime cases are substituted with 'guess work' by the media to obtain the public's attention. The glorification permeated both '*Serial*' and '*West Cork*'s in one similar and fascinating way. The rumours and guesswork within the media for both of these cases had a dominant focus on the relationships of the victims at the time of their death. Both Lee and du Plantier were scrutinised in the media for their romantic histories, with the assumption discussed in '*Serial*' that 'it's always the boyfriend'. The danger of this, firstly, is the risk of mischaracterising the perpetrator, as in both of these cases, 'it could be anyone'.

To expand on Fister's argument of 'marketplace of anxiety', such can be seen in the cultural framing of Adnan Syed. Syed's Pakistani Muslim heritage permeated a host of media outlets, as well as court proceedings themselves, to such a degree that an attempt to weaponize racist stereotypes to somehow explain why he was unequivocally Lee's killer. In the literature review, I mentioned the phenomenalism of OJ Simpson, as he too was used as a weapon by his defence team no less, to advocate for certain political discourses, such as police brutality against African Americans. The commonalities in Syed's findings are stark, as it was found that later publications addressed the weaponizing of culture to manipulate and shape juror perception. In my research, I could identify this form of media framing is a tool in jurifying the wider public, an important argument by Paquet discussed in chapter two. 'Jurifying' the public is a relatively new argument put forward by Paquet in 2018 that the publication of true crime media have

given birth to an individual ecosystem of ‘armchair detectives’ who operate with the conjecture and research made available to them. This particular phenomenon will be discussed further in the next section.

Dean (2010) and Horeck (2019) argued the ethical concerns of the public having the power to decide who is innocent or guilty as a socially engaged viewer of true crime media. In the context of both case study podcasts, the consumers were shown to be actively engaged with the material made available to them, as 76% of serial viewers actively researched their own information beyond the podcast episodes. The form and narratives of the podcasts themselves did little to violate ethical concerns put forward by criminologist Hazel Wright, as discussed in chapter two. However, the activated ‘armchair detectives’ are researching information made available to them by news publications and other media sources which have, as a whole, done very little to prioritise the facts of the case nor the victim’s families above the capitalisation that comes from ‘social intrigue’ (Wright, 2020). This is unequivocally reflected in the fact that Syed and Bailey, 25 years later, are still dominating true crime journalism. Future research may benefit by adopting the approach of this study to compare how, and how often, victims are portrayed in the media in comparison the famed suspects and perpetrators.

The Emergence of Prosecutorial Culture

For the purpose of this analysis, the definition of prosecutorial culture provided by Lowens and colleagues will be operationalised; prosecutorial culture refers to the way in which a subset of prosecutors and members of the police utilise outdated, racialized notions of criminality to achieve success in court instead of solving the case or problem (Lowens, Paul & Terry, 2020). It was found within the comparative analysis that police and prosecutorial misconduct were identified in the jurisdictions of Maryland, US, Ireland and France. As discussed above, the media and public have been known to utilise racial stereotypes as a tool to convince the public of a suspect’s guilt – the prosecution of Adnan Syed is a true example of both police and prosecutorial misconduct. In the initial investigation, lead detectives Ritz and McGillivray, though aware of the case’s inconsistencies, were convinced of Syed’s guilt. In the case study findings, a brief written for these detectives was discovered and based wholly on the racial and religious elements of Syed’s Pakistani Muslim heritage that for them, dictated his guilt. Furthermore, it was also found that in court, prosecution argued that Syed’s should be denied parole due to the likelihood he would flee to Pakistan, where his culture of ‘defending his honour’ by killing Hae Min Lee was not a crime, and thus could not be extradited back to the

United States. Similarly, Bailey could not be extradited to France to stand trial, and yet he was convicted as guilty in absentia by the French Court d'Assises. What is significant about both of these instances, is that prosecution relied almost entirely on the circumstantial evidence of the respective cases, as there was an overwhelming lack of forensic evidence to convict. In chapter two, I identified Raymond and colleagues argument that modernised DNA evidence procedures were quite new, and easily misunderstood at the time (Raymond et al., 2009). Thus, the reliance on circumstantial evidence based wholly on the unreliable testimonies of Jay Wilds proved successful in court, and Syed was convicted. Comparatively, this was not the case for Ian Bailey. The DPP had ruled there was not substantial evidence to proceed with a trial, and the trial held in absentia in France found him guilty on old evidence that had been discredited. Interestingly, the '*CSI Effect*' identified in the literature review describes the manner in which jurors will instinctively rule to acquit in the absence of forensic evidence, due to forensic evidence being portrayed in crime media in the early 2000's as a reliable scientific tool (Cole, 2013). However, both of the case studies are from the nineties, with the exception of the 2019 trial in absentia, and yet Bailey was still convicted. The lack of forensic evidence was enough to convince the DPP the case did not warrant a trial for Bailey, yet it could be argued that the prosecutorial culture of the Irish police and the media campaign that had been running against him for over twenty years was enough to assume guilt for the French justice system. Further research could expand on this – does prosecutorial culture promote jury incompetence? As discussed in the literature review in the context of the OJ Simpson trial, jury selection was careful and deliberate, to select jurors based on race to weaponize their biases in the prosecutor or defence's favour (Brown, Duane & Fraser, 2009). With the media propelling much of the conjecture outside of the courtroom, it is not unfounded to suggest prosecutorial culture still has a role in achieving favourable verdicts.

It was also evident that the misconduct by An Garda Síochána – planting spies for Ian Bailey, witness tampering, and poor preservation of the crime scene led to an unsolvable case. The case was repeatedly denied by the DPP to merit a trial to prosecute Bailey. Once serial was published, the same conclusion was reached about the prosecution of Adnan Syed, as his case was very 'thin'. However the trial proceeded, and Syed was sentenced to life in prison, with six jurors featuring on the podcast to say they still to this day, believe Syed is guilty. The power of prosecutorial culture and the mechanisms in which the law is often skirted by circumstantial evidence cannot be understated. The current literature in this area is sparse, and the present study may provide grounds for expanding on this in the legal setting.

The Search For Truth

“You can’t handle the truth!”

- Jack Nicholson

The second strand of comparative research highlighted the legislation in effect the time of the murders discussed in ‘*Serial*’ and ‘*West Cork*’. In Maryland, the introduction of the Juvenile Restoration Act 2021 proved crucial in the success of Syed’s appeal trial, and Koenig shed light on the legislative development in the final episode of ‘*Serial*’. The development has not been comparatively seen in Ireland or France. ‘*Serial*’ shed light on the criminal justice system in a number of ways – this development in legislation in addition to the weaknesses of the criminal justice system in America at the time of Syed’s conviction in 2000. Koenig and her team seemed to welcome the new act, and it was well received amongst viewers and Americans alike. Haugtvedt argued that true crime podcasts are successfully responding to the damaging inaccuracy of media narratives on true crime cases by bringing the focus of viewers back to the important legislation in their society (2017). This is clearly reflected in the sophistication of ‘*Serial*’ as an investigative journalism series, which was widely praised for its featuring of many expert professionals in the legal system and investigation. This is an important development in media as a whole, as the majority of media is stimulated by the unproven rather than the proven. In the literature review, Bourrie states the slow shift in news media towards both criticism and praise of the criminal justice system in its entirety in the wake of high profile cases, and what they speak to in terms of legislative developments (Bourrie, 1997). This shift, while slow, has been a characteristic in both case studies in the present research, and has perhaps shaped the structure of true crime podcasts. Both podcasts include interviews with solicitors, forensic scientists, detectives, and prosecutors to speak on the facts of their respective cases, and how the lack of forensic evidence risks irresponsible court procedure and prosecutions. In comparison to the United States and Ireland, the court procedure employed in France during Bailey’s in absentia trial only reinforces this – while du Plantier was the focus of the trial, the subversive nature of the prosecution against Bailey warrants important questions about not only the merit of a guilty verdict, but the legislation, or lack thereof, in place in France to prevent reckless sentencing. It was found in the West Cork podcast that the French criminal justice system is geared towards putting suspects on trial, which the former DPP argued to be irresponsible and against the integrity of the law. The success of legislative development in America overturning a similarly reckless sentencing, would suggest this is true.

Legislation requires mechanisms that gear prosecutors and policing bodies to accurately establish the course of events with factual evidence where appropriate and possible, in order to provide the most truthful outcome. Both podcasts discussed are beginning to reflect an unbiased approach to the public researching the case.

In the literature review, Berry argues that the interaction between podcast hosts and audiences is a crucial mechanism in engaging audience members in active consumption not yet seen in true crime media thus far. ‘*Serial*’s audience was substantial, and as one of the most streamed podcasts of all time, its influence extended beyond the host and audience members. The concept of the podcast originated from the ‘star witness’ Asia McClain falling through the cracks of the original trial. In the literature review, Vitis states that the interactions between podcast hosts and their audience have yielded an active form of consumption, and audience members become ‘co-investigators’ in the search for the truth, gaps in the case, and new evidence (Vitis, 2022). The influence and infamy of the podcast resulted in Asia McClain not only being called to testify at Syed’s trial to appeal his sentence, but the podcast and Koenig’s investigation was a topic of questioning in the courtroom. Such a finding is unprecedented within the current literature surrounding true crime. In terms of understanding this as a sociocultural phenomenon, further longitudinal research may increase understanding this in a general context of true crime media publications.

Conclusion

The first strand of my research highlighted the trends in media narratives and prosecutorial culture that exists in the true crime genre. This was demonstrated through two case studies of podcasting, which covered high profile murders in the 1990’s, and showed the challenges that these narratives cause in court proceedings, jury competency and bias within the wider public. The podcasts discussed, ‘*Serial*’ and ‘*West Cork*’ raised questions not only about how the media engages with framing suspects, but how the wider public’s investment into the story resulted in nation-wide co-investigations. Comparatively, the legislation in place was also seen to operate with prosecutorial culture, creating bias within legal and policing bodies. In one way, the release of ‘*Serial*’ and ‘*West Cork*’ demonstrated how the media can be utilised as a tool for positive impact rather than glorification, as both podcasts launched the public into an investigation of the cases with a critical lens, now being informed of racial stereotyping, circumstantial evidence, and expert testimony educating the audience on what to look for. Questions were raised about the validity of current legislation and prosecutorial practices, the

reliance on false witness testimony, lack of forensic evidence, and police misconduct. This finding is limited within the current study, and would benefit from further comparative examination in the context of western legal systems, and why this prosecutorial culture has permeated court conduct as well as public perceptions. The current study, while expanding on the current literature in a new way, has its limitations. Akin to the previous discussion of the study's strengths and limitations, the lack of control over the data, while providing a valuable insight into prosecutorial culture, was an unexpected finding. The parameters of this phenomenon were not explored particularly in depth as it is beyond the scope of the study, however, future research may benefit from examining this empirically. The current research depends largely on secondary sources, however there is a viable opportunity for future studies to conduct empirical research in this domain and measure perhaps the implicit attitudes of those who engage with prosecutorial culture.

Chapter Six

Conclusion

This research examined a body of secondary data pertaining to two true crime podcasts – ‘*Serial*’ hosted by Sarah Koenig and ‘*West Cork*’ hosted by Jennifer Forde and Sam Bungey and gained an insight into the prosecutorial culture that exists inside and outside of the courtroom when trying suspects for egregious murders. As a result, I was able to discern both the evolution of true crime media and legislation in three different jurisdictions over the last 27 years. It is widely accepted in the existing literature that traditional formats of media have prioritised profits by sensationalising true crime cases over investigating the truth. It has become an intrinsic mechanism of entertainment media to capitalise upon the human curiosity of violent and horrific crimes, and often within these narratives, facts, evidence, and even victims are forgotten. It was through the comparative case study research into two famous true crime podcasts that it was possible to ascertain a deviation from the typical glorification that dominates the media. Both podcasts, in their narratives and investigatory approach, were found to be sophisticated, unbiased, and professionally informed in their efforts to bypass prosecutorial culture by indeed highlighting it. Overall, from this research it has become apparent that this approach to true crime narration is a positive step in the right direction in terms of returning respect, critical thinking, and growth within the criminal justice system.

During the course of this research, the legislation in relation to murder, defamation, juvenile sentencing, and extradition were critically examined, and their application within the courtroom in the trials of Adnan Syed and Ian Bailey were also found to be particularly problematic. The reliance of circumstantial evidence and false or unreliable witness testimony to secure a successful prosecution was a common element in these cases. Furthermore, police misconduct was a definitive setback in investigations, and prosecutorial culture was fostered in the absence of forensic evidence. Both podcasts highlighted this prosecutorial culture that is most often overlooked in traditional news media. Traditional news media, included in the case study findings, demonstrated a theme of creating campaigns against prime suspects based on the conjecture and assumptions made by police or even rumours circulating at the time of the crime. The search for truth, in essence, is secondary to the sensationalised, highest selling narratives seen in these campaigns. Thus far, narratives informed of cultural bias and stereotypes are having a significant impact on the public. It is recommended that research expand upon this. With true crime podcasting at the forefront of improving these narratives,

other media formats may be seen to follow suit in due course. The glorification and sensation of egregious crimes is becoming increasingly more prevalent in evaluating the ethics of criminological discourse. It was found that the victims and their loved ones had unceremoniously faded from legal and public discourse during these cases, and the podcasts that were published are encouraging to adopt similar investigative narratives to attempt to return respect, dignity, and attention back to the victims, and their story. Victims of egregious crime suffer the most severe losses, yet their story, amidst the media, is usually the last to be told.

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