

Leeds United on Trial

STEVE REDHEAD

In these increasingly 'libertarian' though conservative times I want to raise a question about the nature of contemporary state intervention in popular cultural industries like football, especially through the judiciary, magistracy and police, but also in terms of a wider governance, indeed 'governmentality',¹ of popular culture by governing bodies and by private and public companies like professional football clubs. I want to take as a case study the so-called 'Leeds United trial', although it is by no means the only example² we could select. First let us set the scene for the case study.

Come On You Whites?

Leeds United Football Club is based at Elland Road in Leeds, Yorkshire's 'capital' city. Since the time of Don Revie, the team have played in all white, a kit based from the days of the 1960s on the great Real Madrid side of Di Stefano, Puskas and Gento, who from the 1950s dominated the early years of the European Cup. It is, semiotically, a signifier of style in football history: like the unforgettable 7–3 defeat of Eintracht Frankfurt at Hampden Park, Glasgow, before 135,000 spectators in the European Cup Final of 1960, and more recently of the team of Roberto Carlos, Luis Figo and Raul, who also played and won the European Champions League Final at Hampden Park, before rather fewer spectators, this time with a superb individual goal by Zinedine Zidane against another German opponent, Bayer Leverkusen, in May 2002. It is also a sign, in Leeds United's case, of 'whiteness' in general. The club has had a chequered history of fan racism over the past three decades and few black players have ever played very often for the first team. No Asian player has appeared in the first team. But in the 1960s Albert Johansen, a stylish black South African left-winger plied his trade for Leeds, and in the 1990s players such as the national South African team captain, Lucas Radebe, together with Olivier Dacourt and Michael Duberry, joined the club's playing staff. At the same time, Leeds city centre became known as a regenerated urban development space espousing cosmopolitan values, entrepreneurship and club cultures. Clubs

Steve Redhead is a Professor of Law and Popular Culture in the School of Law, Manchester Metropolitan University.

Entertainment Law, Vol.1, No.3, Autumn 2002, pp.98–106
PUBLISHED BY FRANK CASS, LONDON

like Back to Basics did for Leeds what the Hacienda did for Manchester. Television dramas such as 'North Square' celebrated the trendy young new movers and shakers in the city's legal community. Leeds established a reputation for commerce and finance, for arts and entertainment. And for sport, especially football.

The Lads

In December 2001 Jonathan Woodgate and Lee Bowyer, two young, white, high-profile professional footballers at Leeds United, escaped jail sentences at the end of a long court case over the vicious assault on a young local British Asian student, Sarfraz Najeib, outside a nightclub in Leeds city centre almost two years earlier in January 2000. Their black colleague, Michael Duberry, was also allowed to leave court a free man after being charged with conspiracy to pervert the course of justice as a result of assistance he gave to Bowyer, Woodgate and two friends that night. After the verdicts Leeds United fined Bowyer and Woodgate for their drinking activities on the night in question but not for their violence. Woodgate was fined eight weeks wages and asked to take part in the club's community programme. Bowyer initially complained about his disciplinary treatment by the club which amounted to a fine of four weeks' wages (something like £80,000 in total) and a spell on the club's community programme beyond that which players were normally asked to undertake. In fact he at first refused to accept the disciplinary action and was placed on the transfer list for two days until he accepted the club's internal punishment. Before being transferred to Leeds United from Charlton Athletic, Bowyer had been convicted of attacking Asians at a McDonalds restaurant in East London, but in the Leeds United trial he walked away without any conviction. Lee Bowyer was totally acquitted after the court case, but his colleague Jonathan Woodgate was sentenced to 100 hours community service for affray. The judge, Henriques J., singled out the players for what he called their dishonesty in the court. By the end of the season both players were regularly playing for Leeds United in the Premiership. In fact Bowyer had hardly been out of the team at all during the whole episode. Chants at Elland Road from the home fans regularly proclaimed 'Bowyer for England!'; indeed the Football Association never imposed a formal ban on either Woodgate or Bowyer. In April 2002 Woodgate broke his jaw after an incident in his home town of Middlesbrough which the club described as 'horseplay'. Leeds United considered disciplining him after the injury caused him to miss the final games of the season, even though a club investigation cleared him of blame. He had in fact been injured for a considerable part of the time since the original assault on the night of Wednesday 12 January 2000.

The Case

The case of the alleged assault directly involved Lee Bowyer, Jonathan Woodgate and Tony Hackworth (a reserve team striker) of Leeds United Football Club. Hackworth was cleared of the assault by the judge, Poole J., early in the trial at Hull Crown Court for lack of evidence. Bowyer and Woodgate were at the time well known Premiership players who had represented their country. Bowyer was 22 years old at the time of the incident and Woodgate 21 years old. Two other men who were friends of Woodgate and Bowyer, Neale Caveney and Paul Clifford were also charged. The charges were affray and grievous bodily harm with intent, an extremely serious charge which could carry long jail sentences for the defendants if found guilty. Conspiracy to pervert the course of justice charges were also laid against Woodgate, Clifford and Caveney. Michael Duberry was additionally charged with conspiracy to pervert the course of justice by driving the four men away from the scene of the alleged crime. All the defendants pleaded innocent. Beginning in late January 2001, over a year after the incident, the initial trial took nine weeks, heard testimony from 60 witnesses, cost £8m in legal fees and was nearing its close when the media intervened. Defendants had already been cleared of the perversion of the course of justice charges and jury verdicts were awaited on the grievous bodily harm with intent and affray charges. This first court trial was sensationally halted on Monday 9 April 2001 when on the eve of the jury's decision a tabloid newspaper, the Sunday Mirror, published an interview with the victim's father Muhammad Najeib, alleging the incident was racist, a charge which had been disdained in the court proceedings. After the collapse of the first trial it was announced that Michael Mansfield QC, a prominent barrister in the National Civil Rights Movement set up in the wake of the Stephen Lawrence case, was considering taking a civil case on behalf of the victim. In the event a retrial was ordered, again at Hull Crown Court. This second trial began in October 2001.

The Event

On a mid-week evening in January 2000, Bowyer, Woodgate, Hackworth, Caveney and Clifford had been drinking with another friend Jamie Hewison in a nightclub in Leeds city centre called the Majestyk. Hewison had apparently been causing trouble in the club. Woodgate testified in court that he thought Hewison was going to hit someone with a bottle. The alcohol consumption by the group had already been considerable. Testimony in court suggested they had drunk 'seven or eight pints of Vodka Mule and Bacardi Breezer' each but were not 'mortal drunk'. Bowyer had already

INTERVENTIONS

101

drunk five or six glasses of wine before arriving at the Majestyk to join up with Woodgate and his Middlesbrough friends. Hewison was subsequently thrown out by the bouncers at the club and about ten minutes later Woodgate emerged to find Hewison 'having a go with some white lads'. Hewison then approached what the media described as some 'Asian' men. Woodgate testified that he told Hewison to 'get off' them. One of the 'Asian' men was the Leeds Metropolitan University student Sarfraz Najeib, who was 19 years old at the time. Najeib had been attacked by Hewison and he had thrown a punch which he testified in court was in self-defence. Fortunately for Najeib, who was shortly to be seriously assaulted in Mill Hill a few hundred yards away, there was a CCTV system in operation which showed the scene outside the club. The knowledge that there had been CCTV security footage was well known once the prosecution decided to charge the men and it was widely assumed that the surveillance images would be enough to convict them.

The events so far described were more or less agreed by the participants in the court trial. What followed was disputed. Najeib's account was that he was chased into Mill Hill from outside the Majestyk nightclub and beaten and kicked. He sustained a broken nose, a broken cheekbone and a broken leg. He was beaten unconscious during the assault and spent eight days in hospital. He was bitten on the cheek by one man who according to witnesses shook Najeib like a dog hanging on to his face with his teeth. Another of the attackers was said to have jumped two footed into his body. The CCTV cameras did not catch any of this action. However they did capture Lee Bowyer leaving the scene outside the club 27 seconds after the other men running in the direction they had gone and then a little while later in what was described as a 'victory' ('post-score') embrace with Caveney, after the assault had taken place, back in front of the nightclub.

Lee Bowyer denied in court that he was involved in the savage attack on Najeib. He had refused prior to the trial to take part in identification parades. He was not reliably identified by any witnesses of the assault in the course of the court case. He said in court that he had fallen over after leaving the Majestyk and felt a 'whack' on the head. He argued that he had never entered Mill Hill and had not been involved in the trouble. Bowyer was wearing a Prada designer leather jacket that night and later forensic tests on its cuffs revealed a smear of blood which matched that of Shahzad Najeib, the victim's brother, who was present at the scene. The prosecution alleged that Bowyer had come into contact with him by preventing him from going to the aid of his brother when he was being beaten unconscious. The two barworkers who gave evidence in court as witnesses gave different descriptions of the man who bit Najeib on the cheek. Bowyer or Clifford were the two men in the frame for this part of the action. Bowyer's barrister

Desmond de Silva QC told the court that Bowyer, on leaving the Majestyk, had thought that the group were going on to a lapdancing club. De Silva said that Bowyer had 'girls on his mind, not grievous bodily harm' and 'lap dancing on his mind, not affray'. Bowyer was apparently keen not 'to miss a lively evening with the ladies'. In court under questioning Bowyer admitted that he was 'not very clever. It's how I speak' and that he was 'not very good with words'.

Jonathan Woodgate was alleged to have jumped in the air, and two footed, landed on Najeib's body in the assault in Mill Hill. Woodgate was represented in court by Donald Sumner QC (and at the second trial by David Fish QC). Even his own barrister likened him to a 'plank'. Donald Sumner admitted that his client communicated badly and was largely ordinary except for his football talent. Woodgate's version of events was that Lee Bowyer had run past him after leaving the Majestyk. Woodgate said in court that he had then fallen over and hurt his ankle and by the time he got up and hobbled forward he was only able to watch the incident. When asked at the trial about whether he could have helped, Woodgate replied 'No. What could I do? I couldn't do nothing'. Nicholas Campbell QC for the prosecution said that in contrast to the defendants the witnesses had been 'courageous people' because they had spoken in court at great risk to themselves from Leeds United supporters who might take revenge on them.

Michael Duberry had picked the four men up in his car after the incident and taken them to his home where they could change clothes and clean up. When questioned by police initially in January 2000 Duberry went along with Jonathan Woodgate's story that the men had taken a taxi to Duberry's home. Clare Montgomery QC for Duberry said in court, after several weeks had gone by in the trial, that Duberry had not told police the truth at the time of the questioning. Duberry said that he had not wanted to contradict his friend 'Woody's' statement and he had lied to avoid getting his friend into trouble. The effect of the revelation that he had originally lied was instant. The retraction was treated as dynamite by the media. There was widespread suggestion that this evidence alone would be enough for the jury to convict the other men. The defence barristers were taken by surprise. One even made the strange suggestion that Duberry had changed his mind at this stage of the trial because if the other men were convicted he would take Woodgate's place in the Leeds United team since they both played as central defenders. Leeds United's chairman Peter Ridsdale had previously told the media that if convicted the players would never again play for the club.

The subsequent publication of the interview with Muhammad Najeib effectively closed the question of whether the jury at the original trial of the men would convict on the charges of grievous bodily harm with intent and affray. The jury admitted to the judge when he questioned them on the

Monday after publication that they had read the *Mirror*'s story. Poole J. immediately discharged the jury and ordered a retrial on the grounds of contempt of court. He announced that it was for the reason that he had been 'deeply concerned' that an article published in the *Sunday Mirror* on 8 April 2001 suggesting the attack was racially motivated could be prejudicial. Poole J. went on to say that 'whatever the intentions behind that publication, the effect for now, is that all that effort has been derailed'. Peter Ridsdale said after the collapse of the trial that there was a 'sense of belonging at the club' and pointedly recalled the murder of two Leeds fans in Turkey a year before. Ironically, Ridsdale was soon to be the target of personal death threats from Leeds United fans who were unhappy with proposed moves to relocate the club from Elland Road to new premises.

Poole J. singled out the Macpherson report on the murder of black teenager Stephen Lawrence for a particularly bitter attack after the collapse of the Leeds United trial. Stephen Lawrence was brutally murdered by several young, white men at a bus stop in Eltham in south-east London in 1993 and eventually, after bungled work by the Metropolitan Police and unsuccessful criminal trials, a major investigation into the racism and policing was undertaken. The eventual government sponsored judicial report presided over by Sir William Macpherson and released in 1999 recommended that police treat any incident as being racist 'where the victim or any other person believes it to be a racist attack'. In other words it established a subjective definition of racist attack. Poole J. claimed that in general the report places an unfair burden on the police in dealing with incidents which may or may not have racist connotation. The judge suggested that the report's effect is to attach a stigmatising label to an incident. In his view it may be that a 'serious prejudice' can be created and a suspect cannot be fairly tried. The *Sunday Mirror* story had carried the view of Sarfraz Najeib's father that the attack on his son was racist. It was precisely this article which led to the collapse of the trial. Poole J. proclaimed that 'we live in a society where there is a particular sensitivity to issues of racism and race' whilst allowing that the victim and his family were entitled to their views on the nature of the attack. The fact that 'the young man who was attacked is an Asian, and it is not in dispute that his attackers were a group of white males' had 'absolutely' no significance according to Poole J. The whole prosecution in the case was explicitly not based on the racial context of the incident at all, relying instead on the expressed view that group loyalties, not racism, triggered the assault. It was not racism which motivated the men who attacked Sarfraz Najeib but 'spiteful group retaliation' in the view of the prosecution, and the judge simply endorsed that view in claiming that the 'misleading theme of racism' which 'this court thought it had exorcised' had been revived by the *Sunday*

Mirror. He thundered that ‘justice cannot be done in the sort of atmosphere created by a publication such as this’. The defence legal team, too, had indeed gone along with the prosecution view on the lack of racial motivation for the assault on Sarfraz Najeib.

The Drama

The outcome of the second trial under Henriques J., which involved only one prison sentence, that of six years passed on Paul Clifford for affray and grievous bodily harm with intent, but convictions by the jury for affray for Woodgate and Caveney, left many observers staggered and the victim feeling far from compensated. Muhammad Najeib stated that ‘the almost fatal assault on my son has turned our lives upside down. We have been victimised not only on the streets of Leeds but also in court’. As a reaction to what was perceived to be a lack of justice, in July 2002 Imran Khan, the lawyer who had acted for the family of Stephen Lawrence, organised the serving of civil proceedings on, initially, Lee Bowyer for £100,000 aggravated and exemplary damages with further action against others in the case to follow. The particulars of claim also alleged that Bowyer ‘dishonestly and unlawfully’ took various steps to ‘prevent himself from being held responsible for the assaults’ and to prevent him from having to pay compensation. Such steps included unlawfully conspiring with others, including Jonathan Woodgate, to provide an untrue account of what had happened on the evening, failing to produce to the police on request clothing and other evidence that would assist in the police investigation, providing misleading evidence to the police and court, denying to the police and the court his true role in the assault and seeking to persuade the police and court that an account of his role in the assaults, which he knew to be false, was true. The claim against Bowyer was on behalf of both Sarfraz and Shahzad Najeib, who had also suffered injuries in the attack and who had to withdraw from his university course because of post-traumatic stress. However, the civil action prepared by the Najeibs and their legal team in the wake of the criminal trial was not quite the end of the matter. Yorkshire TV and its parent company Granada Media, producers of recent ‘factual’ television dramas such as ‘The Murder of Stephen Lawrence’, planned a two hour TV drama based on the entire case, emphasising that the civil action would make the drama more relevant. The feeling was that Najeib’s experience was not just a story about race in modern Britain but a more general metaphor for our times. Executive producer Allen Jewhurst argued that ‘it is mainly the story of how young men can earn twenty thousand pounds a week and virtually own whole cities and think they are bullet proof’.

As a further twist to the horrific tale of racial violence compounded by state and judicial ineptitude, David O'Leary, the Leeds United manager who had published a conventional mass market football manager's autobiography during the years of the case entitled *Leeds United on Trial*,³ was sacked at the end of the 2001–02 season despite Leeds United having finished in the top six of the English Premiership. O'Leary criticised both Bowyer and Woodgate in *Leeds United On Trial* for 'failing to exercise control' on the night of the incident. If any of the Leeds United footballers had in fact been found guilty of grievous bodily harm, O'Leary stated, echoing his chairman Peter Ridsdale, 'they would never have played for the club again'. O'Leary stated in the book that he 'found the attack on student Sarfraz Najeib absolutely appalling'. He regarded it as 'senseless violence' which was abhorrent. In O'Leary's view 'Paul Clifford, the man convicted of carrying out the attack on the young student, deserved to be sent to prison for his crime'. O'Leary maintained that Bowyer and Woodgate's conduct ('running around Leeds drunk that night') was 'sheer stupidity' and a 'disgrace'. Even though they were 'both found not guilty of the more serious charge of GBH' the manager was 'ashamed' of his players. In a Sunday newspaper article following the end of the second trial O'Leary expressed further views about the players. In the book and the article O'Leary certainly gave the impression that he thought that the reputation of Leeds United Football Club had been damaged by the events of the previous two years. Many commentators suggested that this was a step too far in the eyes of Leeds United's chairman and board and that the subsequent breakdown of relations between manager and dressing room was the final straw which broke the camel's back. After O'Leary's surprise sacking former England manager Terry Venables was appointed as Leeds United manager, something of a rehabilitation for the former England manager, who was eventually replaced because of 'off the field' activities at Tottenham Hotspur in the 1990s which had led him into the civil courts. Lee Bowyer, who as a result of refusing to sign a new five-year contract was already being offered to other clubs via Leeds United's transfer list at the end of the 2001–02 season, at first continued with his proposed transfer to Liverpool, although delays occurred because of bartering with Leeds about the million pound costs of Bowyer's trial and with Liverpool about Bowyer wanting effectively to double his wages, and eventually the transfer was called off. Bowyer's fellow defendant Jonathan Woodgate signed a new three-year contract to keep him at Leeds United until 2005 and Michael Duberry, after discussing a transfer to Bolton Wanderers, also remained within the fold at the beginning of the 2002–03 season. The England manager Sven-Göran Eriksson was reported to be watching Woodgate and Bowyer with a view to including them again in his England national squads and both played against Portugal on 7 September 2002.

Entertainment/Law

The case we have chosen to study has a number of implications for the governance of popular culture at the beginning of the twenty-first century. I do not have the space to deal with all of these implications here. However, in conclusion, I want to draw attention to what I think is the most important of these implications for those interested in theorising the disciplinary field designated by the label 'entertainment law'. These terms 'entertainment' and 'law' seem to me to be increasingly a binary division in need of deconstruction in the Derridean sense of the word. Popular cultural industries like football are part of a global domain of entertainment, or more accurately, popular culture. They are populated, at least in the top echelons such as the Premiership in England, by highly paid young men who like to think they virtually 'own cities' and are effectively 'bullet proof', in the words of the television producer interested in making the Leeds United crisis into a drama. Law, civil or criminal, is an anathema to them which seems not to impinge on their everyday lives. Even when it does, as in the decision to prosecute the Leeds United players in January 2000, the state intervention is relatively weak and ineffectual. The state in relation to popular cultural industries, say in the form of action by the Department of Culture, Media and Sport in the UK government, is usually offering facilitation, rather than full blooded intervention, in the contemporary free market, neo-liberal environment of the entrepreneurial creative businesses New Labour wishes to form, sustain and encourage. Governing bodies like the Football Association seem content to sit back and, with a laissez-faire attitude, allow football players' 'misdemeanours' (on and off the field) to be forgotten when it comes to performing on the international and global stage. In short a strategy of non-, or at least minimal, state intervention continues to reign. Maybe the idea of a 'strong state', most recently last heard of in the 1980s during Margaret Thatcher's odious regimes, is in need of some rehabilitation, albeit in a more palatable social democratic form. Without such a rethinking of state intervention and the governance of culture, and a re-theorising of 'entertainment' on the one hand and 'law' on the other, I fear that we are condemned to more cases of the 'Leeds United on Trial' variety.

NOTES

1. See Michel Foucault's important lecture on the 'art of government' from the late 1970s at the College of France, entitled simply 'Governmentality', collected in J.D. Faubion (ed.), *Power: The Essential Works of Michel Foucault, Volume 3* (London: Allen Lane, 2001).
2. For instance, three other high-profile footballers, two from Chelsea and one from Wimbledon, went on trial in London in July 2002 as a result of events in a nightclub in January 2002 (a mere month after the end of the second trial at Hull Crown Court) which were very similar to those in the 'Leeds United trial'.
3. D. O'Leary, *Leeds United On Trial* (London: Little, Brown, 2002).