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## JUDICIARY OF ENGLAND AND WALES

His Honour Judge Clifford Bellamy  
Designated Family Judge for Warwickshire and Coventry

**“Judge orders boy, 11, to live with father he hates”  
Can the Press be trusted?**

*[A paper delivered at the Hanson Renouf/Association of Lawyers for Children Conference on 'Privacy and Transparency: Disclosure and publicity in children law proceedings' held in Jersey on 8<sup>th</sup> October 2010]*

I was delighted when Barbara Corbett invited me to speak at this Conference. It is a real pleasure to come back to Jersey. I mean no disrespect to Piers Pressdee when I say that I would much rather be here than listening to his submissions in the care case he and I should have been dealing with in Coventry today.

One of the problems about speaking last at a Conference such as this is that by the time it is your turn to speak either everyone else has said all that you wanted to say or you have been so provoked by what other

speakers have said that, ideally, you would like the chance to go away and re-write your talk. For any repetition, I apologise. For failure to respond to other speakers, well, perhaps discretion is sometimes the better part of valour!

As a solicitor, I quite enjoyed my occasional contact with the media – Joshua Rozenberg on the telephone; an ITV film crew in my garden; it was heady stuff. When I became a judge, I thought I had left all of that behind me. For most of my fifteen year judicial career I have been able to keep my head well below the media radar. Until this year, my only brush with the media was in 1996 when, as a District Judge in Leeds, I dealt with an assessment of damages hearing at which the jazz singer, George Melly, appeared as an expert witness – wearing a bright purple suit and matching hat. He had been called to give evidence about surrealist art – or, more particularly, about the work of Craig Richards and the Non-Euclidean movement. Now I have learned enough today to know that you are such an erudite audience that there is nothing I can tell you about the Non-Euclidean movement that you don't already know. Suffice to say that the day after the hearing the case was treated to a half-page spread in *The Times*.<sup>1</sup>

2010 has been a much more challenging year. Two family cases I have presided over have received quite a bit of publicity. That has given me

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<sup>1</sup> *Melly wins fire fight for bedsit artist*, *The Times*, Wednesday November 20<sup>th</sup> 1996.

a different perspective on the debate about openness and transparency in the Family Courts.

### **Simon's story**

The first case concerned an 11 year old boy. I'll call him Simon, though that isn't his real name. I need to tell you a little bit about his story. Simon's parents had separated shortly before he was born. Simon was fifteen months old when his father issued his first application for contact. That was in June 1999. Litigation then continued almost uninterruptedly until August 2010.

Despite the early problems, the father eventually managed to establish regular contact, including holidays abroad. Sadly, in February 2006 contact came to an abrupt halt. That triggered more litigation. Over the next four years huge efforts were made to get contact restarted but all to no avail.

By November 2009 it was clear that further attempts to restart contact would be pointless. At that point leading counsel for the father made an application for change of residence. The application was vigorously opposed. I heard the application just before Christmas. I delivered judgment on 4<sup>th</sup> January 2010.<sup>2</sup> I transferred residence from mother to

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<sup>2</sup> *Re S (Transfer of Residence)* [2010] 1 FLR 1785

father. The mother appealed. On 21<sup>st</sup> January her appeal was dismissed.<sup>3</sup>

The hearing before me was in private. The hearing in the Court of Appeal was in public. By the time the father arrived home from the Court of Appeal a reporter from the Daily Mail was outside his house trying to sniff out a good human interest story. The father refused to talk to him and sent him packing. The next day the father obtained a Reporting Restrictions Order. That order was brought to the attention of the media through the usual channels. However, despite that order, a few days later a reporter from the Daily Telegraph went both to the father's home and to the mother's home, looking for a story.

A Consultation Paper published by the last Government in 2006 considered the way other countries approached the issue of openness and transparency in the Family Courts. Describing the practice in New Zealand the Consultation Paper said that 'There are no reported incidents of any families having been traced or "door stepped".'<sup>4</sup> That cannot be said of the British experience.

On Sunday 24<sup>th</sup> January the Mail on Sunday ran a story under the headline, in large bold type, 'Judge orders boy, 11, to live with father

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<sup>3</sup> *S (A Child)* [2010] EWCA Civ 219

<sup>4</sup> *Confidence and confidentiality – improving transparency and privacy in the family courts*, Department of Constitutional Affairs Consultation Paper CP 11/06 p.27.

he hates'. That was an eye-catching headline. My judgment ran to around 15,000 words. The article ran to just over 500 words. It is difficult in just 500 words to capture the essence of a case, particularly a case with the history and complexities of this one. Given that difficulty, on what basis does a journalist decide what information the public most needs to know?

In Simon's case the article reported, correctly, that his father:

'works in the City of London, lives in a £1 million Stockbroker Belt house, has remarried and has two more sons who are educated privately. He said he would also send [Simon] to private school...'

Contrary to that impression, no-one reading my full judgment could possibly have come to the conclusion that the father's wealth played any part at all in my decision that Simon should move to live with him.

Perhaps all of this underlines the perceptiveness of the children involved in the excellent research recently undertaken by Julia Brophy on behalf of the Children's Commissioner for England. In her report Julia notes that

'Children and young people said the press sensationalise information, or construct bold headlines that do not reflect the content of cases and will "cherry pick" bits of information.'<sup>5</sup>

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<sup>5</sup> *The views of children and young people regarding media access to family courts*, published by the office of the Children's Commissioner for England, March 2010.

The article about Simon's case in the Mail on Sunday also appeared on the Mail's website that same day. The on-line version allowed opportunity for the public to respond. By mid-afternoon there had been 172 responses from 21 different countries around the world – from Ireland to Indonesia.

Some of the responses were, I thought, a little unkind. One said 'Yet another periwigged imbecile demonstrating why nobody can have any faith in the legal system any more'. And another asked 'Which Asylum do they wheel these Judges out from?'

What was more interesting was that the article generated a debate in which those who thought I had made the right decision and those who thought I had not were about evenly divided.

Some of the respondents made points that resonate with the debate that is going on about openness and transparency in the Family Courts. Two themes, in particular, emerged. One related to the level of detail provided in the article. One person wrote 'There must be more background to this story than is written here...The judgement must surely be based on more information than we have been given here.' Another said 'We probably don't have all the facts...' Another said 'If this is the full story then the judge is a fool'.

The second theme related to the manner in which the story had been reported. One respondent expressed the view that the way the article was written displayed bias against the father. Another wrote 'Sounds like a common sense decision. Shame about [the journalist's] provocative headline and slant on the piece.'

### **Truth and trust; power and responsibility**

In a criminal trial at Birmingham Crown Court earlier this year, a Greek national took the oath. He said 'I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing about the truth'. In giving the Huw Wheldon Memorial Lecture in 1997, the BBC's distinguished foreign correspondent, Fergal Keane, declared that 'the fundamental obligation of the reporter is to the truth.'<sup>6</sup>

According to St John's Gospel, Pontius Pilate asked Jesus, 'what is truth?'<sup>7</sup> I have just read Andrew Rawnsley's book 'The End of the Party – The rise and fall of New Labour'<sup>8</sup> and, only for the sake of balance you understand, I am about to read the recent autobiographies of Tony Blair<sup>9</sup> and Peter Mandelson<sup>10</sup>. I have no doubt that all of that reading will make me quite sympathetic to Pontius Pilate's question. And I am

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<sup>6</sup> *The Art of the Reporter*, referred to by Mick Temple in *The British Press*, McGraw Hill, 2008, p.124

<sup>7</sup> St John's Gospel, Ch 18 v. 38

<sup>8</sup> *The End of the Party – The rise and fall of New Labour*, Andrew Rawnsley, Viking/Penguin Books, 2010

<sup>9</sup> *A Journey*, Tony Blair, Hutchinson, 2010

<sup>10</sup> *The Third Man – Life at the Heart of New Labour*, Peter Mandelson, HarperPress, 2010

not *un*sympathetic to journalists when it comes to reporting the truth in family cases. They are, after all, significantly handicapped by the restrictions on what they can report and by the lack of access to all of the material that is available to the court. The debate about those issues will continue to rumble on.

However, even if the Press cannot report the full truth, because of the handicaps to which I have just referred, can they at least be trusted to behave responsibly within the limits of what *is* currently open to them? There is a lot riding on the answer to that question. When the Children, Schools and Families Bill was going through Parliament a spokesman for the then Secretary of State for Justice, Jack Straw, promised that

'Greater media access to Family Courts will lead to greater trust in Family Courts'.<sup>11</sup>

If the on-line responses to Simon's story are anything to go by, Jack Straw may have been deluding himself.

When it comes to the importance of acting responsibly it seems to me that the senior judiciary has been extremely supportive of the Press. For example, in 2004, Mr Justice Munby (as he then was) expressed the opinion that

'Article 10 entitles journalists to adopt a particular form of presentation intended to ensure a particularly telling effect on the

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<sup>11</sup> *The Times*, February 27<sup>th</sup> 2010, p.11



average reader. As Neil LJ recognised<sup>12</sup>, a tabloid newspaper is entitled to tell the story in a manner which will engage the interest of its readers and the general public.<sup>13</sup>

And more recently he has said that

'...the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation.'<sup>14</sup>

In making its case for the media to have access to the Family Courts it was the clear expectation of the last Government's white paper *Family Justice in View*<sup>15</sup> that the media's reporting

'must be responsible and honest, providing information about the system without endangering the identities or welfare of children.'

Now, it is an open question as to what lawyers mean by '*responsible*' in this context. However, as we conduct this debate we should not lose sight of the fact that surveys have shown that Britain has the least-trusted press in Western Europe. A survey in 2002 found that in the UK 75 percent of those surveyed said that they "tended not to trust" the printed press – a much higher proportion than in any other country in

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<sup>12</sup> *Re W (Wardship: Publication of Information)* [1992] 1 FLR 99

<sup>13</sup> *In Re Roddy (A child)(Identification: Restriction on Publicity)* [2004] 2 FLR 949, para [84]

<sup>14</sup> *Norfolk County Council v Webster* [2007] 2 FLR 415 at para 33.

<sup>15</sup> *Family Justice in View*, December 2008, Cm 7502, para 31

the European Union.<sup>16</sup> A MORI poll for BBC News in November 2006 found that 72 percent of the British public do not trust journalists.<sup>17</sup>

When it comes to defining what we mean by 'the freedom of the Press' it is the responsibility of the senior judiciary to articulate clearly the issues of high principle. But when it comes to the debate about opening up the Family Courts, we should not allow high principle to blind us to the actuality of how Press freedom is exercised and to the consequent risks for children and families. Put shortly, we should not confuse ideals and expectations with reality and experience.

All of these are serious issues, made the more serious when one considers the practical realities in the light of what has been described recently as 'the current national crisis in the newspaper industry'.<sup>18</sup>

Just over fifty years ago, Lord Denning gave a graphic – and to our twenty-first century eyes, perhaps rather quaint – account of court reporting. He said:

'A newspaper reporter is in every court. He sits through the dullest cases in the Court of Appeal and the most trivial cases before the

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<sup>16</sup> Eurobarometer survey, 2002, referred to by James Curran and Jean Seaton in *Power Without Responsibility: Press, broadcasting and the internet in Britain*, 7<sup>th</sup> Edition, 2010, Routledge, p.98 and pp. 336-7.

<sup>17</sup> Referred to in *The British Press*, p.126.

<sup>18</sup> *Publication of Information: Children, Schools and Families Act 2010*, Lucy Reed, [2010] Fam Law 708, p.712

magistrates. He says nothing but writes a lot. He notes all that goes on and makes a fair and accurate report of it. He supplies it for use either in the national press or in the local press according to the public interest it commands. He is, I verily believe, the watchdog of justice.<sup>19</sup>

Fifty years on, the investigative journalist Heather Brooke recently made the point that:

‘There used to be twenty-five reporters covering the law courts for Britain’s national news bureau the Press Association. By November 2009 there were only four, and such decimation of court reporters is replicated in every news organisation across the UK.’<sup>20</sup>

30 years ago, when I was a young solicitor, a reporter from the local newspaper was always present in the County Court on Fridays – divorce day. A list of the decrees nisi was published in the local paper. The position today is very different. In the eighteen months since the media became entitled to come into Family Court hearings, only one print journalist has set foot in my court. That mirrors the position nationally.<sup>21</sup> Even if there were to be fewer restrictions on what can be reported and some access allowed to court papers, it remains the case

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<sup>19</sup> *The Road To Justice*, Lord Denning, Stevens & Sons, 1955 at p.64

<sup>20</sup> *The Silent State – Secrets, Surveillance and the Myth of British Democracy*, Heather Brooke, William Heinemann, 2010, p.162

<sup>21</sup> *Transparency: A discussion paper* (unpublished), The President of the Family Division, Sir Nicholas Wall, presented at the President’s Conference, May 2010.

that newspapers simply do not have the resources to send reporters into the Family Courts on a regular basis.<sup>22</sup>

Last year, on the day that accredited media representatives were allowed into the Family Courts, Camilla Cavendish, writing in *The Times*, said that

'The door is open, but we desperately need more journalists to pick up a torch and walk through it.'<sup>23</sup>

But it is clear that that is just not going to happen. Research undertaken in 2008 found that 49% of published news stories analysed for the purpose of the study 'were wholly or mainly dependent on materials produced and distributed by wire services with a further...21%...of stories containing some element of agency copy.'<sup>24</sup>

So far as concerns the debate about openness and transparency in the Family Courts, perhaps we need to take a reality check not just on what is considered desirable but on what is actually possible not only in

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<sup>22</sup> If the Children, Schools and Families Act 2010 should ever be brought into force, this problem of lack of resources could present the Press with a very real problem in that s.13 of the Act provides that '(1) A publication of information is an authorised news publication if the following conditions are met. (2) Condition 1 is that the information was obtained by an accredited news representative by observing or listening to the proceedings when attending them in exercise of a right conferred on accredited news representatives by rules of court....'

<sup>23</sup> *The Times*, 28<sup>th</sup> April 2009, p.6

<sup>24</sup> Lewis et al *Four rumours and an explanation: a political economic account of journalists changing newsgathering and reporting practices*, 2008, referred to in *The British Press*, p.166

terms of protecting children but also in terms of achieving high quality, accurate and *responsible* reporting.

My second brush with the media this year related to a public law Children Act case in which I ordered a local authority to pay £100,000 towards the parents' legal aid costs.<sup>25</sup> Initially I directed that the local authority should not be named. The Press Association asked the Judicial Communications Office if I was prepared to change my mind. My response was that if they wanted me to change my mind they must make a formal application to the court. The Press Association was not best pleased. The message I received from the Judicial Communications office said that the Press Association's Media Lawyer 'doesn't wish to "give you a kicking" but is minded to write an article about your refusal to name the local authority...'

Although the Press Association decided not to make an application to the court, apparently on costs grounds<sup>26</sup>, the BBC was not so inhibited. Three weeks ago I heard The BBC's application. Counsel for the BBC assured me that if permission were granted the BBC could be trusted to report responsibly and to comply with its own Editorial Guidelines. That may well be so, but it ignores an important point. The court has no power to limit coverage of information coming out of the Family Courts

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<sup>25</sup> *Re X, Y and Z (Children)* [2010] EWCH B12 (Fam)

<sup>26</sup> *Local authority named after BBC application lifts restriction*, 'News' section of the Society of Editors website [www.societyofeditors.co.uk](http://www.societyofeditors.co.uk), 29<sup>th</sup> September 2010

to particular news organisations. As Mr Justice Hedley observed in a child case he dealt with only recently,

'...once disclosure is allowed it is disclosure to all the world and not every organ of the media may be as scrupulous or indeed as concerned [as ITV Wales] to protect the identity of [this child].'<sup>27</sup>

In the case I was dealing with I granted the BBC's application.<sup>28</sup> I subsequently sent a copy of my judgment to the Judicial Communications Office. They sent a copy to the Press Association. By 3.24pm that same afternoon the Press Association had written a report which was then very quickly used by on-line news outlets. I was surprised to note, in particular, that the case was reported by local newspapers all around the country from the Brighouse Echo to the Littlehampton Gazette. I was even more surprised, three days later, as I sat on my morning train reading The Times, to discover that I have a new best friend in Camilla Cavendish.<sup>29</sup>

In the course of doing some background reading as I was preparing this paper, I was amused to find that two hundred years ago there was a newspaper called the *Twopenny Trash*. Apparently it broke all

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<sup>27</sup> *Z Council v TS & Ors* [2008] EWHC 1773 (Fam), para 10

<sup>28</sup> *Coventry City Council v X, Y and Z (Care Proceedings: Costs: Identification of Local Authority)* [2010] EWHC B22 (Fam)

<sup>29</sup> *The Times*, 30<sup>th</sup> September 2010, p.31

circulation records in 1816.<sup>30</sup> A hundred and sixty years later, in November 1978, The Star was launched. Its new editor-in chief, Derek Jameson, announced that the paper would be 'all tits, bums, QPR and roll your own fags'.<sup>31</sup> An office memo to Sunday Express journalists in 2003 commanded 'We must make the readers cross'. The memo went on to itemise the things that make Express readers cross.<sup>32</sup>

The point made by Mr Justice Hedley is a point we ignore at our peril. In opening up the Family Courts to the media we open them up to all-comers. As a judge, I am well-used to taking risks. But how far can we go in taking risks with private and intimate information about the lives of children who have the misfortune to find themselves as the main focus of proceedings brought by a local authority or as 'both the battlefield and the ammunition'<sup>33</sup> in disputes between their parents? How far can we really trust the Press?

Seventy years ago, taking a swipe at two newspaper owners, the Prime Minister, Stanley Baldwin, said that

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<sup>30</sup> *Power Without Responsibility*, p.9

<sup>31</sup> *The British Press*, p.65

<sup>32</sup> *Power Without Responsibility*, p.97

<sup>33</sup> *Is the Family Justice System in Need of Review?* – a paper delivered by the President of the Family Division, Sir Nicholas Wall, to 'Families Need Fathers' on 19<sup>th</sup> September 2010.

'what the proprietorship of these papers is aiming at is...power without responsibility, the prerogative of the harlot through the ages.'<sup>34</sup>

Surely if the Press is to be given greater power to report family cases we must first be absolutely confident that that power will be exercised with responsibility?

### **The Internet**

I want, finally, to say something about the internet. My experiences this year, and particularly with respect to Simon's case, have also brought home to me some of the problems of the internet. Having upheld my order to transfer Simon's care from his mother to his father, the Court of Appeal very generously sent the case back to me to make the handover arrangements. On 3<sup>rd</sup> March I ordered that unless the mother delivered Simon to his father's home on 11<sup>th</sup> March then the High Court Tipstaff should call to collect him the next day.<sup>35</sup> Simon appealed. The Court of Appeal allowed the appeal and ordered that Simon should go into foster care for three weeks as a stepping stone to placement with his father.<sup>36</sup>

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<sup>34</sup> *Baldwin: A Biography*, Middlemas, K and Barnes, J, 1969 p.598, referred to in *The British Press* pp.35-6

<sup>35</sup> *Re S (A Child)* [2010] EWHC B2 (Fam)

<sup>36</sup> *S (A Child)*, [2010] EWCA Civ 325



The move into foster care was an abject failure. In July the father gave up his quest to enforce the transfer of care. He agreed to Simon staying with his mother. He also agreed not to pursue his wish to re-establish contact with Simon. Given the public interest in the case earlier in the year I thought it only right that I should give a short judgment explaining what had led to that final outcome.<sup>37</sup>

After publication of my final judgment a google-search picked up how the case had been reported in other countries. The Kansas Family Court Coalition's website had the headline 'Tortured by the court and his unrelentingly self-centred father – Finally 12-year-old boy gets to go home to his Mom'. A more measured headline appeared in the online version of the Irish Examiner: 'Father gives up right to care for son'.

But in terms of the problem of successive re-telling of the story, it was a headline from an Australian newspaper, *The Herald Sun*, that most caught my eye. *The Herald Sun* reported that:

'A Review of British family law is under way after a 12 year old boy involved in one of the country's longest legal disputes was allowed to live with his mother, reversing an earlier High Court ruling that he should live with his father.'

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<sup>37</sup> *Warwickshire County Council v TE & Ors* [2010] EWHC B19 (Fam)

That is seriously inaccurate. All of these headlines underline the point that what the media reports will be retold – and retold around the world. What comes **out** of the Family Courts stays out.

In the report I referred to earlier, Julia Brophy noted that

'Almost all respondents said [that] children in cases will be fearful that very private, painful, humiliating, embarrassing and shameful information about their care and family will be placed on social networking sites. Children said anyone can download information from newspapers and post it on the internet. It will then be available forever – to be 'googled', downloaded, added to blog sites and circulated by text and e-mail at any time throughout a person's life'

The young people and children interviewed make a very valid point. We would be unwise to overlook the practical reality that in today's world the power of the internet is greater than the power of the courts.

## **Conclusions**

To borrow the oft-used misquote from Andy Warhol, this year I have had my 15 minutes of fame. It has been an eye-opener. I began the year as an enthusiast for greater openness and transparency in the Family Courts. I end the year with questions and doubts.

As 2010 draws to a close, I am happy to be able to retreat to the peace and tranquillity of my judicial bunker. But that still leaves the question raised in the title of my talk: Can the Press be trusted? I trust them not to give me a good kicking – or at least, not without some justification. However, when it comes to the reporting of family cases, whether the Press really can be trusted to use their power responsibly is another question entirely. The jury is still out. Thank you for listening.