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OPENING UP THE FAMILY COURTS: AN OPEN OR CLOSED CASE

SPEECH BY LORD JUSTICE WALL

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Introduction

I very much welcome this opportunity publicly to re-state my position on the question of transparency in family justice, and I am grateful to the organisers of this conference for allowing me to do so. I fear that very little I am going to say today will be new. With one important exception, I have said nearly everything contained in this paper in public on earlier occasions. However, as this has been largely in judgments, I doubt if what I have said will have been read by many in this audience. Equally, although some of the material in this paper was also contained in the Levy / Hershman Memorial Lecture which I gave in Birmingham in June of this year, what I said on that occasion was not widely reported in the Press, and a shortened version was published only in the September issue of the journal Family Law (at [2006] 36 Fam. Law 747) Thus, once again, it may not have been read by some in this audience.

Where I stand

I therefore make no apology for repeating my personal position, which I can state very shortly and simply. Whether or not it represents the position of the judiciary at large will have to wait until the end of the current consultation, although I grateful to the President for allowing me to see the considered response of the substantial majority of the High Court Judges of the Family Division, put forward by the President on their behalf, and pleased to say that I find myself in very substantial agreement with it.

My position is that I am in favour of giving the media – and in practice this means the Press - access to family proceedings, provided that there are clear ground rules about what they can and cannot report. In practice this is mostly going to mean the extent to which, if at all, they are to be at liberty when reporting the proceedings, to identify the parties, and, in particular, the children concerned.

In addition to giving the press the right of admission to our first instance courts, judgments and reasons in family cases should, in my view, be routinely given in open court in anonymised form. In some cases of particularly sensitivity and where anonymity is in practical terms impossible, it may be necessary for the court, in the interests of the children concerned, to exclude the Press altogether. In such cases, and in other less sensitive but nonetheless controversial or "high profile" cases, judges should prepare and issue press releases, so that the public can have immediate access to and understand the essence of what they have decided, and their reasons for the decisions they have reached.

In my view, there needs to be an ongoing dialogue between the higher judiciary, the press and the media generally about family justice and how it is administered. We - that is the specialist judiciary and practitioners - have nothing to fear from public scrutiny: indeed, we should welcome it.

The anonymisation of a judgment is not, in my view, a difficult or unduly onerous task. It should not cause delay. Judges, including myself, routinely (and, I fear, somewhat patronizingly) refer to the parties by their roles in the case – mother, father, social worker

and so on). The preparation of summaries and press releases takes a little time, but in my experience the benefits of so doing outweigh the time and trouble they take.
As I have said on a number of occasions, and do not apologise for repeating, it is unacceptable to me that conscientious judges and magistrates up and down the country, doing their best, with inadequate resources and under heavy pressure of work, to make difficult decisions in the best interests of children, should be accused of administering "secret" justice. It is easily forgotten that it was Parliament, not the courts, which imposed the restrictions contained in section 97 of the Children Act 1989 and section 12 of the Administration of Justice Act 1960 with a view primarily to protecting the children who had the misfortunate to be the subject of such proceedings from the consequences which publication of their plight would cause. The judicial task has been to interpret and apply those statutes. This we have done. The need for anonymity and privacy has, however, been misunderstood and misrepresented. I am, accordingly, now convinced that the only way to defeat the unwarranted canard contained in the words "secret justice" is to take the steps I have just outlined.

Admitting the public to family proceedings

Unlike the Constitutional Affairs Select Committee, however, both in its Fourth Report (*Family Justice – the operation of the family courts (HC 116-1)* and in its most recent report entitled *Family Justice: the operations of the family courts revisited (6 June 2006, HC 1086*) I do not favour, indeed I am opposed to, the admission of the public into family courts, even given the qualification which the Select Committee envisages, namely that there would be a judicial discretion to exclude the public in certain circumstances.
I will explain my reasons for taking this view. The balance which has to be struck, it seems to me, is clear. On the one side, there is the undoubted need to protect family privacy and to encourage frankness in family proceedings, particularly those which relate to children. Public exposure militates against both concepts. On the other side, there is the need to have a system which is understood by, and accountable to, the public. Speaking for myself, I see no reason why the tension between the need for a media presence and the need to respect privacy and confidentiality cannot be satisfactorily resolved. We are likely, I think, to need a new Statute, although there is a great deal we can do by amendment of the Family Proceedings Rules, by Practice Directions and by the creation of fresh Family Procedure Rules, a task which is already underway, and which is overseen by the Family Procedure Rules Committee, a body chaired by the President and on which I sit. However, what is clear to me is that we undoubtedly need to engage in a dialogue with the media about the change. This aspect will be a main theme of this paper.
I can explain my objections to admitting the public by reference to two BBC radio broadcasts in the early summer of this year, dealing with the work of the Wells Street FPC. None of the parties who spoke about their cases was identified, but the issues they had brought to the court, their attitudes to them and the obvious fact that the court was grappling with them sensibly and sensitively did much, in my view, to dispel the "secret justice" gibe.
In the second of the programmes, Nicholas Crichton, the DJ(MC) in charge of Wells Street asked the presenter of the programme whether, if she and her family had the sort of problems with which the court was dealing day in and day out (and which she had been observing) she would really want her neighbours, residents on the same estate and members of the public generally sitting in and listening? Her clearly honest answer was that of course she would not.
In my judgment, that question and the presenter's honest answer to it should resonate. Of course, the public needs to be informed and to be fully and properly informed. There is, however, as the late Lord Donaldson memorably remarked a line to be drawn between the public interest and the public's curiosity. This is a point to which I will return. However, for present purposes it is to guard against the public's sometimes prurient curiosity that I am opposed to opening up family proceedings to members of the public. Why should your neighbours or perhaps your former colleagues or lovers be allowed to come and listen to your disputes with your new partner or other intimate issues? In cases involving domestic violence, why should the opportunity be given for the victim to be intimidated by the

presence of the perpetrator's friends who may well themselves be perpetrators or criminals? In a case in which criminal conduct such as drug dealing is involved, why should those engaged in that activity but unconnected with the proceedings be entitled to be present?
I take a simple example relating either to care or private law proceedings involving a particular family with school aged children living on a particular estate, or in a particular village, perhaps raising allegations that one of the parents has sexually abused or otherwise seriously harmed a child in the family. Why should residents on the estate or in the village be allowed in to listen? It is, in my view, idle to suppose that such people will conscientiously follow the provisions of section 12 of the Administration of Justice Act 1960 and not talk about the case when they get home. And if they tell their children, as they are likely to, how are those children going to be prevented from repeating (and in all probability misrepresenting) salacious evidence to their peers, leaving aside the possibility that the material will be used to bully or torment other children in the family concerned, or their friends.
In a letter written to Alan Beith, MP, the Chairman of the CASC, after he had given evidence to it, the President, in a wide ranging review of the subject, made a number of what I regard as telling points against the indiscriminate admission of the public to family proceedings. I select one paragraph only, which reads as follows, from his letter:-

> 3. There is a strong feeling among the judges that, quite apart from proper welfare concerns for the child, a rule or presumption of a public right to access, with the discretion to the judge to consider exclusion of any particular member(s) of the public would be burdensome, difficult to police, and likely to add to the length of the proceedings. In particular, it would raise considerable difficulties in identifying and challenging "undesirables" as well as giving rise to inhibition (and on occasion intimidation) of parties and witnesses, with consequent adverse effects on the outcome of the hearing. Those legitimate concerns explain why I favour the proposal to restrict access to those with a genuine interest in the case, for example, lay advocates to assist parents with learning difficulties and members of the family or others who will support the parties through the hearing and in dealing with the outcome of the hearing.

I respectfully agree with that analysis. I am, furthermore, not impressed with the argument that criminal proceedings are held in open court and that members of the public are entitled to attend those proceedings without any form of vetting. Criminal proceedings focus on criminal acts for which, if convicted, the Defendant will be punished. The liberty of the subject is self-evidently engaged. The actions of public authorities directly related to matters such as arrest, detention and the collection of evidence must all be open to public scrutiny except in those rare cases in which the public interests requires the case to be heard in camera.
In my view, the case for admitting members of the public to family proceedings heard in private is simply not made out. Indeed, there are, in particular, two principal and, I think, compelling arguments against admitting the public to family proceedings involving children or, for that matter, family financial disputes. The first is that the presence of the public would be likely to inhibit the parties and their witnesses. The second is that, provided there is the opportunity for responsible media reporting of the proceedings, the public's presence serves no purpose in the public interest.
By contrast, the case for admitting the Press (with appropriate safeguards) is very powerful and, speaking for myself, I do not buy the argument that the presence of a journalist – or even more than one – would inhibit the parties.

Issues, not personalities

In my judgment, what matters in the reporting of family proceedings is not the identity of the litigants, but what the case is about. It is, I fear, in this area that there is a substantial divide between the judicial perception of cases, and that of the media.
If a family judge is hearing care proceedings, the circumstances in which the care order falls to be made or refused, the evidence required for the order, the quality and nature of that evidence and the manner in which it is investigated and analysed – these are what matters, not that the child in questions happens to be the son or daughter of a particular person. If a

father is refused contact, what matter are the reasons for the refusal, not the identity of the father. If the press is genuine in wishing to render the family justice system transparent, the fact that it can report the issues and the process is what matters. It does not seem to me to matter that newspapers are unable to identify the parties.

This, however, is plainly not the view of the Press. I remain permanently dispirited about the way in which the media seize on family disputes involving the rich or those otherwise perceived as celebrities. The most difficult, and, I venture to think, the most important financial disputes are not between millionaires, but between couples where there is often only one modest income; where there are young children and inadequate resources to finance two households. My main anxiety – set out in more detail later – is that the media will seek to sensationalise family proceedings. Editors of newspapers will be interested in personalities, not issues, and may distort cases in order to achieve a story.

Broadcasting or televising

It follows from what I have already said that I am not be in favour of family proceedings being either televised or broadcast. I see no benefit in that process, only dangers. Selected and edited highlights from the OJ Simpson trial, instant re-plays, analysis of and commentary upon extracts from the evidence in that case did much, in my judgment to damage the image of American criminal justice and turn the court into a media scrum – see, by contrast the dignified way in which Mantell J (as he then was) and his jury tried Mrs. West: or how Thayne Forbes J and his jury tried Dr. Shipman.

These views are not new

The views which I currently hold are not the result of any Damascene conversion. I have both held them and expressed them publicly since 1994, shortly after my appointment to the High Court Bench. I have reminded myself that I gave a paper to a conference in Oxford in that year entitled Publicity in Children Cases – a Personal View. It was subsequently published at [1995] 25 Fam Law 136. In it. I advanced what I perceived to be the three most compelling reasons for promoting open justice in the family jurisdiction. These were: -

1. to enable informed and proper public scrutiny of the administration of (family) justice;

2. to facilitate informed public knowledge, understanding and discussion of the important social, medical and ethical issues which are litigated in the family justice system;

3. ..... to facilitate the dissemination of information useful to other professions and organisations in the multi-disciplinary working of family law.

Throughout my eleven years as a Family Division Judge, I attempted to practice what I had preached. I regularly gave judgments in open court. I published every decision which I thought had even the remotest interest to the public or to the profession. Indeed, it reached the point on the Northern Circuit during my time as Liaison Judge where a joke at my expense ran along the following lines: bright eyed and bushy tailed young solicitor / barrister bounces into the chambers of a judge / district judge and announces: “I wish to rely on an unreported judgment of Mr. Justice Wall”. The district judge / judge looks up wearily from his papers and says: “I didn’t think there were any unreported decisions of Mr. Justice Wall”. I tell the story only to make the point that over the last 11 years I have attempted to be open about the work I do. Every judgment that I published was routinely made available to the Press, which did not, I have to say, appear to be even remotely interested, despite some of the cases, on their facts, being quite extraordinary. For example, should a father suffering from Huntingdon’s disease have contact with children who, wholly unbeknown to them, he had been on the point of murdering by setting fire to the van in which he had told them he was taking them on holiday? Should the Down Syndrome child of an orthodox Jewish couple be fostered by Catholics, and baptised? Should the male child of a mixed Muslim / Christian marriage be circumcised against the wishes of his Christian mother? These are just three examples amongst many which came before me sitting as a Family Division judge and which I thought raised important issues which needed to be discussed.

You must, accordingly, understand that I have an element of cynicism about the current Press campaign for "transparency" in family justice. That cynicism derives from many years of trying, without any success at all, to encourage responsible press interest in the issues which regularly come before the family courts.

I will give one recent example of the problem. It relates to a case called *Re H (Freeing Orders: Publicity)* [2005] EWCA Civ 1325, heard in the Court of Appeal in October 2005, but not reported in the Law Reports until the summer of this year at [2006] 1 FLR 815. It is referred to in two places in the Consultation Paper where it is initially described as a recent high profile case which has "added to concern about the way the family courts work and how decisions are reached, particularly when those decisions have such a profound impact on people's lives". I have to say that this description misunderstands the case, as I think what follows will show.

What happened in *Re H* was that a newspaper had published a highly tendentious, and illicitly obtained account of both care proceedings and the subsequent application to free the children concerned for adoption. The message from the newspaper was that local authorities, aided and abetted by a secretive judiciary, were implementing a covert policy of social engineering by removing children from the care of their worthy and God-fearing parents on the specious ground that the parents concerned were not sufficiently intelligent to care for them.

Nothing, of course, was further from the truth, as an objective and fair-minded reading of the judgments in question made clear. Ironically, the parents' application for permission to appeal to the Court of Appeal was not based on the first instance judgments, but on their dissatisfaction with the manner in which they had been described in the newspaper. Thorpe LJ, who gave the leading judgment in the case (to the effect that press misreporting did not provide grounds for permission to appeal and that the parents had not made out a case for permission) expressed his agreement with me when I said: -

26. ..... this case provides a strong argument for those who. like myself, take the view that the decisions of circuit and Family Division judges hearing care and adoption proceedings should, as a matter of routine, be given in an anonymised form and in open court. No fair minded outsider reading the judgments of HHJ Hayward-Smith QC and Pauffley J could possibly conclude that either decision represented a miscarriage of justice .....

27. This case is not about social engineering or about the State intervening in an improper and heavy-handed fashion in normal family life to remove children from honest and law-abiding parents whom it deems insufficiently intelligent to care for them. Like all care cases, it is about children suffering, or being likely to suffer, significant harm due to the care or lack of it given to them by their parents.....

Having reviewed the decisions in the courts below, I commented: -

31. Cases involving children are currently heard in private in order to protect the anonymity of the children concerned. However, the exclusion of the public from family courts and the lack of knowledge about what happens in them, easily lead to the accusation of "secret justice". Moreover, judges communicate in carefully reasoned judgments, not sound-bites. Thus, even when a judgment is published, it is likely to be read in its entirety only by lawyers.....

Having suggested that in appropriate cases, judges should also prepare short, anonymised summaries of their reasons for public distribution, I said:

33. What is manifestly unacceptable is the unauthorised and selective leakage of one party's case, or selective and tendentious reporting in breach of the rules relating to the confidentiality of the proceedings. This, in my experience, inevitably leads to unbalanced mis-reporting of the difficult and sensitive issues with which the courts have to grapple. In my judgment, therefore, the best way to tackle the problem is by greater openness in the decision-making process along the lines that I have described.

I apologise for the length of these citations, and I am pleased to see from the Consultation Paper that all the judgments in the case were placed on the HMCS Website. I suspect, however, that more people read the tendentious newspaper reports, which included a wholly unwarranted attack on the integrity of the High Court Judge who made the order freeing the

children for adoption. I venture to think that if the judge had given her judgment in open court, none of this would have happened.: alternatively there could have been an intelligent debate about what had occurred, based on the judge's reasons.

In my judgment, Re H gives rise to no concern about the way the court's decisions were reached, save for the fact that both limbs of it were heard in private, and that the judgments were also given in private. What the case does demonstrate is the danger of irresponsible press reporting, and the difficulties faced by the court in rebutting press misrepresentations of the process. As I have already stated, the judge, for perfectly honourable reasons, but nonetheless unfortunately in my view, did not give her judgment in open court. She subsequently sent it to the newspaper which did not either publish it or many any correction to its wholly inaccurate and misleading story.

What I said in Re H echoes a paragraph of Munby J's judgment in Re B ([2004] 2 FLR 142 at 190, paragraph [133]) in which he said: -

[133] ..... Those who without justification attack the family justice system can all too easily do so by feeding the media tendentious accounts of proceedings whilst hypocritically sheltering behind the very privacy of the proceedings which, although they affect to condemn, they in fact turn to their own advantage. It is all too easy to attack the system when the system itself prevents anyone correcting the misrepresentations being fed to the media.

The benefits of publicity

In addition to rendering the process transparent, it needs also to be remembered, I think, that there are occasions when publicity can be positively advantageous to the children concerned in a case. In this context, I am not thinking of publicity to trace abducted children, where, in my experience, the media have been uniformly helpful, but the situation in which, for example, a parent is wrongly accused of child abuse. In an article by Mr. Timothy Scott QC printed at [2003] Fam Law 594, entitled *Automatic Prohibitions on Disclosure*, Mr. Scott discussed a case, in the event resolved by consent, in which a woman had been exonerated in care proceedings under Part IV of the Children Act 1989 from abusing her infant twins. She was, nonetheless, vilified in her local community, and her two elder children were also ostracised. She wished, with the help of a journalist, to write a story to set the record straight. Plainly, for the exculpation to be effective, the mother and the children had to be named.

The role of the Press

So, what is to be done? In the Court of Appeal, of course, everything we say is said in open court, and since the decision in *Pelling v Bruce-Williams* [2004] 2 FLR 823 our practice has been not to impose reporting restrictions in family cases unless the parties specifically request them, and provide good reasons for them. Thus in the case of *Harb v King Fahd Bin Abul Aziz* [2005] 2 FLR 1108, we reversed a decision of the then President, Dame Elizabeth Butler-Sloss, who had directed that the hearing to decide whether or not the King, as a Head of State, was entitled to state immunity should be heard in private under a fictitious title. Furthermore, we refused the King's request for Mrs. Harb's application for permission to appeal to be heard in camera. We directed a hearing in open court, and the application was both so heard and, of course, reported.

I recognise and take the force of the point that in the Court of Appeal we rarely if ever hear oral evidence. Cases are argued on the papers, and usually involve either a point of law or the manner in which a particular judicial discretion has been exercised. Nonetheless, I think this audience would agree that reporting restrictions should be imposed, for example, where a child of school age has been the victim of sexual abuse, or where, as recently happened, the case concerns the manner in which children should be informed that the person they believed to be their father had been born female. In such cases, in my view, children and their parents are entitled to respect for their privacy and thus to anonymity.

Editorial influence and control

This, it seems to me, is the key issue. I fully acknowledge that it is of the essence of a free press that the judiciary cannot, and indeed should not, seek to exercise editorial control over it. Furthermore, I accept Dr. Pelling's argument that it is not a satisfactory solution to the problem for judges to decide which of their cases will be published or otherwise placed in the

public domain. Within the constraints, where appropriate, of a necessary respect for the privacy of the child and the litigant, the Press must be free to report what it thinks appropriate to report, provided always that its reporting is accurate.

It follows, in my judgment, that if the judiciary wishes to minimise tendentious, inaccurate or sensationalist reporting, it must meet the press half way and ensure that when it takes the view that an issue ought to be reported, the issue in question is presented to the press in a way in which the press can properly use it.

Above all, however, the reporting of proceedings must be accurate. This raises a whole number of issues. The first is perhaps the most readily soluble. Which journalists do we admit to the courtroom? I do not see this as a particular difficulty. I hope it would prove possible to negotiate a system of accreditation with the Press, so that only accredited journalists would be admitted to the family courts. Part of this process, however, requires, in my view, information being given to journalists, (as well as discussions with them and with their editors) so that the judiciary and the public can be satisfied that accredited journalists fully understand the nature and context of family proceedings.

I wish to be absolutely clear (even at the risk of repetition) about what I am and what I am not saying in this context. I am saying that Press reporting of family proceedings must be fair and accurate. I am emphatically not telling journalists that judges can exercise any editorial control over what they write. The Press must be free to report what it wishes to report from the proceedings, providing the reporting is accurate and obeys rules as to anonymity imposed by the court.

There is, however, in this respect – and as I have already pointed out earlier in this paper - an undoubted tension between judges and magistrates on the one hand, and journalists on the other. Judges and magistrates decide individual questions on the facts as they find them to be. They have to give reasons for their decisions which can be scrutinised by the parties and any appellate court. They communicate by means of judgments and written reasons, not sound-bites. They do not sensationalise issues. The obvious example is in children's cases, where their task of the court is to find the facts and by balancing the ECHR rights of the parties and the child or children concerned, to apply the paramountcy principle in the Children Act and to attempt to reach a conclusion which is in the best interests of the child / children.

Journalists communicate in a different way. They want a story. Their editors wish to sell newspapers. Journalists have limited space for their copy, and limited time in which to write it. Many important points of law, perhaps affecting many thousands of people, do not come with a good story attached. The judiciary and the Press must, accordingly, reach a new modus vivendi in which each respects the working ethos of the other.

We, the judiciary, have, I think, already come some way in this respect. Reserved judgments handed down in the Court of Appeal (and many handed down at first instance) are made available to the Press in writing at the moment of hand down. All Court of Appeal and House of Lords judgments, and nearly all the important High Court judgments are available, free of charge, on the internet.

I made a habit at first instance of providing a summary of any important judgment which I had given in public. In the Court of Appeal we regularly issue Press Releases in controversial cases. In my view it stands to reason that if you hand a 100 paragraph judgment down at 10.30am, you cannot reasonably expect a journalist who has to have something on the wires by 11.00am to have read it, absorbed it and made an accurate précis of its finer points in 30 minutes.

Speaking entirely for myself, I would have no difficulty from a judicial standpoint in hearing some first instance family proceedings in open court, notably those raising issues of public importance. Indeed, this already happens, for example in the PVS cases, or in sensitive life and death medical cases where the question is whether or not it is lawful or unlawful to provide or withhold particular treatment for a child. A good example of this is the series of decisions involving Charlotte Wyatt and the Portsmouth NHS Trust.

In my own experience, I heard the whole of the case of *Evans v Amicus Healthcare* [2005] Fam. 1 in open court. In this case, as I am sure you will remember, Ms Evans wished to

retrieve and use frozen embryos created by her and her former partner in order to become pregnant. The evidence required both Ms Evans and her ex-partner to give details of intimate conversations between them about their relationship. The case lasted five days, and I could not but notice that the press benches were crowded each morning at 10.30, but rapidly emptied when a witness said something quotable or newsworthy. The same benches were also, I noted, wholly deserted during the legal argument.

At the end of the case, I prepared a press release which sought to explain my over long judgment in simple terms, and I was pleased to note that virtually all the media reporting of the case followed my draft. *Evans v Amicus Healthcare* was, of course, an unusual case, but it illustrates my simple and fundamental point, namely that if the family justice system is to shake off the canard of "secret justice", there is only one way to do it; and that is to admit the press into the courtroom. In my judgment, this is what we should do.

The Wells Street programmes to which I referred earlier provided a good example of informed, but anonymous reporting. It was not difficult to engage with the issues in the case – for example the problems posed by an alcoholic or drug abusing parent, or a parent refusing without good reason to promote contact, and so on. The two programme broadcast were, in my view, a good example of responsible media comment on the family justice system.

As I have already stated, the proposition that press reporting must be responsible is an issue which, in my view, the family judiciary needs to discuss with newspaper editors, so that a modus vivendi can be achieved. The sensationalism of which the judiciary frequently complains seems to me at least in part to derive from the absence of full and proper information.

However, I have to say that what troubles me is not so much the copy which the conscientious journalist produces, but the use to which it is put by the editor and the sub-editor. I will give you a small recent example from my own experience. I gave an interview to a highly responsible journalist, in which I expressed my views of our current divorce laws. I pointed out the inconsistency between a system which, on the one hand, appeared to value marriage and to discourage any analysis of matrimonial misconduct in its consideration of financial issues, and, on the other, divorce laws which not only dress up the essentially administrative act of pronouncing a decree as a judicial decision, but which enable a party to obtain a divorce by making essentially uninvestigated and often trivial or even untrue allegations of behaviour against the other spouse. I argued that this approach tended to undermine the concept of marriage. Please note that "undermine" was the word I used.

I had no complaint about the article written by the journalist, which faithfully reflected what I had said to him. I also had no quarrel with the newspaper's thoughtful leading article on the subject. But I did object to the headline attached to the article which was in inverted comma, and which attributed to me something which I had emphatically not said, namely that the current divorce laws were "destroying" marriage. Not only did I not say this, I have to say frankly that I do not really know what it means.

This is a small but, I think, instructive example, The journalist is not responsible for the headline: that is an editorial decision. I therefore admit to a substantial anxiety about admitting journalists to the family courts, which does not relate to the journalists themselves, but to their editors and sub-editors. I fear very much that, unless a considerable degree of self-discipline is used, irresponsible editing of journalists' copy is likely to sensationalise and distort what may otherwise be an accurate report of proceedings.

It follows, in my judgment, that the discussions to which I have referred between the judiciary and the Press will need to take place at editorial level. Editors must act responsibly and exercise proper editorial control. Otherwise, the whole object of the exercise will be frustrated, and judges will retreat back into the bunker. This is not something I want to happen.

I would, therefore, like to see the opening up of family proceedings as a co-operative exercise. If judges meet the Press half way – particularly if they accommodate the Press in relation to reserved judgments, summaries and Press Releases, they are, in my view, entitled to expect the Press to reciprocate. If it does not, the judiciary will have to think of the

sanctions it can impose – such as the withdrawal of accreditation. This is not a road down which I wish to travel.

I do not wish to give the impression that I am a complete killjoy. Some tabloid headlines are amusing and do no harm. Thus, in the recent case of *J v C*, the Court of Appeal held that a female to male trans-sexual who had gone through a ceremony of marriage with a woman whilst he was himself still a woman could not be the parent of a child born to the woman by AID. We prepared a careful press release for the judgment, which was, to my relief (and so far as I could judge) soberly reported. I mention the case because when it had been before the courts on Mr. J's application for financial provision (an application dismissed both by the judge and the Court of Appeal) the level of the discussion was set by a tabloid headline describing the relationship of the parties over a number of years in the immortal words: "I was good bonk, says woman husband".

We may thus try to raise the level of the debate, but we must recognise that we may not always succeed – nor will be always be entitled to do so. The judiciary should be as open to fair criticism by the press as any other institution. The underlying point here, however, is of course, a serious one. There must be a mutual accommodation There needs to be a series of firm ground rules, and a dialogue.

When I sat as a Recorder in crime, the only people in the public gallery were usually associates of the accused. In many cases there was nobody there. I doubt very much if the Press will use the freedom to attend family proceedings very much. I recall that it came as something of a surprise to many journalists when they were told that they were already entitled to sit in on proceedings in the FPC. But of course the fact that the right would not be used is not the point. The important point is that the process would be open: the work of the family courts could be scrutinised and subjected to informed debate and criticism. In my view it is the ignorance of what goes on in the family courts which fuels the canard of secret justice.

As a former family judge, and now as a judge of the Court of Appeal, I have the good fortune to enjoy freedom from political interference. With that freedom necessarily goes a duty to the public to ensure that everything I do is open to comment and criticism. Every word I now say in court in family cases is spoken in public and can be reported. As I have already accepted, it is no longer good enough for family judges to say that they should be the sole arbiters of what issues should and should not be in the public domain in the field of family justice. We are public servants, and we serve the public. We have a responsibility to ensure that our decisions are understood by the public. It is, after all, in everybody's interests that the work of the family justice system is transparent, and fully understood. The only way we can do that is by making it public. And making it public means, in practice, giving the press access to it. We need to re-think. The skies will not fall if we do. Opening up family justice will, in my judgment, help to gain it the respect it deserves and – who knows – might even encourage the politicians to begin to resource it properly.

Conclusions

So I turn, finally, to the specific issues identified against my name in the flyer for this conference. Firstly: "Has the Consultation Document got the balance about right?" I think the answer to this question is "yes", although I have reservations about some of the proposals in the consultation. I am frankly sceptical, for example, about the suggestion that "MPs and other elected officials" should be encouraged "to see for themselves how the system works in practice, so that they can both scrutinise the system and be able to deal with their constituents' concerns and questions more confidently". I do not buy the argument that MPs and other elected representatives should be entitled to attend as of right, "in order to fulfil their roles". In my experience, the intervention of politicians in proceedings on behalf of one side has, almost invariably, been inappropriate and unhelpful. I am not sure it is what MPs want. I do not, however, have time to develop this issue, and no particular desire to do so. It is, in my view, at the fringes of the argument. I am confident that if elected representatives seek the court's permission to sit in on cases in order to further their understanding of the system, that permission will not be refused.

Secondly: “Will justice be improved by greater transparency?” It may be. My frank answer to this question is that greater openness is unlikely to change the quality of justice. With appropriate safeguards such as those already discussed, greater transparency is unlikely to cause any harm to the quality of justice. Furthermore, I think it helpful for the norm to be that everything a judge says can be reported. I have already had occasion, during my short time in the Court of Appeal, to criticise judges for the words they have spoken in private, usually to litigants in person. There is never any excuse for judicial discourtesy or arrogance, and openness should be a powerful corrective to any potential judicial tendency of that kind.
Thirdly: “How might the court exercise its discretion to limit press reporting which might damage individuals?” Here, I think, the principal answer is anonymity. It may, however, be necessary to exclude the press completely if a particular witness finds it difficult to give evidence about a sensitive personal issue in the presence of a journalist, or if the evidence is so such a nature that the judge is satisfied that it is not in the public interest, on in the interests of justice for it to be reported verbatim.
Fourthly: “What changes can be effected under existing legislation to “prefigure” the possible changes and test their impact?” As I indicated earlier, a great deal can be done by rules and by practice directions. However, in my view, the Consultation Paper is part of a public debate, and in my view, the final word should be left to Parliament. On the whole, I would welcome statutory guidelines, albeit that I would hope that both before and in the process of setting them, Parliament would pay careful attention to the views of those who have to make the system work, notably, of course, practitioners in the field and the judiciary.
Thank you very much.

Ends
