

**FAMILY JUSTICE COUNCIL**

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**THE BRIDGET LINDLEY ANNUAL MEMORIAL LECTURE**

**“How Information Technology and Modern Communication  
Systems Are Affecting Journalism and Family Law”**

**Tuesday 13<sup>th</sup> March 2018 - Birmingham**

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Transcribed from the Audio Recording

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## **SIR JAMES MUNBY:**

It was a terrible blow when Bridget suddenly died two years ago. I remember very vividly the feeling of shock and disbelief which swept over me when I heard the news but of course, and she would have been the first to recognise this, life goes on and although she was absolutely central and integral to what the FRG did, the FRG goes from strength to strength and I think she would be very pleased and very proud of what the FRG has done in the last two years and what it's currently doing at present. It's very, very important work and those who knew her and those who didn't are joined together in that work. We had a very interesting lecture last year which I suspect, as I think I said last year, may with the benefit of hindsight, be seen to be a ground-breaking exposition; something which at present is teetering on the edge of heresy but I suspect may become within a pretty short time the new orthodoxy. That was a lecture given by a lawyer.

Tonight, we're enormously privileged to have Louise Tickle who is a journalist but, goodness me, what a journalist. She doesn't write tripe in the kind of papers who simply tailor what they write to the circulation figures. She's the kind of journalist who actually goes out there and spends days sometimes following a court, following judges, following what's going on and writes very interesting, very, very thought-provoking pieces. My only criticism of her is that she publishes by and large in *The Guardian*. Don't misunderstand me. *The Guardian* is a wonderful newspaper but not enough people in the law read it, but we're enormously privileged to have her here tonight. She has risen wonderfully to the occasion. I have had a preview of what she's going to do. As we want with these lectures, as I'm sure Bridget would have wanted, it is thought provoking and provocative, and I suspect that once she's finished her presentation, and again unlike a lawyer it comes with slides and pictures, we'll have a very interesting discussion which as soon as possible we'll throw open for a general debate.

We're here in Birmingham tonight because it seemed to us important, and it seemed to me important, that we don't simply fall into the metropolitan trap of assuming everything takes place in London. We want to move round the country and Birmingham seemed an obvious place for our first journey abroad. We're absolutely delighted to have so many members of Bridget's family here; her husband, her children, her sister and others. They were here and I think enjoyed the lecture last year. They're here today. They've travelled, most of them, all the way from Cambridge and I very much hope we'll see them in future years. But without more ado, I'm going to ask Louise to start a little bit early because she's got quite a lot to pack in and you don't want to hear from me; you want to hear from her. So, Louise.

## LOUISE TICKLE:

Journalists don't very often - and shouldn't very often - talk about themselves. But anyway. This is how I remember it. It's 1978, October, just after my eighth birthday. I'm living in Brussels with my mum, my little sister who's four and my dad. Well, I mean we're not living exactly with my dad because my mum had left him two years before. And that wasn't for any awful reason, nobody had done anything bad, but because she wasn't happy. And after that my mum and my younger sister and me lived in a little white house in the suburbs while my dad lived in a flat near the European school where he taught maths, the same school I went to. My dad still took me and my sister into school most days and dropped us home most days. We had weekends together. We spent chunks of holidays with him. We did really fun stuff. And my dad and I really talked. It always felt like he was interested in me and I completely adored him. He and I just, got on. I felt safe with him and calm with him in a way that for complicated reasons, which are not her fault, I didn't feel with my mum. I felt I was the centre of his world.

Despite my parents' separation, I was at that point pretty happy and secure. And then one day just before that October half term, we were somehow all four of us in dad's car together, which by then wasn't really that usual. And I don't really recall exactly what was said. I'm sure it was done gently and with lots of reassurances, but the upshot was that my mum was taking me and my sister back to live in England, away from my school where I'd been since kindergarten and which I loved, away from my friends, and obviously away from my dad who would stay in Brussels.

And this is how I remember it. The cold metal bonnet of the car which I flung myself across and sobbed onto, lying on my front, clinging onto my dad's car and desperate not to be taken away from him. The pain of that completely engulfed me. I will never forget the rage and the shock, or the utter powerlessness I felt in that situation. I was quite fierce but I was only eight. I couldn't do anything about it. Nobody was going to listen to me.

From that moment onwards, and this may sound extreme, I lived in grief for the loss of my dad. And my misery was made more exquisite actually by the fact that he travelled to England to see us every two weeks, and so every two weeks I had to lose him all over again. The lead up to flying home at the end of school holidays in Brussels always felt like heading into this nightmare. On the drive to the airport with me and my sister in the back of dad's car I would sob all the way, watching the familiar Brussels streets flow past, counting each landmark, crying like my heart was breaking. Because it was, every time we did that drive. I believe the only way I survived the next few years was because I knew that I would at some point go back to Brussels to live with my dad. I had decided. And people have questioned how I could have known that aged eight or nine or ten but

all I can is that I definitely did. And so after three and a half incredibly unhappy years in England during which time I went to three different schools and my relationship with my mum deteriorated to the point that I couldn't stand it anymore, I climbed into her bed early one morning – I was 11 by now – and told her that I wanted to go and live in Belgium. I think she understood very well that I was telling, not asking.

I don't know what conversations were had behind the scenes but I truly don't think that there was any way of stopping me. So off I went, and it was happy ever after, except of course it wasn't, quite. I've had to work very hard all my life to withstand the guilt of hurting my mum so badly and I will never not feel horrendously guilty about abandoning my sister who was only eight when I left and experienced a far more difficult childhood because I wasn't there to be her buffer and ally.

Of course, I know that my childhood was vastly better by an order of many magnitudes than what is lived by so many of the people whose stories I try to tell, and who everyone here works with in different ways. But the reason I want to tell these stories, and find myself compelled to unpick what has gone wrong, examine where policies and systems have hurt people, try to hold up the culpable failings and highlight the unintended ones, is because I will never forget those feelings of powerlessness that I felt in the face of implacable authority, which is of course what our parents are to us when we're young.

I will never forget and have never been able at heart to heal the grief – or assuage the insecurity – that becomes etched into your psyche when you lose someone you so desperately want, need and love.

I can only conclude that this history is why I am drawn to the issues raised by the way that family law, society and government policy intersect.

Just over three years ago, after legal aid for family law was axed, I turned up at the Bristol Civil and Family Justice Centre wanting to observe a litigant in person apply for a non-molestation order. I'd been sent by my editor and I didn't really want to go, but anyway there I was, instantly, thanks to some very passionate people, drawn into this compelling world of family law and the messy, agonising, frustrating and intellectually and emotionally demanding issues it throws up.

The people I have been lucky enough to work with in this field are not only immensely clever. They do it because they care. And I love that.

So, power and powerlessness, authority and none, having lots of resources to draw on compared with having few, the complexity of human relationships and the generations - long fallout of our human failings – and the fact that people with little power and no voice will always strive to find a way to be heard. Which is perhaps not a bad place to start a lecture looking at how information technology and modern communication systems are affecting journalism and family law.

I'm not a lawyer though, or a social worker or an academic or, thank goodness for everyone, a judge. It's as a journalist that I'm going to try and engage with some of these issues, and that means I'm going to do it through a series of stories. Stories I've written or been involved in, and the stories, ideas and reflections of other people who have very generously shared them with me. I need most particularly to thank, first, barrister Lucy Reed of *Pink Tape* fame who has been an incisive and constructive critic throughout, thank you, and my partner, Jim, who has looked after our two young boys over many evenings and weekends to give me the time I needed to research and write this lecture.

So modern information and communications technology; this is huge and also complex. It's not just that the ways we construct and send information are changing as mobile phone technology in particular races forwards. There's also ever evolving forms of social media, facilitated by new and emerging platforms, Facebook, Twitter, Instagram, WhatsApp, Snapchat and a whole host of other apps that I don't know about which exist to help people make contact with one another, all downloaded onto our smartphones and tablets and accessed online from anywhere at any time with our data gathered and stored and accessed by... we don't know who.

The overall question I'm going to be considering is what impact all this connectedness and importantly speed is having on journalism and family court cases. And the quick answer to that is massive and not fully understood or appreciated by the generation who grew up without access to it – that means everyone here today pretty much; all of you, and definitely me.

One family barrister said to me there is still an attitude from some in the law that social media is a bit of a niche hobby for sad losers, whereas the reality of it is that it's changing not just the way people communicate but also importantly the things they communicate about.

Essentially what we need to think about is how do these modern communication technologies and the ways people use them affect the relationship between the State, journalists and families, not just today in 2018, because in social media terms now is already ancient history, but into the future too.

My starting point is that communications technology, including but not exclusively social media, has empowered people and that's *because* it's so unregulated. It allows people to report on and to reveal things that traditional media is constrained both by law and by cost from covering, but its ungoverned – and possibly ungovernable – nature is also why social media can be such an unpleasant space, and such a dangerous one.

So one obvious impact of modern comms for both journalists and for professionals working in the family courts and Children's Services is that anyone can now set themselves up as a publisher of information and post anything they fancy online.

There is lots that is good about this.

Much of what gets put online is brilliantly informative and insightful; a huge chance to learn. I use it like that. Modern communications have also made professionals more easily accessible and plenty of individuals who work to support families - the legal and academic and social work Twitter communities are awesome - actively choose to engage in this way. They are commentating on issues and raising public policy concerns of enormous relevance to families. Social media has also now become a legitimate and common way to chat with the media and to question and even to lobby government. And then there are adoptive parents and foster carers and kinship carers who go online, fathers and mothers who have lost their children, survivors of domestic abuse who blog and tweet, a whole range of people who have come into contact with Children's Services and the family courts and are now using their experience to give raw insights into how the system works, and how it sometimes doesn't. They make often rigorously argued and compelling points. They spark conversations. They really get stuck in and, no, it's not always pretty. I do worry about people often, but it is always fascinating.

I am staggered at their capacity for understanding and thoughtfulness and generosity, often at the same time as they are feeling fear, sadness and anger. They are using social media to fight their way into a professional and political conversation that has been closed off to them until now and the best of them are, I believe, having a powerful impact.

Supportive communities for people who would otherwise have been completely isolated have been formed thanks to modern communications technology. The charity, Family Rights Group, runs an online forum for birth parents which its Chief Executive, Cathy Ashley, has told me has exploded in popularity. "I think," she told me, "because it provides learning without having to disclose anything about yourself." It's moderated and so people know it's safe. They'll get professional advice. Parents can support each other through posting their experiences and giving encouragement and

it's anonymous so parents and their children can't be identified. There are also online forums. Just search "forced adoption" where families who have lost their children let rip. Some are private groups. Some aren't. Some members give well-meaning but damaging advice. It's so easy now for stuff relating to family law cases to be posted online and it's not just getting banged up for contempt and a whopping fine that we need to worry about, (although I do worry about it quite a lot).

There are very real risks beyond just breaking the law, because it's not only parents in grief and despair who post accounts, inevitably partial as any first-person testimony is – as I'm well aware mine was – of what's happened to them. Sarah Phillimore is a family barrister who over several years now has spent many hours engaging with people on some of the most active private social media forums in an attempt to find out where they're coming from and to help them understand the alien and frightening family law system they've become embroiled in. She told me, "I see many examples of campaigners against the family courts who publish the most awful stuff online which is not merely wrong but actively dangerous for the people who rely on it." In one online discussion, described by Lucy Reed in her January article for Family Law, an expectant mother posted that she was worried about a legal meeting, and concerned that, "They're not going to give me a chance to prove I'm in a much better place in life now and I want to make things right." This woman got a response from another mum who said she was going through a similar experience. She'd realised, this lady posted, that if you don't register the birth the government doesn't own the child and can't come and take it.

Posts advising against the registration of births are, Lucy noted, a recurring theme on these forums. So are posts suggesting to desperate parents that running away abroad is a solution.

Frightened, traumatised and angry people are unsurprisingly receptive, and as the number of care applications soars and more families are finding themselves referred to Social Services, bereaved parents, siblings, aunties, uncles and friends – and I use the word "bereaved" advisedly – make up an avid and growing audience.

And that's because social media is all about spread. Family and friends. Friends of friends. Friends you've never met but bond with online. Huge and geographically dispersed, traumatised and vulnerable communities are created and brought together in this online world. It's the nature of the social media beast. And in this context, suspicion, terror, hopelessness, despair and grief combine to create a febrile swirling mixture of distrust of state intervention into family life; distrust of its intentions, its practices and its outcomes, on occasion, as published judgments have shown, entirely reasonably.

However, what is posted online without any fact checking, independent investigation, balance or legal moderation can easily harden into a trusted authoritative source. Family barristers have told me that taking poor advice posted online has changed outcomes for birth parents and their children in disastrous ways.

Lack of understanding of how modern communication systems work can also be dangerous when it's professionals who don't get it. One lawyer told me that in a recent case she was involved in, "It was embarrassingly apparent how little the advocates understood about how the parents were communicating on social media. For most of the hearing it was clear that the guardian and her barrister thought the mother was lying because they didn't understand how Facebook Messenger worked and thought the mother had deliberately 'friended' the father so he could get in touch."

In fact that app doesn't require that people are friends for a message to be sent.

She carried on, "It's not hard to see how this could have a serious impact in a finely balanced case. It was almost comical as four different lawyers were giving four different explanations in court as to how Facebook Messenger worked."

So our lack of understanding of fast emerging technologies clearly poses risks, and relying on online communities for advice is potentially a hugely damaging scenario for vulnerable people to get sucked into. They are dangers that are not going away.

Two words to keep thinking about: connectedness and speed.

How people tell their stories is becoming more graphic, more visual, more immediate and can reach enormous audiences at the touch of a share button. This also means that the way people get in touch with journalists is changing. It's getting easier and faster and we can respond more easily and publish immediately if we choose.

At its very simplest, I'm thinking about my email inbox. I approach this with apprehension because sometimes my inbox feels like one long, dreadful scream of pain. After every story I write about something that has gone wrong in a child protection case and frequently in between – I've had four today I counted – I get messages, endlessly detailed and anguished messages from mums and dads in care proceedings or embroiled in lengthy private disputes about children. From kinship carer grandparents who are battling to have their complaints recognised by Children's Services or trying vainly to squeeze some financial support out of a local authority which would otherwise be



paying a king's ransom in fostering fees for the next 18 years. From frightened women who say that judges don't accept the risk to their children from their abusive ex-partners. From men saying they are discriminated against by the family courts. From adoptive parents where adoptions have broken down and who despair at the lack of care shown by the State to the children they love so deeply, and who are baffled and hurt by the suspicion they feel is heaped on them.

Occasionally I get emails and direct messages on Twitter from social workers, councillors and lawyers, whistleblowing their concerns, and expressing their deep, ethical worries at what they see as systems failures that are damaging the very people they're trying to help. Email and Twitter and Facebook and Messenger and plain old texting have made individual journalists easily accessible in a way we never were before.

Whatever the rights and wrongs, family members who get in touch with journalists are genuinely suffering, and while there is both economically and practically, because of the punitive rules preventing reporting of the details of what goes on in care proceedings, no way for the most part for me to find out if anything systemic is going wrong, what the number, length, detail and emotional tone of these many messages do achieve is to alert journalists to the fact that there is a growing disquiet about the wider social consequences of how we currently seek to protect children. They are, I see them as, an alert which is coming upwards from the deep but getting close to the surface now, which tells me that there is too much pain being endured to be contained.

Modern communications technology has made it far easier for people to express this pain and now as it happens, not only after it happens, and to ever-bigger audiences. Collectively their communications, read by me and other journalists, as well no doubt as by people's councillors, their MPs and whizzing round their communities on social media, these messages sound a warning that I think the government would do well to take notice of because, at its worst, when someone has lost their children, they have no more left to lose. And when you have nothing left to lose, you have nothing left to fear.

Although I don't think people have yet been able to collectively channel their rage and indignation, this is a place of enormous, latent power.

How are we adapting to fast evolving communication systems? I'm going to talk about this from the point of view of a journalist who reports on issues dealt with by family courts. Advances in technology haven't just changed how journalists hear about what's happening. They've also changed how we build an audience for and then communicate the stories we tell. I'm thinking with great admiration of BBC reporter Jon Manel's podcast *The Adoption* which ran on Radio 4 last year,

a series of mini reports on the story of two siblings' adoption journey taking in the perspective of their birth mum and dad, the social worker and the adoptive parents. It ran on consecutive days on Radio 4 but it wasn't just put out on air as a one-off. Links to the podcasts were also tweeted out and Facebooked reaching an even bigger audience. There was considerable conversation about it on Twitter and the podcasts were made much of on BBC iPlayer. I binge-listened to them in bed on my phone late into the night.

I'm also thinking of legal reporting legend Joshua Rozenberg tweeting with great sensitivity and tact the way that the heartbreaking and important hearings about Charlie Gard unfolded in the Family Court last year. He also broke on Twitter the President's "blood on our hands" judgment last August, which immediately exploded across every news outlet and led bulletins for at least 24 hours.

There are risks to speed, Joshua noted when we spoke. Breaking court orders by mistake is one of them but there are considerable benefits in journalists being able to live tweet court hearings. Our listeners and viewers and readers, the public, can in this way follow the arguments that are made during a case almost as if they're inside the court, not just get told the outcome. And I'm aware that many people were alarmed by the public repercussions of what happened in the Charlie Gard case, but I think in the long-term it must be better for citizens to be informed about what goes on in the most painful and difficult cases rather than not be trusted to find out.

I'm going to give you a different example now which shows how conversations about child protection issues are being held privately on social media in non-working hours, trying to work out how best to tell stories relating to family law and whether we should tell them at all. I think it's social media working really well, allowing conversations that would not so easily have taken place before between people who would be unlikely ever to have met.

So this is 29<sup>th</sup> December just gone, a few minutes before midnight. Martin Barrow, who's tweeted me there, is a foster carer, a blogger and a regular Twitter commentator. He also used to be an editor on *The Times*. So he sent me this web link and I clicked on it which took me to a video on a Facebook page. I was going to play it to you but it must have been recently taken down, so I have to describe it.

A ten or 11-year-old boy is hunched on the top bunk in a bedroom. He's black. Six police officers, all white, surround him trying to get him to come down. He's clearly frightened and distressed. Over the ten minutes or so of the video you gather that the boy has run away from his foster care

placement to come back home. He very clearly does not want to go anywhere with those police officers. There's no social worker anywhere to be seen.

The police have been there for an hour trying to get him down. His mum isn't obstructing the police but she's certainly not helping them or trying to calm down her son which also feels awful. Eventually a female officer climbs up onto the bunk, at which point the boy cowers sobbing against the wall. He's then physically manhandled off the bed - this takes a long time and is not pretty - and is bundled down the stairs. By the end he's hysterical.

It's really, really horrible. So I sent that tweet back to Martin, and I thought of how traumatised my own nine-year-old son would have been if that had been him. I still shudder now.

So that's how many times it had been shared and I think it had only been posted a couple of days, if that. So Martin and I carried on messaging each other about what to do. On New Year's Day I took it to one of the national news desks, and they didn't take the story.

This is what they said:

"It's hard to see how you could tell the story with the kind of reporting restrictions that would be in place. We don't know the back story, I assume, unless you have more details, and the footage is inconclusive. It's horrifying to hear a child in that much distress but from what I saw the police didn't behave with excessive force and were quite clear they were left with no option."

I really didn't agree with that decision, but disagreeing with news desk decisions is pretty much a constitutional problem for all journalists, but anyway later on 2<sup>nd</sup> January I got this.... So obviously this video is reaching a lot of people.

The problem, as I went on to explain in the conversation with Martin, is that I wouldn't just retweet that video on my timeline - for a start the child's face can be seen - but the problem I have is that just because there are child privacy issues doesn't mean that there are not public interest issues.

I thought there was plenty there to unpick, not least because I'd be surprised if people thought that police are allowed to physically manhandle the child who's done nothing wrong and who is in no immediate danger in the way they did that night. It would be interesting and informative for people - for me - to know what circumstances allow it. And there were other questions Martin clearly thought should be answered about best practice or lack of it, and the State potentially inflicting harm on a child.

But for a journalist who's doing their job well, as opposed to someone who is simply acting as a publisher, a video like that, posted on Facebook, it has to be a starting point, not an ending point. And we need not only the resources but also the legal freedoms to be able to investigate and report on this kind of story.

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"Piss off out. I'm on the phone."

That's a foster carer.

"When you're on the phone chatting loud in your Pakistani language, I don't say anything. I just grin and bear it, yeah, so piss off out and leave me on the phone."

That's just a few seconds from a recording made covertly by a mother in a mother and baby placement. She was at risk of losing her newborn infant to local authority care, so the weeks she spent in that placement were in truth the most important weeks of her life and of her child's.

I wrote about it in *The Guardian* in 2015. You may recognise what happened from this case. The audio was allowed to be presented in court and the judge found that it contradicted the foster carer's assertion that it was she who'd been rudely attacked by the mother.

And this is where I want to talk about covert recordings of meetings with professionals and offer some thoughts about it.

I was never lucky enough to interview Tony Benn but it's well known that when he was interviewed by a journalist, he would bring his own machine along, smile sweetly and press record. It concentrates the mind and it very definitely keeps you honest. As a journalist I don't record interviews as standard but I don't see how in good faith I could possibly argue if somebody I was interviewing wanted to. I do sometimes record when an interview is on a very contentious or politically sensitive issue, and I do it then for my own protection.

In the case of the covert audio recording described above, that foster carer was someone whose evidence about the mother would have been taken very seriously by a family court. The issues of who had power versus who didn't here are exactly the same as if it had been a critical meeting with the social worker or a children's guardian. As technology makes it increasingly simple for anyone

to record in this way, the issue of who holds power and who isn't allowed to exert any is one that needs to be held up and discussed.

Now, clearly, there are difficulties and dangers around recording. Video or audio can be set up, edited or taken out of context. Recorded material can be shared online that puts children at risk. Where there's an abusive relationship, recordings by one family member of another could be misused. So it's not clearly without its complications. The legal issues around whether covert recording by parents or professionals is actually allowed have been unpicked on a number of occasions by The Transparency Project of which I am a member, and its assessment, with a couple of caveats, is that in itself covert recording is not illegal.

What is more important really is why it is that parents feel that there is a need to record professionals without letting them know.

Some local authorities have told parents it's illegal to record or that it shows they can't work "openly and honestly" with social workers. The prospect of being recorded without their knowledge undoubtedly makes many child protection professionals feel uncomfortable, attacked even, undermined. Recording implies social workers are not trusted.

And there you have your answer.

For individuals who are collectively trying to help in very difficult circumstances, working with stretched resources, feeling that their profession is distrusted is, I have no doubt, painful to hear and to own.

But think of it this way.

When I write an article I can quote someone entirely accurately but not fairly. Words taken out of context or reported in a way that doesn't reflect the tone they were spoken in or, very importantly, the interviewee's intention, can be damning. Families tell me that while professionals start from the position that they will be believed, parents start from the position that they won't. That's why they feel the need to prove what's happened. Parents and relatives who come into contact with Children's Services and the courts also frequently feel that their words are misinterpreted and sometimes deliberately distorted.

That isn't just fear speaking. It has been plainly shown to be true.

The President in a recent judgment showed that he understands all too well why recording of professionals is a pressing issue.

He said: "It needs to be accepted with honesty and candour that there have been in recent years in the family courts shocking examples of professional malpractice which have been established only because of the covert recording of the relevant individual."

That article I wrote about the foster care nightmare was published nearly three years ago, but just last autumn I live tweeted an HCPC fitness to practise hearing of a Bristol social worker who had been found by a judge to have fabricated evidence and lied about it on oath in a care case that was acknowledged to be finely balanced. A mother and two children could have been separated forever. A meeting, an assessed activity between the mum and her children observed by their social worker was logged correctly but information was added to it much later on by a social work manager who hadn't been there. The social work manager then submitted paperwork to the court that showed, inadvertently, that she had made alterations. This was fortunately discovered by the mother's counsel and then, when being cross-examined, the social worker lied about having done that. If it hadn't been discovered, the mother could never have proved she hadn't done or said what the social work manager wrote that she had. Her children could have been permanently removed.

That social work manager and the HCPC had a very interesting reaction to me live tweeting her disciplinary hearing but that is for another day. Before fetching up at the hearing, however, I met the mother in that case. She felt angry and bitterly let down. That is an understatement.

Last Thursday, by the way, I heard the HCPC's decision. They gave the social worker a caution. That is just one level of seriousness up from taking no further action. I do rather wonder how much confidence that mother and indeed other parents and judges will have in that social worker's evidence in any future care cases she's involved in. That, for the profession, is a problem. I also wonder how much confidence parents in care proceedings will have in the rigour of regulatory processes, given that a finding of fact was made by a judge that she had lied, set against the HCPC's decision to impose the mildest sanction possible in that case. That's a bigger problem and it only highlights the fact that it's these distortions and sometimes dishonesty which are why parents are increasingly wanting to film or record their meetings with social workers and others in the family justice system.

And that is what needs to bother everyone and exercise all our minds. Not whether someone who has very little power should be able to hold to account someone who has lots.

“It’s not about you” is a phrase that comes to mind. “Get over yourself” is another.

I think there’s a great argument for recording to be standard practice and do it all out in the open so if there’s any doubt, everyone has a clear and unambiguous record to refer to of how matters played out. Modern technology would allow it very easily. Families reckon, understandably, that it would expose poor and unlawful practice that can change lives forever.

And it’s very definitely not all about worst case scenarios. Think of how police officers now wear bodycams as standard. It’s not all about catching people out. It has made them raise their game.

I expect recordings of meetings between parents and professionals would make for much more consistently ethical and defensible social work practice across the board, as the CAFCASS operating framework acknowledges. Recording makes people who are in truth powerless and who often feel betrayed and sometimes are traduced by those in authority feel as if they’re finally able to wrench some power back and I have a lot of sympathy with that.

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We all know the saying “information is power.” A serious case review into the death of a child which was published in January noted that checks on the internet and social media can provide publicly available information about lifestyle and relationships to inform assessments. And it’s certainly true that some people post the most extraordinary personal information on social media.

It’s often stuff that makes me gasp, or makes me squirm, and stuff that seems to be very revealing.

The serious case review author suggests that social workers might want to get cracking with internet and social media checks on parents to “enhance and triangulate” what they’ve been told.

As I understand it, if a parent or anyone has privacy settings on, then the state needs their consent to look, or a warrant from a magistrate, or it’s an offence.

If privacy settings are not on – and this presumably is the publicly available information the serious case review authors meant – then guidance says that repeat viewing, so scrolling through someone’s Facebook feed, say, more than just the once, might be seen as directed surveillance and potentially unlawful.

So, rock meet hard place, (and that is Andrew's lovely phrase which I have pinched).

This is about state agents surveilling people's social media and making judgments based on what they see, using pictures, videos and messages to identify potentially who else in a family's life they'd like to investigate. It's about whether what's seen online should be used in evidence, evidence which might contribute to a child being removed.

So here you've got the authors of a serious case review advocating something that could be, will be in many cases, against the law. I wonder, do social workers as a profession understand that they're not allowed to snoop like this? Does your average care lawyer understand the legal restrictions on surveillance? Do either of them even recognise scrolling through a Facebook feed as surveillance?

If this is going on right now and people don't realise that they need special permission to do it, it's a problem.

What about these trusting relationships we're trying to foster?

What about working in the phrase "openly and honestly?"

Where is the notion of respect and consent in all this?

Even if you carry out surveillance lawfully, should material posted on social media be used in evidence?

And I wondered, if it might not be worth considering this: who are you when you go online? Are you all of you or just a slice of you? Do you highlight some aspects of your life and leave others out? For whatever reason, is what you write always true? Could some of your posts be misconstrued if taken out of context or read by the person that they weren't intended for?

Things we say and do online are not always typical of who we are or fully representative of what we do in our lives. How many of us would want our superior or a social worker or a judge trawling through jokey online posts about our alcohol consumption after work? Taken out of context you could think all sorts.

So I got this response from a mother whose own private Facebook account was hacked into by her local authority when she was in care proceedings. She said, "If a social worker uses evidence



against you that's gathered from social media and then gives their expert opinion on what's going to happen to your family based on her assessment of your online behaviour, what is there to stop you from doing the same back? Why should it be one rule for us and another for them? There is advice and guidance from employers for social workers on keeping all their social media accounts anonymous but it's not always followed, so if I had found pictures of my son's social worker on Facebook on nights out, pissed out of her face on a regular basis or doing something else unscrupulous, why would I not be allowed to take that into court and say, 'Hang on, mate. This is your expert? Why is she reliable and I'm this nightmare?'"

So leaving aside whether it's legal or not, is checking on people's social media presence a good and, importantly, a fair basis for assessment or triangulation?

Responsible journalists are also having an ongoing debate about the use of social media as a source of information, when and how we can publish what people are saying online. We're thinking about what permissions have implicitly been given if someone is posting in a public forum. Is the fact that it's on someone's open Facebook wall or Twitter feed good enough? Well actually no, it's not, and there is some poor and unethical media behaviour going on out there.

As a journalist, except where important issues of public interest are at stake, and I can only get information by covert means – and I have to beg and plead and justify to my editors that I would need to do this – I can only interview someone if they know they're talking to a reporter. I always make this very explicit and the more vulnerable the person I'm talking to, the more I spell it out.

Amanda Taylor, a senior social work lecturer at the University of Central Lancashire, was kind enough to talk to me about consent and the use of our data. In child protection, if a Section 47 investigation is taking place, not very much is private and there are of course compelling reasons for this. You can be asked about anything relevant, and you can of course choose not to say, but at least, Taylor pointed out, you do know you're being asked.

Parents may not consent to unannounced visits but, as she also observed, they are aware – or should have been made aware – that a social worker turning up at the doorstep is a typical part of the process. This is not going to be the case with online surveillance, whether it's done lawfully or not, and if professionals are already breaching legal boundaries then consent hasn't just been dispensed with, it's not even being considered.

And of course people do suspect it's going on and they take countermeasures. They use closed groups and they are therefore effectively forced underground to get advice and support which, as we have seen, does not always end well.

Whether and when and how often we should spy on people might not be the wrong question *per se*. We don't want children hurt or worse for lack of information that might have prevented it, but I wonder if it's really the best question. So let's look at this from a different place.

As a society we only have so much energy, brain power, resources and time. So is this where we want to put our best efforts? Into constructing a social contract where surveillance of citizens in their private spaces is pushed at social workers as best practice rather than as a last resort? Albeit with less developed technologies than what we have now, societies have been down this surveillance route before and only oppression and a fracturing distrust has come of it. I don't think we can risk it given the ratcheting up of anger and cynicism I sense about state interference in families' lives.

This is what I hear from parents in care proceedings, from adoptive parents, from kinship carers and really desperate and distressed mums and dads battling for any kind of help for their child who's disabled or has special needs. People are scared and they are sometimes paranoid. They're hurting. They're skint, exhausted, indignant and pissed off. No-one, they feel, is really, deep down looking after them or looking out for them. With austerity and swinging council cuts there is increasingly less support on offer, so actually they are right.

And if the idea is to build trust with vulnerable families so that better quality work can be done with more of them, so that more children have better lives in their families, the idea of using surveillance as standard operating procedure seems like a curious way to go. Snooping on our online data, cross-checking it to work out if people have lied and then offering it up to a court as evidence may seem like a magic tool at a time of crisis, but my sense is that long term it would actually make a social contract more brittle and prone to splinter.

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Last section now: transparency.

My firm belief that there has to be more transparency in family law is a push directly against the powerlessness that is imposed by the state when someone is not allowed to speak.

The court battle to get permission for Annie or @survivecourt, as some of you will know her, to speak was lengthy, and my expenses claims went through the roof. The commission to write that story, a *Guardian* Long Read, nearly collapsed several times, and luckily, we eventually got this which saved the day.

Writing on family law is, as I have said many times before, the most difficult reporting I've ever done. It's not difficult because people don't want to talk to you; they are desperate to. Nor is it hard because issues are sensitive and complex; they are but so are many stories journalists deal with on a day-to-day basis.

It's difficult because the default position is that reporters are bound by law, the Administration of Justice Act 1960 which I didn't know about three years ago and know quite a lot about now. We are banned from reporting what goes on, when justified or not, the State intrudes in drastic ways into family life.

This doesn't happen in any other court process except where national security is at stake. But in national security cases, the State has to argue its case for justice to be done behind closed doors. It must provide evidence as to why that trumps freedom of speech and transparency.

In family law this all happens back to front. The media has to argue for the right to freedom of speech. But far worse and more painfully, family members must apply not only to exercise their Article 10 rights but also, therefore and by extension, argue for any right to complain publicly about what the State has done to them.

I thought I'd quote the first line of Article 10 which asserts the principle we're talking about, and it goes like this:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Article 10 is wrongly often portrayed as being only about the freedom of the press but it is much broader and more important than that. It encompasses the freedom of citizens to complain about what the state has done to them and this has, I would suggest, been grossly overlooked by lawyers.

Imagine someone did the worst thing ever to you. Took your children away, extinguished the legal relationship between you, told you that you can never see them again and then told you that it's

your fault. Finally, you're informed that you can't complain in public and if you do you're committing a criminal act.

Well, as you know, you don't have to imagine it, because we're there.

Is there any wonder that parents seek out what can be risky online spaces to talk about what's happened to them? The idea that Section 12 will ever stop people using social media in this environment is antiquated and unrealistic. In 1960 when that Act came into force, most people would never have heard of computers.

This will doubtless be contentious but while retaining anonymity for children, I believe that as in cases of national security the state should have to make the case for imposing restrictions on reporting, on its intrusions into people's lives. This would force it to make rather more rigorously evidenced arguments than in my view it has to date.

Here are some experiences I've had of local authorities and CAFCASS officers trying to curtail my reporting.

A judge being asked on the most spurious grounds for me to be sent out of court. I was allowed to stay.

Local authorities have demanded that they not be named. In each case I've been involved in to date they have been.

And though I'm not massively into identifying individual social workers, un-evidenced assertions made in court that by naming them a family will be identified.

I have not been at all convinced that local authorities have demanded these things exclusively for the sake of the children involved. And I thought I would give you a very recent example.

In October just gone my own local authority, Gloucestershire, explicitly relied on the potential damage to its reputation as a reason for blocking publication of its identity by the media, not the family's identity - BuzzFeed UK, the BBC and me for *The Guardian*, were not seeking that. Its own.

It also argued that preventing the grandmother in the case from speaking out about her experiences as she very much wanted to because she, a professional who had worked with children all her life, was so appalled, would only be a minor infringement of her Article 10 rights to freedom of

expression. This council, which has been repeatedly criticised for, amongst other things, unlawfully removing a breastfeeding child from its mother, so things are not great down my way, paid public money for a barrister to submit a legal argument saying these things.

I was left thinking how can senior professionals believe this is an acceptable stance? It is entirely beyond me that they thought this was okay. It really concerns me. The judge, I would say, was unimpressed. Such glaring mistakes should not be happening but obviously still they are.

Though I don't think that harm would inevitably in every case result from a family being identifiable, I don't believe that family members should lose their right to anonymity if they themselves wish it. But just as journalists are allowed to go into criminal courts and describe the process by which justice is done, I think we should absolutely be able to go into family courts and describe exactly what happens when life changing evidence is given and ruled on about children's futures.

Senior social work managers and others in authority should not simply be able to assert that terrible things will happen to families if how they themselves perform, and sometimes mis-perform, their duties is reported on.

I have observed the most extraordinary sense of entitlement and arrogance both in court and in email communications in the way these assertions are made. It is unattractive as well as unpersuasive. It always comes across as why should we, the state, have to evidence what we say or justify restrictions we want to impose on other people's freedom of speech?

There is no humbleness. There is a reflex of dislike that anyone should presume to want to hold a local authority publicly to account. But why, just because this is the state working for children, does it get a free pass on scrutiny and accountability?

And there's another thing. I don't want to have to rely for my reporting on what a family judge says in her judgment.

For a start, in some areas of the country judgments just don't get published. I'm thinking of Norfolk, for example, where I gather family judges don't put anything out on BAILII and there are other places where very little sees the light of day.

So that's quite a trick for transparency, isn't it?

Now my dad, and remember he's a maths teacher, always told our class, "Show your working." If you didn't, even giving the correct answer wouldn't have got you full marks. But you would have got some for your working, even if you got the answer wrong, because your thinking could be understood. How the child protection and legal process unfolds is vital to how family law is experienced by the people involved in it and to how it's understood by society. And even where judgments are published, with the judge showing her working, what if she leaves stuff out that to another person's eyes – from a reporter's perspective perhaps or, God help us, from a family's – seems important?

I want to see and be able to describe that working as it happens. People deserve to understand what is done in their name.

And also what if a judge gets things wrong? It happens. Why shouldn't we know?

It would be overstating the power of journalism to presume that reporting is the complete answer to uncovering all of society's failings but media coverage can make a difference. Court reporting of the Oxford gang sexual exploitation trial demonstrated clearly the pulverising effect on traumatised girls of multiple defence barristers being able to cross-examine them one after another after another, for day after day. And it has made a difference.

I have yet to come across any function of the state that works better in secret. The law that prevents reporting of what goes on in family courts is meant to protect individual children's interests but I think it is now working conveniently to hide bad and sometimes even unlawful practice.

And preventing powerless people from even speaking about their experiences from complaining about what the state has done to them is, in my view, an outrage. I don't know how it has been tolerated for so long.

When problems are held up to the light, there is at least a fighting chance of addressing them. Sequestered from view and any meaningful accountability, changes in how family law is done to people will be agonisingly slow. And while the reasons for privacy – that children are protected – have enormous traction, with the inexorable and, as I see it, inevitable explosion in people speaking out on social media and the speed by which this testimony spreads, the tension set up between the two human rights of respect for private life as against freedom of expression are now, I believe, becoming strained to breaking point.

We will need to keep grappling with these tensions creatively, compassionately and in a way that's informed by a strong sense of ethics, not only by the law. In a way that only considers vulnerable people's best interests, and never our own.

Thank you.

**SIR JAMES MUNBY:**

Gosh, so I told you it was going to be powerful and provocative. I suspect it's made very uncomfortable listening to every family justice professional and, indeed, everybody in the room but that's what we're here for. Now we've got a panel. I think the papers you've got contain their biographies, so I'm not going to waste your time and insult your intelligences reading all that out. John Simmonds of Coram BAAF needs no introduction to anybody in family justice. Michael Keehan, the Family Division Liaison Judge for the Midlands circuit, needs no introduction to anybody in Birmingham, and Andrew Pack perhaps does for a moment because not everybody will know Andrew is the genius behind *Suesspicious Minds*, the great blog.

**ANDREW PACK:**

Is that a finding?

**SIR JAMES MUNBY:**

There are two blogs I turn to and I read almost every day. One is *Suesspicious Minds*, the second is *Pink Tape* and, trailing a short way behind, the third is *The Transparency Project*. I was mortified recently reading one of them. Here I was, a poor, pathetic old judge thinking I was very trendy, very up to date using the word "blogosphere" and I was told by one of the most revered commentators that I was in the Stone Age. Well there we are. What I would like to do now if we may is if our panelists could very briefly in just a few words and a few minutes express their reactions to what we've been hearing and we will then move into a more general panel discussion leading into a question and answer session. It's terribly important on these occasions that we hear the audience. So who'd like to go first very briefly? Andrew?

**ANDREW PACK:**

If that's all right. So I actually agree with almost everything that Louise said, which doesn't make for very controversial panelling, I'm afraid. I'd be getting roundly booed on *Question Time*. A lot of

the things that Louise has said have been things that I've been saying to social workers in training for a long, long time, particularly about covert recording, and I've always said to social workers, "You need to step back and think about why people want to do it and why they want to do it is because they feel powerless and you are powerful," and social workers say to me, "But I'm not powerful. I don't have any power. You're always telling me I don't have power to do anything. I have to go to the courts." The dynamic for them is that there is one person with power and one person without the power and if they go online for advice about what are social workers or if they watch *EastEnders* and see what social workers are, social workers are people who come into your house, get things wrong and steal your children and get £5,000 bonus for every child that they adopt, which is still something that people on the internet believe and they will probably never stop believing it.

Lucy and I did quite a big piece of work where we tried to put that myth to bed and extinguish it once and for all and it was surprisingly difficult to do it. I know it's not true. Proving it's not true is very difficult and also I've been talking to social workers for about a year now about looking at people's social media profiles and I feel very strongly about it in that I take the view that if you were a social worker and you visited someone's house and they nipped out to make a cup of tea and left their diary on the coffee table, you wouldn't read their diary. You wouldn't go through their unlocked phone while they weren't in the room. So why would you be on their social media profile? It's about working with people honestly and transparently. If you say to people at the outset, "Part of my social work with you is going to be I'm going to make unannounced visits. Part of it is going to be that I'm going to check your social media to see what's going on. Part of it is going to be if I talk to people and I find out that you are still in a relationship with this dangerous person that you've told me that you've broken up with, I'm going to rely on that in evidence." If you have that conversation with them, I think that's okay but to it clandestinely seems to me deeply unattractive and it flies in the face of what the current buzzword in social work is of "relationship based practice" and it's a very one-sided relationship.

As Louise said, social workers are very fond of throwing about the words, "These people need to work with me openly and honestly." Well, that cuts both ways. We need to work openly and honestly with them as well. I would give two counter examples to the things that Louise has been talking about to show that things can go badly wrong. So on the social media side I'm thinking particularly of the Hoaxsted dad which, for those who don't know, were a set of individuals in the Hampstead area were abusing their child and manipulating their child and actually feeding them juice made of cannabis and getting them to tell stories about their father which were patently not true, and then the stories expanded in the way that these things do and it involved everybody in the local community and head teachers and apparently staff at the local McDonald's and staff at local



shoe shops and babies were being sacrificed to the devil and all of this went on the internet and children were seen telling these stories on videos and shared, I think, about half a million times. There's a judgment that says that all of this is rubbish but all of the people who were being accused of those things on the internet were having their lives ruined. People were publishing, "This person eats and kills babies. Here's where he lives. Here's the school he teaches at." People were turning up at their schools ready to lynch them and it was complete drivel.

So that's an element in which the internet is still that sort of wild, wild west mentality. The other thing is at a point last year I pitched a story to Louise about a published judgment which involved a psychologist who'd done a report on the mother putting loads of verbatim quotes in the report and the mother had tape recorded the sessions and he'd made them all up. He'd completely fabricated them and that I felt was very worthy of media scrutiny and, Louise, your editor wasn't interested in that because it wasn't newsworthy but the flip side of it is that front page new of *The Times* last year was the Tower Hamlets case about the foster carer that had banned Christmas and ripped the child's crucifix from their neck and who was forbidding the child to eat pork, all of which was utter nonsense. Where was the front-page story on *The Times* retracting that story? It never happened. So I agree with Louise completely about transparency and openness and thinking about these things but there has to be some "with great power comes responsibility" which I think Spiderman first said. I'm done.

### **SIR JAMES MUNBY:**

The trouble is - and one side of me, the optimist, romantic believes it; the other, the world weary, embattled judge finds it very difficult to believe - that if you have the disinfectant power of publicity, as Justice Brandeis said all those years ago, the truth will out because, as the great Oliver Wendell Holmes, also an American, said, "In the currency of the marketplace, truth will always triumph over falsehood." Well, that may have been so of 1920s America, although one's sceptical. I do wonder whether it's true of 21<sup>st</sup> Century Britain and the fact is the more one takes off the leash, insofar as one can take off the leash, the more one has the unregulated wild west of social media. It is in fact too much of the time manifest nonsense, lies and untruths being pedalled which actually get attraction and we can publish judgments until we're blue in the face but if it says... if the strapline is, "Top judge slams bent social worker", it gets big coverage in some sections of the media. When do you ever see a story of equal prominence saying, "Top judge lauds social worker?" What do we do? I still cleave, perhaps foolishly, to the belief that on balance it's better to have transparency, although so much of the time it's simply a means for the foolish, the misguided and I'm afraid in too many cases the plain dishonest to pedal misleading truths which unhappily too many people believe, but what I'd be interested to know, and I've raised this in the past, I said, desperately trying

to persuade myself this was right, I said in a judgment on this, the social media, the net throws up enormous challenges but we can't just throw up our hands in dismay and say there's nothing we can do but what can we do?

Louise, I think an important part of your presentation was if there was more ability on the part of everybody, including responsible journalists, actually to report what goes on, there'd be more opportunity for the truth to out, but my rather dispiriting question is let us suppose that 1960 went altogether. Let us suppose that you're able to sit in the Family Court, just in the same way that you can sit in the Crown Court. Would there be any real diminution in the misunderstanding, the untruths? I wonder. Now, I've said too much.

**DR JOHN SIMMONDS:**

Okay. I'm a social worker, so you can imagine that both reading Louise's talk on the way up from London and hearing it a second time very powerfully put, powerfully and persuasively put in so many respects, but it creates quite a significant area of discomfort for me. I suppose particularly there's an issue about somebody that was brought up when, if you couldn't pop round to somebody to communicate with them, you had to put a stamp on a letter and walk to the local post box, maybe a 250 yard walk to the red telephone box on the corner of the road, just so long as you had the penny to put in the slot, you could post a telegram but that depended on whether the post office was open, but that's where I come from and maybe still aspire back to, but at the same time computers grabbed my attention from a very early point on and they still do, but social media, no. I mean everything that's been said today kind of reinforced my belief that it's too complex, I don't need the work and the risks are huge.

The issue for me comes from training as a social worker, many years ago, I have to say, in the context in which we're discussing this, this sounds incredibly naive if not stupid but that there were three things which I was taught and expected to be able to do and they are summed up as the expression of non-possessive warmth to the people that I worked with, accurate empathy in relation to the issues that they were struggling with and a non-judgmental attitude also in relation to the issues that they were struggling with. That was in essence what I was expected to both understand and to be able to deliver in a variety of contexts and the supervision of my work over the time when I trained as a social worker was really focused very much on how I was able to do that. They were fundamental beliefs about the social work profession, what we were expected to do and the values that actually drove what we did. The issue, and I hear it all the time both in the way that Louise has raised it and Andrew has raised it, about the current challenges, the suspicion, the distrust, the outrage, the disappointment and the injustice that many families actually feel when it comes to

engaging with local authorities and that developing a caring and supportive and respectful relationship with families, feels as though it's become fundamentally challenged, difficult and in many respects undeliverable. And I suppose one of the things that I've been reminded of too is that over the course of my career, while these were the principles that actually drove us, the thing that has changed so much of that perspective is the discovery of child abuse and neglect.

It started for me; I was expected to read about the killing of a child in foster care in Wales at the end of the Second World War which brought about many of the issues in the Children Act 1948 and particularly the role of the state in supervising and approving foster carers. The horrors of the death of that boy and the neglect of his brother were deeply affecting on me. It was the first time I think that I came across what the reality of abuse and neglect might actually mean. The death of Maria Colwell in Brighton in the 1970s had an equally powerful impact with a high profile public inquiry. There were then the evolving issues focused on the newly discovered battered baby syndrome, the beginning of a sense of what child abuse could actually look like, and then the evolving issues - sexual abuse, neglect and emotional abuse. I think that the challenges to us as social workers was that we were naive, we didn't recognise the risks, we didn't pay sufficient attention to what was going on in families and most particularly we were paying very little attention to the risks that parents and families could be to their children. It changed the nature of social work because I think the challenge is every time a child abuse enquiry or a judgment was handed down which said to us, "You're not thinking about the risks to this child," it really challenged particularly those beliefs and values that I have just talked about and I think that we now find ourselves in a position where the system has generated a sense of can we cooperate, can we work in partnership, can we respect, can we think through the challenges that many families find themselves in and not forget many of the lessons that, and again the media have raised with us, about the degree of naivety that as a profession has been evidenced every time a child has been killed or seriously injured.

There is a second thing about all of this and that has been particularly raised for me with the Grenfell Tower tragedy with it raising so many issues about the nature of the relationship between the State and vulnerable families and that's not just to describe the families that lived in Grenfell Tower as vulnerable families. Some of them were but some of them were well established and Grenfell Tower was the source of both their home and their community. But there are so many issues and questions about; the nature of housing policy, universal benefits, the nature of our health system, and I think that they do indicate something of a crisis about the relationship between individuals, families and the state. So there are also many aspects of what Louise has actually raised for me about the political nature of that relationship and what it actually indicates. So where I started out in my social work career with a significant political commitment to equality, the availability of a basic

structure of State services and the role of the State when it comes to poverty, marginalisation and inequality. It seems to me that those questions are really very challenging questions to answer today and frankly I'm not sure where we're going with all of that.

So I think Louise has raised some very profound issues for the social work profession and other professions too – lawyers and judges. I don't know what the answer to all of this is but it does need to be addressed. The relationship between individual families and the State seems to me to be quite a profound political issue. I think that what Louise has done and what I've heard so far raises some very significant questions that require a serious debate. The rise of social media has also raised those questions and I think we have a challenge to engage in thinking about how we address that as well on the side of both families and children because there are so many questions that I have about what our system focusses on and comes to be respected and trusted over the next five to ten years. That's me.

**SIR JAMES MUNBY:**

Michael.

**MR JUSTICE KEEHAN:**

I think three points. First is that I entirely agree with Louise that the state needs to be held to account and when local authorities, when individual social workers have got it wrong, it's important that that is made known either by judges or by journalists. How that's precisely done is a difficult question. We at the moment do it, certainly in the High Court, by giving public judgments, particularly where we are being critical of local authorities and condemning practices or actions or dishonest evidence that we find had been given. I don't believe, secondly, that we've got the balance right between transparency and keeping matters confidential. I shall avoid the word "secret." There have been changes in improvements. One of the most important ones was permitting journalists to attend, accredited press representatives to attend court hearings and to observe and that I think has played a very powerful role in changing the way that the family proceedings are reported. Is that the end gain? Should we not move further? My own view is that there are steps we can take to open it up further and assist the journalists in understanding what are the issues in the case and what's the evidence. But thirdly what has not yet been mentioned are the children and if it's a gloves off approach, abolishing the Administration of Justice Act 1960, people can say what they want, the aggrieved parent rightly or wrongly can tell their story unfettered on social media and journalists can publish it, fine. Where do the children stand and how is that

going to affect the children who may not be going back to their parents for very, very good reasons and whose parents' campaign can very adversely affect them?

You will all know the research that has been done where children, a group of children were asked about how they would feel about their case being reported even anonymously. Apparently, to a young person, they were absolutely against their cases being reported. I'm not sure that's necessarily completely accurate across the board but it does paint a very powerful picture of the young people and the children who are the subject of the proceedings in the family courts take about their cases being known and I entirely agree that it's an immensely difficult balance to strike between a wronged and aggrieved parent speaking about the way that they have been wronged and aggrieved whilst at the same time protecting the children from adverse and unwanted publicity.

**SIR JAMES MUNBY:**

Can I just very briefly pick up a point Michael made? In 2009, 2009 is not exactly a very long time ago, tremendous change as he's pointed out, print journalists are allowed in court. As has recently been pointed out, unless you are a print journalist with a press card, you cannot come into court under the same dispensation, however distinguished the legal commentator you are or if you're a mere blogger, and forgive my sarcastic use of the word "mere." This just exemplifies the fact as to how fast the world is moving on and I think I see her over there. When Lucy raised this point, I confess hands up it hadn't occurred to me but the moment the point was raised it seemed to me an absolute no brainer. Of course legal bloggers should be allowed in court on the same kind of terms as the print journalists. I'm tempted to being indiscreet but I mustn't be. The process of getting that through the Rules Committee, and that is not a comment on the members of the Rules Committee, is one which would astonish most people here, but the real point it just shows how very, very quickly things are changing and I brought this out three or four years ago in a judgment. As it happened, Mr Jonathan Baker, Queen's Counsel, appeared in front of me in I think 2008 - was it 2008, Jonathan? - in some instant case where we were talking about various forms of internet activity.

**MR JUSTICE BAKER:**

2004.

**SIR JAMES MUNBY:**

2004 and as Mr Justice Baker, by then he'd become, pointed out in a judgment of his, at the very point when he was addressing me back in 2004, unbeknownst to both of us, social media, as we now call it Facebook, had been invented on the campuses of Ivy League universities and was sweeping across America, so that these things are happening with incredible rapidity and I'd like to think I'm reasonably up to date with all this. I confess that the technology completely baffles me, and going back, Louise, to your appalling story of how four barristers couldn't even agree on how the thing worked, I have to confess if they'd been in front of me I would not have been able to adjudicate between them. But, Louise, before we throw it open, is there anything you'd like to say having heard our musings and points?

**LOUISE TICKLE:**

I was lucky enough to be asked to speak to, I think, a room of about 80 judges in October and I sort of banged on my transparency point then, although I was quaking in my red boots, and what I found was to my really immense surprise was that they were very welcoming and they were very open and they were concerned about the things that you're concerned about but that the principle didn't seem to be something that worried them, but it was the practice of how to reconcile these two seemingly irreconcilable things and I don't have a solution yet. I mean one crazy idea that kind of came into my head one night was, you know, don't barristers have this thing where you have a sex ticket and there's only certain barristers that can go and do sex cases because they've done certain kinds of training and they've got certain kinds of experience? Maybe, I don't know, this feels very weird to me as a journalist because I'm not about restricting other journalists from doing things, is it something where you could have certain accredited journalists who do... I don't know but there has to be some way of moving things forward so there is more openness and more ability. I'm very aware that I'm very fortunate that I mainly write, sorry, for *The Guardian*. I'm sorry there's not enough people who read it in the law profession but I have fabulous editors who hold me to very high standards and fantastic lawyers who understand the law and will fight for my rights at the same time as protecting us from contempt. So you need that level of resource to be able to do something safely because when I started doing this reporting, I was not *au fait*. I am still constantly checking. In fact I checked with the President that I could say something in this lecture because I was worried and I think that finding ways of getting journalists who are thoughtful and responsible enough and will take enough time together with the resources that will protect children and allow reporting to happen in a more detailed way about the process has to be found. And I don't know what that way is but that was maybe a silly idea that came to me.

**ANDREW PACK:**

I would immediately think in relation to that that we would have a very notorious commentator on the family justice system who works for *The Telegraph* complaining that he was being gagged and not allowed into the system.

**LOUISE TICKLE:**

He might.

**ANDREW PACK:**

And that would just put more fuel on the fire.

**LOUISE TICKLE:**

And who accredits people? I know. It's very difficult.

**SIR JAMES MUNBY:**

I'm going to tease you.

**LOUISE TICKLE:**

Oh go on.

**SIR JAMES MUNBY:**

"Top journalist argues for licensing of journalists."

**LOUISE TICKLE:**

Well, that's why I said that I struggle with it.

**SIR JAMES MUNBY:**

I think I'm right in saying that the licensing of the press, which in my book is simply censorship, was abolished towards the end of the days of Charles II or was it James II and censorship, licensing, has not been part of the English law since then except the indirect licensing which was imposed by a punitive stamp duty on newspapers which meant you couldn't sell the newspaper for less than sixpence in the days when sixpence was an awful lot of money.

**LOUISE TICKLE:**

We're already to some extent licensed though, aren't we, by the people who are allowed into family courts? You have to be a member of an accredited news body. So I mean I'm freelance. It's only because I happened to join a union that I have an NUJ card. If I wasn't a union member, I wouldn't have anything and I wouldn't get into court.

**SIR JAMES MUNBY:**

Well, yes. The real joke about that, as anybody who's read in the relevant Practice Direction knows, is it talks about a scheme authorised by the Lord Chancellor.

**LOUISE TICKLE:**

Yes. That's true.

**SIR JAMES MUNBY:**

Has anybody ever seen the scheme? Is there in fact such a scheme? I just don't know. Now food for thought. I'm sure there are people raring to go. If you could just give your name and where you come from, where you fit into the system that would be very helpful so we can understand the significance of your comment. Who wants to go first? Here you are, right at the front. There's a microphone coming down.

**SUKHCHANDAN KAUR:**

Sukhchandan Kaur here as Nagalro Chair, practising as independent reviewing officer conference chair as well as independent social worker, formerly children's guardian. Taking on the issues, as Mr Justice Keehan, said about publishing children's information, as a social worker that concerns



me greatly as, if children's information is published, what impact it will have on them? School friends reading information. Those children going off to university, going for jobs but their stories have been published. Those children will be stigmatised for life. Whilst I can fully appreciate that the parents would want to tell their story but they may not tell the story correctly from the child's perspective. They would say it from their own perspective and this child forever will be struggling to make sense of their life experiences as what actually happened. This is what the court papers say. This is what my mum and dad say. This is what the social workers say. Well, anybody asked me? So my concern really is the lifelong stigma for those children.

**ANDREW PACK:**

I think it really hinges on how you anonymise cases, doesn't it, because for decades now, where we've been reporting family cases which form legal precedent, those details have been reported and the child's name has been anonymised. It just happens to be in a case illustrating an important legal point that they were published and now we're publishing them more widely. So you have to a scheme of anonymisation. It worries me that that process is done at the end of a final hearing when sometimes people are unhappy with the outcome and upset by the outcome and wanting to leave because it's a traumatic and difficult process, and all of the lawyers are also trying to deal with that emotional fallout and it's at the end of a day and often we're trying to rush things through and the judge has given a long judgment and their focus is not entirely on things, it concerns me that that process, it's very easy to miss things and it concerns me that anonymity and anonymisation of a judgment has different features if you're doing it in London to if you're doing it in a small town, particularly where the judgment names the local authority involved perhaps because they're critical of that local authority and there's a public interest in doing that. Well, that's fine but I know that if a judge in my local court publishes a critical judgment of a local authority, our local press are going to pick up on it because they run stories about cats up trees and nonsense like that. So "Judge gives social worker what for" is news. Well, that's fine but then people who read the story and go to the judgment are going to be able to jigsaw identify that family and that's a square that we have to find the right fit for and it's not easy.

You need enough information on a judgment to see why the judge reached that decision but not so much that people who know the family can identify them. I mean the obvious thing is even me telling you a family in Chigley had five children removed because there was widespread sexual abuse within the family, okay, and the children were aged between ten and four. Well, somebody down that street is going to go, "You used to have five children. I haven't seen them with you for ages. Where are your five children? Are you that person? Did you do those things to those children?" I just can't see how you can avoid that on that granular level apart from saying we're

going to publish the judgment but not tell people whereabouts in the country it is, but then if there's pockets of bad social work practice, isn't there a public interest in knowing that? I don't know the answer.

**MR JUSTICE KEEHAN:**

I think there is a balance though because we've got to get much better at the way we anonymise our judgments. We've got to be much better at what we put in and more importantly what we keep out so that you minimise the risk of the jigsaw identification. You are inevitably though, you will not get away from the fact that on the micro level on the street or in the little village, just by the fact that you're saying there are x number of children in this age range with this, that the people in that locale are going to know and unless you simply publish a completely anodyne judgment that says nothing and tells nobody anything, you can't avoid that. Where it is important though is that you minimise the risk of there being a wider understanding of who the family are and so, for example, we're being advised now we don't give dates of birth, for example. You just give an age range. You don't give the town or the city where they live. You give an area of the country. Most importantly, we're now advised that when we've got horrendous sexual abuse cases, we don't set out in the body of the judgment the details of the abuse. That goes into an appendix that never sees the light of day apart from going to the parties but never forms part of even an anonymised judgment that goes onto BAILII, and these are matters that have been raised over the last few years and I think we are getting better and being more attuned to how we craft the judgment that will ultimately be published. But you're right, there's a certain point where you simply cannot protect local people knowing what's going on but it's getting the balance right.

**SIR JAMES MUNBY:**

I think one of the problems is if when you begin either delivering an oral judgment or craft a written judgment, you know you're going to publish and you have had the luxury of time to work out, as it were, the anonymity rules you're going to impose upon yourself, and you have a little crib sheet, for example. You have a list of the names and then a list of the random letters which you apply to them. You can then deliver a judgment which doesn't require much further work to anonymise. Most judges giving judgment in care cases don't have that luxury. They sit in the Family Court. At the end of a two or three-day care case, they go straight into the judgment and the judgment - and some people think this is important - doesn't refer impersonally to mother. It doesn't say that mother is going to be called "x." It actually uses her name because some judges take the view that's important. If you're actually talking about somebody in court in their presence, you should be using their name, and I don't think people quite appreciate just how complex and time consuming

it is to transmit, to transfer that raw transcript into an appropriately anonymised judgment and it is in fact an incredibly difficult job and it's very easy to miss something if you haven't had the luxury as Michael and I do, but many judges don't have, of working out beforehand what you're going to say, and it is actually very challenging.

The real point that Andrew says, of course, is not that the world will know who these people are because usually one prevents that. The real problem is that the people in the locality of the children, the playground, will know who it is, but if you have a case involving prominent people or people who will be known to the world at large or to a very wide section of the community, it's actually an incredibly challenging job writing a judgment where you think you have defied the most clever jigsaw identifiers, actually penetrate behind what you've said and we like to think that we're quite good at it. And there was a very chastening example. Brian Farmer is the Press Association reporter who currently covers the family courts in London and Brian is a sort of friendly critic. He's very understanding but in order to help the system he sometimes gently chides us and he told me about a year ago somebody had handed down a judgment which was thought to be impenetrable and he, Brian, within two and a half minutes of Googling around had worked out who the family was. So there are incredible technical challenges just producing something which is as impenetrable as you think it is, and if you want a test, I handed down a judgment this morning. It's very short, very, very, very short, a page and a half. It doesn't even disclose the sex of the child and I'll throw out the challenge. If anybody can identify who the family is, they can get a bottle of champagne. Answers on a postcard.

**ANDREW PACK:**

Does the judgment name the counsel involved? I think I could split the bottle of champagne with one of them.

**MR JUSTICE BAKER:**

Is that inciting us to commit contempt of court?

**SIR JAMES MUNBY:**

No. It's simply inciting you to, on a post structural basis, deconstruct my judgment. Now I must stop talking.

**JOSHUA ROZENBERG:**

Thank you. Joshua Rozenberg. I was interested in what Mr Justice Keehan said about putting the substance of the sexual abuse into an anonymous or into an unpublished appendix. I only heard about this quite recently and I gather this is... am I right? It either serves not to identify the children in the way that we've been talking about or because that sort of material is used as a form of pornography and I wondered whether that message had got through to the criminal courts as well because they obviously feel the need in sentencing remarks which are published to identify exactly what the convicted person has done. I sometimes tweet references to this and readers who wouldn't normally browse through the sentencing remarks on the judicial website are rather shocked because we in the mainstream media sanitise these things, as everybody here knows, to a very large extent and that's not done in the sentencing remarks. I'm not arguing in favour of less publicity for these things but I am drawing attention to the problems that we're talking about and where we draw the line.

If I can just pick up James's point about access to the family courts, I tried this out a few years ago. I do, even though I'm a freelance commentator, I have managed to purloin a plausible looking press pass and was able to get in. I certainly share the concerns about licensing of the press which we objected to when the scheme first came out but I think the reality is that the judge always has the discretion to allow any journalist in, anybody claiming to be a journalist or purporting to be a journalist and so on. Certainly when I tried an experiment of turning up at the Applications Court on three successive Mondays and produced a card, I was let in and I daresay others would. It was quite interesting because there was a complete disparity of policy as between the three High Court judges who heard these cases. Some shared the papers with me. I'm not at all sure whether that was lawful or not but they took the view that I wouldn't be able to understand what was going on unless I could see the papers, which of course was perfectly true. Others didn't but the real problem of course is that if I can't report what was going on, and I wasn't at all sure whether I could report any of what was going on, anonymised or not, but if I can't report what's going on, it's not going to be something that's going to be done, but it was very useful and very instructive. I was very impressed by what I saw and I would encourage any blogger who doesn't have a press card to send a note into the judge and I daresay the judge will look upon this favourably.

**SIR JAMES MUNBY:**

The problem, Joshua, is the print journalist is entitled to be there unless excluded. Others are not entitled to be there and there is the concern, "What happens if I make the journey down there and I'm not let in?"

**OLIVIA RUDGARD:**

Hi. My name's Olivia Rudgard. I write about social affairs for the *Daily* and *Sunday Telegraph*. I thought the talk was very interesting. I wanted to pick up on the point that you made about social workers and there being in some situations a lack of trust with social workers. What strikes me with some of the people who get in touch with me is that they feel similarly about judges actually and they feel that judges are also kind of in some cases conspiring against them and acting not in their interests. I wondered as, since there are two judges on the panel, if I could ask you if you are concerned about that and if there's anything that could be done to try and do away with that problem, so in terms of greater transparency or something along those lines.

**SIR JAMES MUNBY:**

Well, I'll go first and I was very struck by Louise's point because there's a sort of unspoken assumption that there's no problem as long as the judge publishes a judgment, that unless the Court of Appeal says it's wrong, it's right and that of course begs the question, which Louise raised, supposing the judge got it wrong or more importantly supposing the judge's selection of the facts is partial either in a way which affects the outcome or in a way that doesn't affect the outcome and the argument is that unless you can report the evidence, unless you can report what actually went on in court, there's no way of criticising or suggesting the judgment is actually wrong or has left things out or has got the wrong end of the stick, and there's no reason why we should be any more immune from that kind of comment than anybody else. The simple fact is that trust in professionals is not what it was some years ago, and I don't think I'm looking back at some golden age that never existed, but whichever profession it is, people no longer accept what somebody says merely because somebody is this or that and the simple fact is that applies as much for the judge as anybody else. Where one is dealing with matters as significant as care cases and what I prefer to call non-consensual but what in the jargon of the social media is called forced adoption, judges are doing very, very, very important things and I've said this and I believe this very strongly and the fact is a family judge making an adoption order against the wishes of the parent is making an order which in terms of its lifelong impact on people will have more impact than any sentence given in a Crown Court except from a handful of cases.

That's the gravity of what we're doing and what we're talking about and judges are human and judges will sometimes get it wrong. Judges are at present grotesquely overworked. We've got fixed resources. The number of care cases is going up year on year and judges in consequence are tired some of the time and we all know that if you're tired, you don't work as effectively as

otherwise. My own view is that judges should not be immune from criticism and if one of the criticisms journalists want to make is that the judge, and on the facts which the judge has carefully extracted and put together, then the consequence follows that actually the whole thing is flawed because the premises are all wrong, the facts are all wrong. That's something a journalist should be able to do but the simple fact is that at present journalists can't do it without access to the evidence or without reporting what went on in court. In saying this the judge seems to have been listening to a different witness than the witness I heard or the impression I got listening to this witness was x, y and z, whereas the judge says it's a, b, c.

So I think there are very real problems here and I was very glad, if I may say so, to have Louise raising that specific point that transparency doesn't suffice merely because there's transparency with the judgment. It's better than nothing but it only pushes the argument back. We've got to be much more honest about this than we've tended to be, I'm afraid, and if we are honest about it, things go wrong. I've been reversed in the Court of Appeal. Michael's been reversed in the Court of Appeal, so—

**MR JUSTICE KEEHAN:**

By you recently.

**SIR JAMES MUNBY:**

In fact, I've been reversed in the Court of Appeal on more occasions since I became President throughout the whole of my previous judicial career. So we all get it wrong some of the time. So I'm entirely with you but, Michael, I went first so you can either say your boss is talking nonsense or simply say you agree and have nothing to add.

**MR JUSTICE KEEHAN:**

I entirely agree. I only add this, that it's just the judges are better trained now than they have ever been and it really is just keeping in mind how important it is that you appear as though, not just appear, but you are in fact approaching the case entirely fairly and you avoid making what on reflection you consider to be a stupid remark which could be completely misinterpreted by a parent or another family member who is sitting there facing the enormous stress and pressure of care proceedings. So it's just a matter of being very careful, however tired you get, to just having an eye to the fact that you want to be and be seen to be fair.

**SIR JAMES MUNBY:**

And it's impossible for us to do but what we've got to try and do is put yourself in the position of the mother. It's quite impossible. We think we can do it but we can't, if I take the mother, and just ask yourself, "Supposing I was sitting down there as the mother listening to this old booby going on, what would I be thinking?"

**MR JUSTICE KEEHAN:**

It's a useful exercise to keep it in mind though. I mean you'll never exactly replicate it but it just keeps you alive to the powerlessness and the fear of the parents.

**SIR JAMES MUNBY:**

And of course the terrible thing, the terrible reality is even when in a care case in court they've got representation, even if it's top class representation, the power imbalance is still there and we believe the power imbalance isn't there because they're represented and that is a very comforting but I think deeply flawed analysis and I have a terrible feeling that if you actually stopped some of the parents in these care cases as they were going out of court at the end and asked them what was going on, what has been happening, what is the answer, what's the outcome, they would be unable to explain and sometimes they get it wrong and that is an indictment of us and of the system and not of them.

**DR JOHN SIMMONDS:**

There's just one issue I wanted to add to that. I mean I think the focus of the pre-proceedings phase of the PLO, with conferences, letter before proceedings, they are meant to be a kind of part of this, an early engagement in working in partnership. That's one thing. I suppose the other thing that seems to me to be an enormous part of the kind of evolving model of working in partnership is the Family Drug and Alcohol Court, so there's a kind of strong sense, both of the judge but of the way that the press operates, of direct engagement by the court in a sense of, "Can we sort this out by accessing specialists, drug and alcohol specialists and other specialists that can move us back into a working in partnership?" and I think that both your support of that and the way that it's been developed, there are some very important lessons in that. I think there's much further that we could go with some of those issues about early engagement and a change in the kind of process within the court in terms of working in partnership with some families, including the services that are available as a part of that process.

**SIR JAMES MUNBY:**

One of the interesting things about FDAC is, and this is well documented, FDAC doesn't always work but when it doesn't work, a lot of the parents feel empowered. They feel they've had their chance and it enables them to understand why they can't keep their child and I think in that sense FDAC is a very powerful empowering tool and it shows that we can do it if we adopt a completely different approach.

**LOUISE TICKLE:**

Can I say something about that?

**SIR JAMES MUNBY:**

Of course.

**LOUISE TICKLE:**

I was lucky enough to go and spend a day with Judge Exton, who is very sadly dead now, but she ran the Gloucester FDAC court and it was the very first article I wrote about family law and she welcomed me in. And what really struck me was the resource that was required to make that court work. And Judge Exton was very passionate about the fact that it was giving families the best chance that could be given and she really wanted it to be available to more people. It was very clear how committed how she was and the difference it made, and that it isn't available to more people is very sad.

**SIR JAMES MUNBY:**

There's a terrible postcode lottery I'm afraid in the family justice system. FDAC is gradually being rolled out across the country. So is another thing called Pause but I think I'm right in saying both Pause and FDAC as yet cover significantly less than half the country and I want to see a day when FDAC and Pause are available across the entire country so that parents and families are not disadvantaged by the fact they live on the wrong side of some local authority or DFJ boundary. We're getting there. The pace is accelerating. I'm quite sure it's a very important part of the future but there's a long way to go yet.



**ANDREW PACK:**

So I've heard judges speak before about adoption being the most serious order that a judge can make and I completely agree it is. You compare it with any sentence that a judge can make in a criminal court and it has vastly longer and more damaging effect, and sometimes I think, well, we also give that power to people who in a criminal court can send someone down for no more than six months and how do I feel about that? I'm not sure I feel great about it.

**MR JUSTICE KEEHAN:**

The sad reality is that if the lay justices didn't deal with adoption cases or cases that may end up in adoption, the system as it currently stands would collapse.

**ANDREW PACK:**

Absolutely.

**MR JUSTICE KEEHAN:**

Because the lay justices, it varies enormously from area to area, but very roughly they deal with something between 80 and 90 or more private law cases. They deal with something around, again it varies, 25 percent to 35 percent of public law cases, a much smaller amount of that would-be adoption cases, but we simply could not cope is the reality.

**ANDREW PACK:**

I completely agree from the pragmatic and logistical side.

**MR JUSTICE KEEHAN:**

Yes.

**ANDREW PACK:**

Do I think that that's right? Not necessarily.

**SIR JAMES MUNBY:**

If we reassure ourselves, if we comfort ourselves by thinking, well they only get the easy cases, they get the cases where the answer, to use a well-worn phrase, is distressingly obvious - if that's right then perhaps it's okay but is that right, and I suspect—

**ANDREW PACK:**

I think post Re: B-S there aren't any of those anymore.

**SIR JAMES MUNBY:**

And I suspect there's a circle of whatever the office of virtue is here that because the case is in front of the magistrates, the professionals think it's hopeless and that is the bit of the system when, we've got to be honest about this, people are going through the motions rather than fighting with all their energy on behalf of the parents. So it is a worrying aspect and of course Andrew's put his finger on it. We don't trust the magistrates to give more than six months jail sentence, up to a year maximum, is it, and yet they can make adoption orders. I saw a hand somewhere.

**ANN CHAVASSE:**

Sorry, Ann Chavasse, a retired barrister and Trustee of Family Rights Group. I was just going to mention to the lady from *The Telegraph* who was saying about trust in the judges but John's already mentioned FDAC so the point's made. I do think it helps people because the objective, the objective everybody is working towards is reuniting the family if that's possible and that's great for the social workers too. They like it.

**ANDREW PACK:**

I've had some experience with FDAC and it's been a very positive experience. The issue I think with FDAC is just they haven't worked out scalability. How can you provide that Rolls Royce type service which is the sort of service that the parents in care proceedings ought to be getting when we have the budget for a Morris Minor? There isn't a solution to that. The government are not going to be throwing any more money at us, apart from to waste on huge IT systems. They're not going to put money into that.

**SIR JAMES MUNBY:**

The answer is that FDAC saves money and FDAC is the most researched project there's ever been. There's a stack of very, very high quality independent academic research proving that it works and there's another lot of research demonstrating it saves money and the headline figure is for every £1 that the local authority puts into FDAC, it saves in short term direct savings £2.30. My question is where outside the Ponzi scheme can you in modern conditions get the return of £2.30 from an investment of £1 and the sadness is that although this is proved up to the hilt and even though you get the return within, I think, 18 months or two years, in modern conditions 18 months, two years is too long because you've got to get the return in the current financial year. The simple fact is FDAC works, FDAC saves money. It's an absolute no brainer.

**CATHY ASHLEY:**

Hi. Cathy Ashley, Chief Executive of Family Rights Group and obviously really pleased to be at the Bridget Lindley Memorial Annual Lecture and to thank speakers, particularly Louise for her talk. A couple of things. One I wanted to raise about the magistrates because I think that gets much less attention and scrutiny and it does concern me that it may be the most vulnerable, the least well represented who end up under them rather than who end up at the family courts, and second is that it's hugely helpful for us to have the published judgments in terms of being able to be able to... well if we are then going to intervene as we have done in the Supreme Court, it's pretty critical but also because we get people contacting the advice line who say x and y has happened and it has gone through the family courts and if there is a published judgment, it transforms the way that you can then respond and yet it is so variable. Where it hasn't been published, families often won't ask because they are worried about the power differential between them and the local authority and they don't want to do anything that might end up jeopardising and there's a particular case of a grandmother in exactly that situation which has been the most appalling practice but when we've said it's not been published, what could we do? She is petrified about trying to ask anything that could cause her grandchildren to be removed from her. So I just wondered what more you think, Sir James, can be done.

**SIR JAMES MUNBY:**

Well, one of the problems... I mean I have an enormous postbag. Every day they come in. They're special delivery, addressee only letters from people who think the family justice system has failed them and many of them are parents, many are grandparents, and the answer I'm afraid is terribly simple. There is nothing I can do because, although I'm head of family justice, judges are

independent. I can't tell the judges what to do and the remedy is simple or straightforward in theory. If it's judicial misconduct, you write to the judicial misconduct people and here is their address. If you don't like what the judge has done, go to the Court of Appeal, and that is the stance which, as a matter of constitutional propriety, I have to adopt but I'd have to have a heart of stone not to be very moved by some of these letters and sometimes reading some of these letters, you know, four, five, six pages from an articulate grandmother, one's left with very uncomfortable feelings. Now that's rather a round way of answering your question.

In the Cardiff research, which is what has really flagged up the disparity in the publication by judges of their judgments, makes for very, very concerning reading and Louise touched upon this and she said in Norfolk no judgment is ever published and I think Julie Doughty, who is the main researcher in Cardiff, published a league table, a list. This is the list of the courts which have never published a judgment, this is the list of the courts which do publish judgments, and the discrepancies were enormous, and we all know, and Judge Wildblood who appeared on the screen, he is very much at the top of the league of publication, but there's very little I can do. I suppose I could say, "Now come along chaps, let's have some more judgments published," but I can't tell people to do it and the reality is the judges are very, very overworked and they will say, "Well, nobody's asked for the judgment to be published, nobody's asked for the transcript." It's a very real problem and my own view, you may think this is cowardice, you may think I'm not doing the job I ought to be doing, is actually the most powerful argument on this is Julie Doughty's research rather than me and some journalists ought to say, look, "Why is it judge x? There's no difference in you, judge x and judge y in these cases. You have never published a judgment on BAILII. Would you like to explain why and, judge y, perhaps you'd like to explain why you publish so many?"

It is concerning but that's one of these where The Transparency Project is so important because it is asking some rather focused, rather tough questions to which we don't actually have very good answers and my favourite character, my favourite character from the world of nursery rhymes and similar things is the little boy in Hans Christian Andersen's story who shouted out, "The emperor's got no clothes on," and I think we need more and more people sniping at us, informed people like Louise and others sniping at us, saying, "Actually this emperor's got no clothes on." If you want to go out and blunderbuss, fine

**LOUISE TICKLE:**

I'll get my Nerf gun out.

**SIR JAMES MUNBY:**

Now the witching hour has come and slightly gone but I'm sure you've got time for a couple more questions, a couple of brief questions if anyone's got a brief question.

**MICHAEL LEWKOWICZ:**

Michael Lewkowicz from the charity Families Need Fathers. A lot of the stories that Louise shared we hear about every week, the kind of problems with social workers, with CAFCASS. They're not uncommon. Trust levels, if people are going to trust the family justice system, they have to feel that... well you have to have trust. If you have no trust, you haven't got a justice system and trust is incredibly low. Probably, if we were going to put a pecking order, judges are somewhat higher than CAFCASS officers who are somewhat higher than social workers.

**LOUISE TICKLE:**

Journalists at the bottom of course.

**MICHAEL LEWKOWICZ:**

Not in the field of family reporting. Even politicians - we expect politicians to look at how to deliver a family justice system, how the law should be amended and they make the laws but actually unless they've been through this themselves, they're pretty oblivious. They have a case book of people who write to them but that's not the same thing as experiencing it for yourself and the sort of things I mean with... it's very common for people to say, "My CAFCASS officer," you know, what you said, "they didn't listen to me, the social worker misrepresented me, they said things which I never said or which they totally misinterpreted in another way," and then actually what recourse have they got because the recourse they have is they can make a complaint but every lawyer will tell you, if you've ever had a family lawyer in your case will say, "Don't piss off your CAFCASS officer. Don't piss off your social worker." So it's quite a big thing to say whilst you're in the middle of proceedings, make a complaint about somebody using inappropriate behaviour or inappropriate statement or something like that. Then your case is rumbled off in six months, 12 months, so on. Maybe things have calmed down and you make your complaint because you still feel that somebody did something fundamentally wrong, at which point the local authority says, "I'm sorry, 12 months has gone by. You're beyond the sell by date of being able to refer a complaint to us." So how can that person get a sense that the system is anything other than closing in on them, not allowing them to

air their concerns and, as Louise said, which areas of government haven't benefitted from greater openness, greater exposure and there are jurisdictions where they seem to have greater exposure.

In some cases they even televise but with a degree of anonymity. What harm it does or doesn't do to the child or family I'm sure could be researched because... I don't know. The issue that the lady behind me raised of course is an important issue about how that child might feel but I doubt that your six-year-old is going to be talking to all the six year olds round the corner about what's in BAILII because that's not what they read and it would be anonymised anyway. It will at best probably have the local authority, the whole region with a few million people in it. So some do it but what research is there to actually say whether this is doing more harm than good because the level of trust out there is dismally low and we would say with some justification.

**SIR JAMES MUNBY:**

Is the reality, and forgive me if a comparison between a police officer and a social worker offends the social workers, when I was a young barrister there was no recording of what went on in police stations. Interviews were not recorded. There was no CCTV recording what was going on in what we now call custody suites. Officers made up their notebooks and the judges all supinely sat back and said that when two officers had exactly identical notes, well, they just both had accurately remembered what they'd heard and after years and years of scandals that was simply thought to be unacceptable. I mean now the system under which interviews by police officers have to be recorded. They take place typically in rooms where there's a CCTV camera going. The custody suites all have CCTV cameras and, as we heard from Louise, the police now wear bodycams and that was the only way actually of restoring trust in the system was to make it by and large fool proof and it would be a definitive record of what had or hadn't happened and what had or hadn't been said. If trust is as low as you suggest or as some people feel it is, has the time not come, I think Louise was hinting at this, where one important step we've got to take is as a matter of routine to have all significant interactions between family members and professionals, both CAFCASS or social workers or anybody else, recorded and they can both have a copy of the tape.

**MICHAEL LEWKOWICZ:**

On a practical level, could we actually have that currently? Why can't litigants or their lawyers if they're represented have copies of the transcript or the disk? They can make their own transcripts because at the moment it costs a fortune to get a transcript and sometimes you have different judges on different hearings and you want them to benefit and you want to be able to benefit yourself from actually seeing what was said at the previous hearing and unless you've got a few

hundred pounds in your back pocket for every hearing to pay for a transcript, why couldn't you make your own? Both sides can have the disk.

**SIR JAMES MUNBY:**

One of the problems is with modern technology and the social media, if the actual recordings of what took place in court are released, there are malevolent and malicious people who will manipulate them and put deliberately manipulated versions up on the web. That I'm afraid is a fact of life but it may be. But you have put your finger on the key point which in a sense underlines almost everything Louise was saying. Is there at present adequate trust in the system? You would have to be remarkably complacent I think to answer that with anything other than a no and what do we do about it?

**MICHAEL LEWKOWICZ:**

There was that case reported in November/December of last year, the abduction to Israel case, where it emerged that a CAFCASS officer had made a recommendation about the child without having read any of the previous judgments. Now in this case it was only exposed because, I'm not sure if it was the father or the mother or maybe both took the matter to appeal, and the appeal judge decided that this was not right and made a decision about it, but how many such cases don't exist because the parents don't have the resources or the wherewithal to actually have made that appeal in the first place and exposed the fact that there was a fundamental injustice in that the CAFCASS officer simply wasn't aware of the history of the case on which they made a recommendation.

**SIR JAMES MUNBY:**

I'd be interested to know whether that was a case on which at first instance the parents were represented or not.

**MICHAEL LEWKOWICZ:**

I think one was for sure. I'm not sure about the other one.

**SIR JAMES MUNBY:**

Because that in a sense raises some rather different questions which it's too late for us to move on to tonight. If the answer is they were represented, then on the face of that it raises a question of professional competence because one might think that the advocate should have said to the CAFCASS officer, "Can I just confirm that you've read this, this, this, this and this?" If they were not represented then it raises a completely different issue, and then of course there is the third issue which was exposed in one of the cases Louise told us about where when the right questions were put to the social worker, the answers were lies.

**LUCY REED:**

I'm Lucy Reed. I just wanted to make one point really and it's this. There's been so many interesting questions that have been raised today and we don't have all the answers to those questions but it's thanks to people like Louise that we are asking these questions and beginning to think through what the first steps are towards resolving some of the difficulties that we've identified, but for me it's not just about journalists helping us with working out how we might practically make transparency work in a way that balances the needs for accountability with the needs for privacy and safety of children and vulnerable adults. There is a sort of more substantive potential advantage to the closed system that we've got at the moment of letting other people in and letting other people see what we do because in any other walk of life, having people come in and say, "Oh, do you know we don't do it that way where I work, in my neck of the woods, in my area of expertise? We do something rather differently. Why do you do it that way?" We don't have any of that feedback. We've lost those opportunities because we are a closed network at the moment and so I think we have to think about it's not just about prising the door open in ways that are uncomfortable because we have a responsibility to let people see. It's also about us possibly allowing people to come in to help us do things better.

**SIR JAMES MUNBY:**

Well, I'm going to be very indiscreet. One of the interesting things when I sit in the Court of Appeal, and I always try and make sure in a family appeal there are no more than two family judges and there's always a non-family judge, how often when there's a non-family judge, the judge says, "James, why on earth does this sort of thing go on in the Family Court? It's not what we do in the civil courts." Now sometimes that is actually, if you analyse it, a condemnation of what goes on in the civil courts but it very much supports... sometimes it's the other way round but it very much supports the point you're making, Lucy. Intelligent, informed outsiders should be allowed into the



system so that they can just say well this, “No doubt it all makes sense to you groupies as it were but it doesn’t make any sense to me.”

**ANDREW PACK:**

There we have a very strong argument for establishing the legal observatory.

**SIR JAMES MUNBY:**

As always we could go on late into the night discussing these things. Can I just on your behalf thank Louise who put together a remarkable, very hard hitting, very thought provoking piece of work which I’m sure is going to feed into this never ending but very important debate? We’re enormously grateful to her. Thank you, Louise, for what you’ve done tonight. Thank you for all the heroic work you’re doing and spend more time if you possibly can in the courts and spend more time writing hard hitting pieces anywhere and everywhere. At least some of us read *The Guardian*.

**LOUISE TICKLE:**

Please do. My job depends on it.

**SIR JAMES MUNBY:**

But also thank you all, for our panel members who, from their different perspectives, have made some very interesting and important points and also thank you the audience, not merely for sitting there and being so attentive but for the interesting questions you’ve asked and generating the discussion we’ve been having for the last hour or so. So thank you all very much indeed and it’s now I think time to bring the proceedings to a close.

*[Recording ends]*