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# "Why I was right to name the teacher's teen killer": naming teenagers in criminal trials and law reform in the internet age

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Youth Justice and Criminal Evidence Act 1999 (c.23) s.45

European Convention on Human Rights 1950 art.2

European Convention on Human Rights 1950 art.3

**Cases:** Venables v News Group Newspapers Ltd [2001] Fam. 430; Independent, January 17, 2001 (Fam Div)

X (A Minor) (Wardship: Injunction), Re [1984] 1 W.L.R. 1422 (Fam Div)

R. v Southwark Crown Court Ex p. Godwin [1992] Q.B. 190; Guardian, June 6, 1991 (CA (Civ Div))

R. v Lee (Anthony William) (A Minor) [1993] 1 W.L.R. 103; Times, July 21, 1992 (CA (Crim Div))

Murray v Express Newspapers Plc [2008] EWCA Civ 446; [2009] Ch. 481 (CA (Civ Div))

***Comms. L. 5*** In November 2014 Mr Justice Coulson lifted reporting restrictions - a so-called section 39 order[1] - which identified 16-year-old William (Will) Cornick, the killer of his Spanish teacher, 61 year old Mrs Ann Maguire, after he had pleaded guilty to her murder at Leeds Crown Court.[2] We now know all the details about the young killer, including his photo. The *Daily Mail* even compared Cornick to child killer Jon Venables as a 'handsome dark-eyed boy. No twisted mask of evil, but the cherubic, full-lipped face of youthful innocence.'[3] The sentencing remarks by Coulson J were repeated in great detail by the *Yorkshire Post* across the world to the *Sydney Morning Herald.* [4]

On the morning of Monday 28 April 2014, the then 15-year-old Will Cornick had gone to school equipped with two kitchen knives in his school bag. As Coulson J's sentencing remarks tell us, Cornick stabbed Mrs Maguire - with 'extensive premeditation and planning' - during breaktime around 11.30am in her Spanish classroom at Corpus Christi Catholic College, Leeds, as the teacher was at her desk helping another pupil. The popular media made much of the fact that she was 5%CC2%CB and of slim build and that her young killer was a foot taller and that the attack was 'relentless, brutal and cowardly'. William Cornick was sentenced on 3 November 2014 to detention during Her Majesty's Pleasure[5] to a minimum term of 20 years, which meant that his earliest release date could possibly be in the year 2034.

The media's interest in this case was particularly intense since Cornick came from 'responsible and caring parents and his family life was marked by love and support.'[6] This meant he could not be dismissed as the product of a hopeless familial background or a dysfunctional family: on the contrary. The media also made much of the diagnoses of the clinical psychologist Dr Diggle, and the two leading psychiatric experts who described Cornick's anger as 'premeditated and predatory' (Dr Lengua), with evidence and adjustment disorder and 'a gross lack of empathy for his victim and a degree of callousness rarely seen in clinical practice.' (Dr Kent).[7] The teenager's openly reported 'psychopathic traits' resulted in a tsunami of soul-searching amongst media commentators, including psychiatrists and parent-journalists of what it must be like to be the 'mother of a hate-filled killer'.[8]

A day after Will Cornick's sentencing and the lifting of the reporting restrictions, Mr Justice Coulson

released his reasons why he had named the teenage murderer citing the 'public interest', stating: 'In my view, naming him has a clear deterrent effect.' Noting that lifting of the section 39 order in Cornick's case was 'exceptional', the judge made the point that he had to balance Cornick's future welfare with the public's right to have important court cases freely and fully reported. The judge rejected the argument by Richard Wright QC, Will Cornick's defence barrister, that under article 2 of the European Convention on Human Rights (ECHR) his client should not be named due to the immediate threat to his life. The judge responded:

*Public interest has been huge. There are wider issues at stake, such as the safety of teachers, the possibility of American-style security measures in schools, and the dangers of 'internet loners' concocting violent fantasies on the Internet. I consider that the debate on those issues will be informed by the identification of William Cornick as the killer.*

It will be argued here that the law is unclear and possibly out-dated in respect of reporting restrictions and anonymity orders concerning children and young people, particularly in the Internet age and with different laws on juvenile reporting in Scotland under devolved legislation.

By revisiting the leading judgment by Dame Elizabeth Butler-Sloss' in the *Venables and Thompson* case in the Family Court Division in 2001,[9] when granting lifelong anonymity to the 'Bulger killers', it will be argued that lifting reporting restrictions by the courts on young persons will not protect them and their immediate families against future raw public and media outrage which tends to follow when children or teenagers have killed or referred to as 'feral youths'. The media interest will continue to find out the identities into adulthood, as was the case with 'Mary Bell' (*Re X* (1985[10] ) and Jon Venables. The Criminal Justice and Courts Bill 2014 proposes some legislative changes which include reporting restrictions for 'providers of information society services', ie internet and social networking sites.

## ***Comms. L. 6** What is the current law regarding reporting on children and young persons in England and Wales?

Section 39 of the Children and Young Persons Act 1933 (CYPA) imposes an automatic restriction on *any* identification of children and young persons under the age of 18 (England and Wales) involved in *any* court proceedings.[11] The statutory aim of the 1933 Act was to protect children's very basic physical needs, recognised children as individuals with rights and had at its forefront the rehabilitation of young offenders.[12] In spite of the archaic nature of the 1933 Act, the principle of this legislation still stands and the media cannot simply argue that the public has a right to know if a section 39 order has been properly made. Any journalist who publishes any matter in contravention with a section 39 injunction is liable on summary conviction under section 39(2) of the 1933 Act, to a maximum Level 5.[13]

When the court makes an order under section 39 it should make clear the terms of the order relating to a specific child (or children) to whom the order relates. The application is made by the prosecutor who drafts the written order as soon as the application has been made orally. A copy of the order is then made available for inspection by the media. Generally, particularly in high profile cases, the section 39 order will be communicated to those who were not present when the order was made, for example by a short notice included in the court list when the case is subsequently listed. Young victims of rape and other serious sexual offences will have automatic anonymity subject to the provisions of the Sexual Offences (Amendment) Act 1992. Young witnesses to such offences do not receive this protection and so therefore it is at the discretion of the court to make an order under section 39 CYPA 1933.

Following the fatal stabbing of the 61-year-old Spanish teacher, at Corpus Christi College in Leeds on 28 April 2014, the CPS for Yorkshire and Humberside announced two days later, on 30 April, that 'a 15 year old male has been charged with the murder of Leeds schoolteacher Ann Maguire.' The teenage defendant would first appear at Leeds Youth Court on 1 May and at Leeds Crown Court for a bail hearing on 2 May. Peter Mann, Head of the CPS Yorkshire and Humberside Complex Casework Unit, issued a detailed warning to the media:

*The death of Mrs Maguire has attracted a very considerable amount of public interest and media activity. This defendant now stands charged with an extremely serious criminal offence and has the right to a fair trial. It is extremely important that there should be no reporting, commentary or sharing of information online which could in any way prejudice these proceedings.* [14]

The reasons for restricting publication of material that identifies children and young people concerned in court proceedings go back to the original aim of the 1933 Act, not only to prevent immediate and long term distress and harm to that young person but also to aid rehabilitation of a young offender and to avoid future public identification of that young person, once released from custody. Breach of reporting restrictions imposed automatically under sections 39 or 49 CYPA are summary offences that are effectively offences of strict liability.[15] One might argue that prosecution by summary only proceedings nowadays is not sufficient and that some prosecutors are reluctant to go that extra mile. Should it not be in the public interest to prosecute those who have responsibility for publication of material that breaches section 39 CYPA? Regrettably, some Attorney Generals have not always prosecuted for such strict liability offences in the past under section 1 of the *Contempt of Court Act 1981* (CCA). Arguably the most prolific AG in this area was the recently departed Dominic Grieve QC who was rather proactive in 'contempt' proceedings against social networking culprits. Grieve left the Coalition Government at the last Cabinet reshuffle in July 2014 before this year's General Election in May 2015.

## When and how can reporting restrictions be lifted? In the public interest or naming and shaming young offenders?

When Mr Justice Coulson lifted the reporting restrictions on Ann Maguire's teenage killer after Cornick's guilty plea, the judge reasoned that 'there is a public interest in naming defendants who are convicted of murder'. In his separate written judgment a day after sentencing the young offender to a minimum of 20 years, Coulson J said that he had come down 'firmly on the side of the public interest,' stating further:

*in my view, naming [William Cornick] has a clear deterrent effect. Ill-informed commentators may scoff, but those of us involved in the criminal justice system know that deterrence will almost always be a factor in the naming of those involved in offences such as this…. That is not least because he cannot be dismissed as the product of a hopeless background or a dysfunctional family. On the contrary, for the reasons already given, he came from a loving and supportive family who have been devastated by what he did.*

Will this judgment set a new precedent thereby making a section 39 order redundant?

The general rule is that proceedings in the Youth Court are not open to the public (section 47 CYPA 1933) and although media representatives are permitted to report on proceedings, they are automatically restricted from reporting the identity or any details that would lead to the identity of any child or young person involved in the proceedings, whether as a defendant, witness or victim (s 49 CYPA 1933). As stated above, the identity of a victim, witness or defendant under the age of 18 who is concerned in proceedings in the Magistrates' (Youth) Court or Crown Court may be published *unless* the court makes an order under section 39 CYPA restricting reporting in a newspaper or in a sound or television broadcast.[16] Section 49 of the 1933 Act allows the media to publish the name and other full details of a young offender (under age 18) when anonymity can be lifted by a (youth) court 'in the public interest'.[17] The reporting restriction under section 49 CYPA is automatic so the court does not need to make an order.

Reasons for a section 49 CYPA order can be, for instance, if it is appropriate to avoid injustice to the child or young person under 18,[18] or if the court feels that reporting is in the *public interest* to dispense to any specified extent with the restrictions in relation to the young person convicted of an offence.[19] Section 49 directions (ie to dispense with anonymity) must be exercised with great care, caution and circumspection. Some young people, for example looked after children, may be particularly vulnerable if their identity is published. The court may make the order of its own motion but it must provide the parties to the proceedings an opportunity to make representations and it must take into account any representations made. The public interest may be served by partial lifting of the reporting restriction. It may be sufficient to publish the name of the defendant to satisfy the public interest ***Comms. L. 7*** but publication of a photograph, address or school should remain restricted to protect the welfare and privacy of the child or young person. As soon as a picture of a young defendant is released the media interest becomes intense, as was the case with the child killers Venables and Thompson in 1993.

Applications to lift reporting restrictions (or anonymity orders) are usually made by legal representatives of the media.[20] Over the past decade or so, the courts have sent contradictory messages in their judgments when dealing with reporting restrictions and anonymity orders on children and young persons, leaving the law rather unclear.

Observing case law it is probably not coincidental that the courts changed their view of the protective nature of the Children and Young Persons Act 1933 (CYPA) during the Conservative Government reign during the 1990s when the then Home Secretary Michael Howard's 'prison works' policy became a popular slogan and reporting restrictions on juvenile delinquents were lifted with increased popularity by the courts. At that time the age of criminal responsibility in England and Wales was still 13 protected by the doctrine of *doli incapax,* and in Scotland it was eight. The naming and shaming of juvenile offenders continued with even greater intensity under the New Labour Government from 1997 onwards, when the then Home Secretary Jack Straw issued one of his most punitive White Papers, *No More Excuses,* [21] the foundation for the Crime and Disorder Act 1998.

Not only did the Act introduce anti-social behaviour orders ('ASBOs'),[22] but also other draconian measures such as parenting orders,[23] local child curfew schemes[24] and lowering the age of criminal responsibility to 10, thereby abolishing the doctrine of *doli incapax.* Newspapers now frequently reported on 'young thugs' who 'terrorise suburbia' with full names and their details, because no reporting restrictions applied directly to ASBOs. And the courts seemed to support the Labour Government's stance on 'zero tolerance' - borrowed by Jack Straw from the Mayor of New York, Michael Bloomberg, at the time - by openly reporting on children and young persons going through the court process.

It was held in *ex p Godwin* (1992)[25] that a section 39 order - originally imposed by Mr Justice Laurie at Southwark Crown Court - was only available where the terms of section 39 (1) CYPA 1933 related to a 'relevant child'. In this case the *Daily Telegraph* had previously reported the abusing stepfather's (S) name, referring to the victim as 'an 11-year-old schoolgirl'. There was a serious risk of jigsaw identification that the child be identified in that the composite picture of S published in the papers would result in the identification of that child. The appellants who sought publication of the trial on indictment proceedings and full access of the public and the media to S's trial, Caroline Godwin, the *Daily Telegraph,* Mirror Group Newspapers and Associated Newspapers Ltd, appealed against the section 39 order under section 159 Criminal Justice Act 1988.[26] The appellants argued that the judge had wrongly interpreted section 39. They further argued that there was no evidence that the naming of the defendant (S) would lead to the identification of the child.

The Court of Appeal in *Godwin* quashed the original section 39 order in its entirety and substituted a new order with an express restriction on the identification of S, as well as the nature of the case against S. The identity of S's daughter was therefore protected not only during the trial proceedings but also by way of a lifelong anonymity order, provided additionally by section 1 Sexual Offences (Amendment) Act 1992 ('Anonymity of victims in certain offences'). Glidewell LJ allowed the appeal in *Godwin,* stating that it could not have been Parliament's intention to allow greater reporting restrictions in an adult court than in a juvenile court. This means that a section 39 order does not empower a court to prevent the naming of adult defendants in general. The CA in *Godwin* reiterated that section 39 orders, are, by their very nature, specifically related to children and young persons under 18 and that adult courts do not have greater powers to restrict publicity than youth courts. Post the incorporation of the European Convention (ECHR) into UK law by way of the Human Rights Act 1998 (from 1 October 2000), it could be argued that S's daughter in *Godwin* would also have had the right to respect for her own private life under article 8.

A general precedent to 'name and shame' young offenders was set in *Lee,* [27] where a section 39 order had been made by the Crown Court on a 14-year old boy charged with rape and robbery. After a finding of guilt and on sentencing, the judge lifted the reporting restrictions. This was followed by an emergency order (made by another judge) prohibiting identification but it was too late to prevent publication in some newspapers. Lee's lawyers made an application to the sentencing judge to reimpose the section 39 order. However, the Court of Appeal permitted the lifting of the reporting ban which meant the14-year-old could be fully reported on, including previous convictions of similar offences, because it would involve 'no real harm to the applicant, and [have] a powerful deterrent effect on his contemporaries if the applicant's name and photograph were published'. This was the first case where the 'naming and shaming' of a young offender was made public while court proceedings were still active, although Lord Bingham stressed that publicity should not be used as an 'additional punishment' - contrary to the views of successive home secretaries and ministers of justice.

After the ruling in *Lee,* anything on a young person with an ASBO could now be published, such as his or her full name, together with addresses and pictures, as well as details of the ASBO, particularly where youths were linked to more serious offending in the neighbourhood. One more recent example was the *Daily Mail's* reporting on Stephen Paul Sorton, 17, Jordan Cunlifffe, 16, and Adam Swellings,

19, who were subsequently found guilty of the murder of Garry Newlove in January 2008.[28] The ruling in *Lee* is generally cited as precedent today for the purposes of the courts' lifting a section 39 order in *any* proceedings.

## Venables and Thompson revisited

Shortly after the ruling in *Lee,* one of the most notorious cases of open court reporting on children was that of 10-year-old child killers Jon(%EBanathan) Venables and Robert Thompson. Arguably the lifting of the section 39 order by Mr Justice Morland at Preston Crown Court 'in the public interest' after the boys' conviction on 24 November 1993 had enormous legal repercussions to this day in criminal youth justice proceedings. The particularly shocking and distressing facts were widely publicised by the media.[29]

On 26 November 1993, on an application by the News Group Newspapers Ltd ('*News of the World'* and '*The Sun'* ) to lift reporting restrictions, Morland J said in his judgment in open court:

*It is necessary for me to balance the public interest in lifting reporting restrictions and the interests of the defendants. I lifted the reporting restrictions as set out in my order of 24 November. I did this because the public interest overrode the interest of the defendants following the murder and I considered that the background in respect of the two boys' family,* ****Comms. L. 8*** *lifestyle, education and the possible effect of violent videos, on the defendants' behaviour ought to be brought out into the open because there was a need for an informed public debate on crimes committed by young children. However, public interest also demands that they have a good opportunity of rehabilitation. They must have an opportunity to be brought up in the [secure] units in a way so as to facilitate their rehabilitation.* [30]

No doubt Mr Justice Coulson had read this judgment when lifting the reporting restrictions on Will Cornick.

When the - by then 11-year-old - Venables and Thompson were sentenced to be detained during Her Majesty's Pleasure at Preston (adult) Crown Court with an initial maximum tariff of eight years, and the section 39 order had been lifted by Morland J, a media frenzy ensued led by the then *Sun* Editor Kelvin Mackenzie.[31] The newspaper expressed 'public outrage' over the leniency of the 'short' custody tariff for the heinous killers and handed a petition to the then Conservative Home Secretary, Michael Howard, bearing some 280,000 signatures, in a bid to increase the time spent by both boys in custody. The successful 'naming and shaming' campaign succeeded in the fact that Mr Howard increased the boys' tariff to a minimum of 15 years in custody in July 1994 with the earliest release date of February 2008, when Venables and Thompson would be 25 years old.

A number of legal challenges followed involving the boys, the first being an application for judicial review, arguing the Home Secretary had acted *ultra vires.* [32] The House of Lords ruled it 'unlawful' for a Government minister to increase the sentences for Venables and Thompson (V and T). Criticising Michael Howard's intervention and interference with judicial decisions, Lord Donaldson referred to the increased tariff as 'institutionalised vengeance … [by] a politician playing to the gallery'.[33] This resulted in a resentencing of V and T, whereby Lord Chief Justice Lord Taylor of Gosforth changed their sentence to a minimum tariff of 10 years.

The increase of the sentencing term by a politician (Home Secretary Michael Howard) was further criticised by the European Court of Human Rights (ECtHR) in *V v UK; T v UK* (1999[34] ). Conversely, the Strasbourg Court also commented that national Parliaments can set minimum and maximum terms for individual categories of crime within their own legislation. The Strasbourg ruling was swiftly followed by the UK Parliament's enacting the Youth Justice and Criminal Evidence Act 1999 (YJCEA). Apart from new rules on reporting restrictions, one positive outcome was the complete reform of the treatment of young defendants in the court process and that they should not be exposed to intimidation, humiliation or distress in court proceedings.[35] Section 48 and Schedule 2 of the 1999 Act amend the Children and Young Persons Act 1933 by allowing magistrates or crown court judge to lift or amend reporting restrictions on juvenile offenders if this was seen 'in the public interest'.[36] The case of *Venables and Thompson v News Group Newspapers* [2001][37] is still the most relevant today regarding lifelong anonymity orders.

In 2000, when Jon Venables and Robert Thompson turned 18, Lord Woolf LJC issued a direction to be executed by the then Home Secretary David Blunckett[38] for the immediate release of the young adults from their secure units and not to be transferred to adult prison. Once again, this caused

outrage with the popular press, now seeking to openly report on the Bulger killers.

In the ensuing action in the Family Court Division Jon Venables and his father Neil as well as Robert Thompson and his parents sought injunctions restraining the defendants, News Group Newspapers Ltd (*News of the World; the Sun* ), Associated Newspapers Ltd (*the Daily Mail; Mail on Sunday* ) and Mirror Group Newspapers (MGN Ltd) (*Daily* and *Sunday Mirror* ) from publishing the addresses of schools or any details which could lead to information about the boys' whereabouts, care or treatment of the claimants since 18 February 1993 or in the future; copying any depiction or painting or drawing or photograph or film made or taken since 18 February 1993; and publishing or copying for the purpose of disseminating any information about the claimants, since 18 February 1993 where the claimants had attended or been kept or might in the future attend or be kept. The application for lifelong anonymity included residential care workers, Home Office and Prison Service staff, other pupils and young offenders at the custodial establishments and any future probation staff who had come into contact with V and T since their first arrest and throughout secure custody.

*Brian Higgs QC* and *Julian Nutter* for Robert Thompson argued that there would be a real risk to the claimant of being murdered and that the court should exercise its inherent jurisdiction to grant an injunction ‘against the world’ (*contra mundum* ), restraining publication of any information that might lead to his identification and whereabouts, including historical matters such as details of his medical and other treatment during detention. Counsel for both applicants also reminded the court that both Venables and Thompson had the right to such unprecedented anonymity for protective purposes arising from the Home Office's duty of care to provide safe custody, treatment and rehabilitation of the young offenders. Additionally there were the duties of confidence owed by the Home Office, the boys' carers, doctors, custodians and co-detainees and the court's duty to take steps to prevent crime and protect the administration of justice.[39]

Counsel for Venables, Edward Fitzgerald QC and Ben Emmerson QC, additionally argued that article 2 ECHR and section 6 Human Rights Act 1998 (HRA) would overwhelmingly tip the scales in favour of an injunction, restraining publication of sensitive information and a lifelong anonymity *contra mundum* order, in that there was a positive obligation to protect the two young individuals against a violation of Convention rights by another private individual.

Desmond Browne QC and Adam Wolanski for Rupert Murdoch's New Group Newspapers (the defendants) argued that the right to freedom of expression under article 10 of the Convention embraced both the media's right to impart information and ideas and the public's right to receive it.[40] Counsel for the defendant newspapers reminded the court that in making such *contra mundum* injunction the court must be satisfied that the restrictions are necessary on the specific facts of each case.[41] Counsel further reminded the court of the judgment in *Lee* regarding Crown Court trials of juveniles and that there has to be a good reason for making an order prohibiting identification.

The court in *Venables and Thompson* [2001] then turned to the evidence. Counsel for Thompson presented a lengthy statement summarising the behaviour of the press from the lifting of reporting restrictions in November 1993 to November 2000 (both boys' release date from their respective secure units) - reiterating that past and present reporting behaviour posed real risks to the safety of Robert Thompson and is immediate family (and that of V). Brian Higgs QC exhibited a recent article in the *Daily Mail* of 2 November 2000, reporting that vigilantes in North Wales threatened to burn down the home of a woman wrongly suspected ***Comms. L. 9*** of being the mother of one of the claimants. Mrs Thompson, Robert's mother, had also made a statement about the impact on her other children and herself. They had changed their names and moved home on eight occasions.

Both applicants' counsel provided extensive press coverage to assist the court in making the *contra mundum* order, with the following newspaper cuttings being particularly relevant:

The *Sun,* 27 January 1994: ‘An uncle of the victim said … “if the judge's recommendation is followed, then the streets won't be safe in eight years time”’.

The *Sun,* 26 May 1994: ‘The mother of the victim said … “They aren't safe to walk the streets. We must not give them the chance to do it again.”’

The *Sunday Mirror,* 31 October 1999: In an article titled ‘Society must be protected from this pair of monsters’, Denise Bulger said: ‘I will do everything in my power to keep them caged and I hope that Jack Straw will back me up. If they ever do get out I have sworn to go looking for them. When I find them they will wish they were dead. I will make sure they know what it is to really suffer … wherever they go mothers like me will be after their blood.’

The *Sunday Mirror,* 27 August 2000: In an article titled 'Throw away the key - if Venables and Thompson returned to Liverpool "they would be lynched--and nobody would shed a tear. The pair of them should stay inside for the rest of their natural lives. They took a baby's life. So why should they be allowed a life of their own?"'

The *Guardian,* 31 October 2000: In an article titled 'Bulger father vows to hunt killers' Ralph Bulger was reported as having said on GMTV: 'Something's got to be done about it. We can't just stop now, and let these two little animals get released … I will do all I can to try my best to hunt them down.' Dee Warner, of Mama (a victim's support group, Mothers Against Murder and Aggression), was also quoted: 'you could say you shouldn't take the law into your own hands but if the law worked for the victims rather than the criminals there wouldn't be these vigilantes attacks. I couldn't advocate anyone being murdered but I haven't had a child murdered so I am not in a position to say how I would feel.'

The *Daily Mail,* 2 November 2000: In an article titled 'Bulger vigilantes are terrorising my family' it was reported that vigilantes had threatened to burn down the home of a woman they wrongly suspect is the mother of one of James Bulger's killers.

The *Daily Mail,* Friday, 27 October 2000: '…like Mary Bell … they are likely to be constantly looking over their shoulders in fear they have been tracked down by vigilantes.'

The *Daily Mail,* Friday, 27 October 2000: 'Susan [Venables] had remarried but her second husband couldn't cope as their home was besieged by angry people wanting to hang her son.'[42]

Granting the lifelong anonymity *contra mundum* injunctions on V and T, Butler-Sloss P ruled that there was a real possibility that Venables and Thompson would be in danger of revenge attacks if their identities were disclosed, making the order 'an exceptional one'. She said that it was apparent from the evidence before the court that a level of hostility and desire for revenge existed amongst certain members of the public, fuelled by the media. Furthermore, that the court was under a positive duty to operate to protect individuals from the criminal acts of others citing the ruling in *Osman* [1999], [43] in that, in exceptional cases, the court had jurisdiction to widen the scope of the protection of confidentiality of information, even to the extent of placing restrictions on the press, where if no restrictions were imposed there was a likelihood that the person seeking confidentiality would suffer serious physical injury or even death and no other means of protection was available. For this reason the lifelong reporting restrictions placed on the media to publish fell within the exceptions established under article 10(2) ECHR.

## Identification of children and young persons in Scotland

To complicate matters for the courts and the media reporting restrictions differ in Scotland from those in England whereby there are generally no reporting restrictions for young persons over the age of 16. [44] Similar to the section 39 order in English and Welsh law, a section 46 order of the Children and Young Persons (Scotand) Act 1937 prohibits the Scottish media from naming a young person under 16 and any persons or information leading to the identification of that child under the jigsaw identification principle. Section 52 of the Criminal Justice and Licensing (Scotland) Act 2010 (which came into force on 28 March 2011) introduced a new rule to prevent any child under 12 being prosecuted in the criminal courts. This means that the age of 12 is now considered a 'minimum age of prosecution' rather than a 'minimum age of criminal responsibility' in Scotland. In Northern Ireland, the current age of criminal responsibility is 10, as in England and Wales, though there is a Bill before the Northern Ireland Assembly recommending raising the age to 12.

Reporting restrictions for young persons under the age of 16 can be lifted under section 47 Criminal Procedure (Scotland) Act 1995 if a judge (or sherriff) believes that the matter is in the public interest; in certain high-profile cases this has to be confirmed by the First Minister. The Sudden Deaths Inquiry (Scotland) Act 1976 states that no one under the age of 17 can be named in fatal accident inquiries. In Scotland the Procurator Fiscal is the public official responsible for the investigation of all sudden suspicious and unexplained deaths.

The Aberdeen-based *Press and Journal* was charged with contempt of court (though later acquitted on appeal) for reporting on (then) 15-year-old Luke Mitchell, who had been arrested by the police, suspected of the murder of his 14-year-old girlfriend Jodi Jones in April 2003. Mitchell was jailed for life and ordered to serve at least 20 years for the killing of his girlfriend Jodi in Dalkeith, Midlothian.

This makes the law on reporting on juveniles a complicated matter under devolution because it would

be fairly easy to read a Scottish newspaper online, reporting on an ‘English youth’ who is under 18 - unless an *inderdict* has been sought from the Scottish High Court in Edinburgh.

In December 1997, the then Labour Home Secretary Jack Straw sought an injunction from the High Court in London, preventing the *Daily Mirror* and other newspapers from revealing his name which would be linked by way of jigsaw identification to that of his teenage son William who had been arrested on suspicions of supplying cannabis. The court ruling was overturned because the identities of both the Home Secretary and his son had been revealed in several Scottish and non-British newspapers (in print and online). The papers had an anonymous tip-off ***Comms. L. 10*** from a journalist who had gone to a London pub where she had met the minister's son, had struck up a conversation with the then 17-year-old William and allegedly she had been offered a small amount of cannabis resin for £10 by the teenager. The teenager received a police caution for trying to sell cannabis and the journalist involved, Dawn Alford, was herself questioned by police for possession of the drug - much to the outrage of her *Daily Mail* editor. Jack Straw's lawyers had simply not asked the Scottish High Court for an interdict (injunction) to achieve at least a UK-wide media ban.

## Is a child's right to privacy absolute: how has the common law developed since the ruling in *Lee* and the introduction of the Human Rights Act 1998?

The freedom of a child to grow up and make mistakes, to act badly and not to have this permanently recorded, is an essential human right recorded in the UN Convention on the Rights of a Child 1989.[45] The 1989 Convention was the first legally binding international instrument to incorporate the full range of human rights - civil, cultural, economic, political and social. Article 40 of the UN Convention guarantees the right of a child defendant ‘to have his or her privacy fully respected at all stages of the proceedings’. Arguably it is up to the individual signatory countries to interpret the UN Convention in line with domestic legislation on the treatment of and reporting on children. The UK clearly adopted a policy of ‘naming and shaming’ young offenders as an additional sanction, whereas it is standard practice in the Netherlands and Germany for the media to suppress the names of young offenders largely until the age of 21.

Following the rulings in *Lee* [1993] a number of court judgments ensued, sending mixed messages to both media and defence representatives who were acting on behalf of children and young persons regarding reporting restrictions. In *R v Winchester Crown Court ex p B (A Minor)* (1999),[46] B, aged 14, applied for judicial review of the trial judge's decision to discharge reporting restrictions after sentence and to lift the section 39 order, which had prohibited B's identification.[47] The judge had reasoned that reporting restrictions were no longer necessary on the basis that ‘open justice’ was ‘essential in a civilised society’. Judges Simon Brown LJ and Astill J in the Administrative Court dismissed B's application and reiterated that it was well within the Crown Court's powers to discharge a section 39 order in relation to proceedings on indictment after conviction (relying on the judgment in *R v Central Criminal Court ex parte Crook* (1995)[48] ).

From October 2000 onwards, once the Human Rights Act 1998 (HRA) came into force, applications from the media to openly report on under-18-year-old young offenders increased, citing article 10 (1) ECHR ‘freedom of expression’ and ‘public interest’ as the main reasons to lift reporting restrictions before the courts. The relationship between articles 8 and 10 ECHR was considered by the House of Lords in *Re S (A Child) (Identification: Restrictions on Publication)* (2004),[49] where the court did not consider that there was scope for extending the restrictions on freedom of expression beyond what was provided by statute as construed in *Godwin.* It is fair to say that there has been considerable criticism of the use of the ‘open justice’ principle to justify the naming of the parties in the *Re S (A Child)* case, where it is worth noting that all the facts could have been reported except for the identity of the parties.

In *Re Gazette Media Co Ltd* (2005)[50] , the CA considered the scope of a section 39 order where two men, S and L, were being prosecuted (and eventually convicted) for offences contrary to section 1 of the Protection of Children Act 1978 and for conspiracy to rape. S was charged with offences of making or distributing indecent photographs of his daughter and with the offence of conspiracy to rape. L was charged with conspiracy to rape and also with offences of making and distributing indecent photographs of a child. In this case, the Middlesborough Recorder had made the section 39 order by stating:

*… no reporting of any proceedings in respect of R v S and L. No identification of the defendant S by name or otherwise the nature of the case against him the identification of the alleged victim [S's*

*daughter], her age place of abode or any circumstances that may lead to her identification in connection with these proceedings.* [51]

Solicitors acting for Gazette Media wrote to the Recorder in the proceedings complaining about the wording of the section 39 order, citing *Godwin* : that - as a matter of law - a section 39 order did not empower a court to prevent the names of adult defendants from being published. Maurice Kay LJ in *Re Gazette* remarked that it was clear beyond doubt that the order made by the Recorder 'flew in the face of *Godwin* ' in that a section 39 order could not add specifics beyond the words of section 39(1) CYPA. Therefore, a departure from *Godwin* could not be justified. It was not enough to delete the restriction against the reporting of any proceedings in relation to the defendants and the victim; it was also necessary to delete the express restriction on the identification of S and L and the nature of the case against them.

The additional problem in *Re Gazette* was that the restriction provided by section 1 of the Sexual Offences (Amendment) Act 1992 ('Anonymity of victims in certain offences') was not sufficient to protect the identity of the child victim during the proceedings and could be interpreted by the media as 'freedom to report' under article 10 ECHR. While conspiracy to rape was an offence to which section 1 of the 1992 Act applied, other linked offences were not. The order was quashed in its entirety and a new order in conventional *Godwin* terms was substituted. Additionally, it was submitted by the Attorney General that, while a total embargo on the reporting of the proceedings remained unlawful, the prohibition of the naming of a defendant - so as to protect the interests of a child - was now possible within the remits of the human rights provision of Article 8 ECHR and section 3 HRA1998, which requires primary legislation to be compatible with Convention rights.

Following the ruling in *Lee* in line with both Conservative and Labour Governments' 'prison works' and 'no more excuses' policies, the courts would regularly lift reporting restrictions on 'young thugs' who terrorised suburbia. In *McKerry v Teesdale and Wear Valley Justices* (2000),[52] a 16-year-old boy, with a long record of offending, had pleaded guilty at the Teeside Youth Court to a 'TWOCing' offence.[53] Upon request by a local newspaper, the magistrates lifted the reporting restrictions and permitted the teenager's identity to be revealed under section 49 of the 1933 Act. Reasons given for the lifting of the anonymity order were that the young offender posed a serious danger to the public and had shown a complete disregard for the law (also citing *Lee).* The Divisional Court held that the magistrates' reasons were completely acceptable because 'no doubt the justices had in mind that members of the public, if they knew the appellant's name, would enjoy a measure of protection if they had cause to encounter him'. The court further added that the power to dispense with ***Comms. L. 11*** anonymity 'must be exercised with very great circumspection' and that the public interest criterion must be met.

In the conjoined cases of *R (on the application of T) v St Albans Crown Court; Chief Constable of Surrey v JHG* (2002),[54] it was held that antisocial behaviour orders (ASBOs) were very much in the public interest and that reporting restrictions would not be granted. In the first case, the court had refused to grant anonymity under section 39 CYPA on an 11-year-old boy (T) in respect of whom an ASBO under section 1 CDA 1998 had been made. T applied for judicial review of that decision ('case stated'). In the second case, the court had granted anonymity to 17-year-old twins (J and D) when making an ASBO on each of the young delinquents. The Chief Constable of Surrey appealed that decision. The allegations against T included verbal abuse, minor criminal damage and two assaults, and those against J and D included assault, nuisance, trespass, criminal damage, threatening behaviour and intimidation.

T, J and D submitted that, given that ASBOs were civil in character, they were less serious than many of the offences in respect of which section 39 applications were commonly refused in Crown Court proceedings. T submitted that the court had failed to consider relevant matters including his age and improvement in his behaviour, and in J and D's case, the Chief Constable submitted that the court had considered irrelevant matters, including the impact on members of J and D's families.

Reaffirming the ruling in *Lee,* the court applied the principle of open reporting on persistent young offenders (citing *R v Winchester Crown Court Ex p. B (A Minor)* [1999]).[55] The court applied the *Lee* -balancing exercise: that of the public interest test in disclosure of the name versus the welfare of the young person in question. While the court did not have to refer to every factor that might weigh in favour of a section 39 direction, it was necessary for it to briefly summarise the principal factors weighing in favour, even if its decision was that those factors were outweighed by the public interest. The public interest test weighed in favour of disclosure in T and JHG, where it could be reported that the individuals were on an ASBO and the neighbourhood could learn about the orders, assisting the police in making the orders effective to prevent future antisocial behaviour.

The ‘J K Rowling case (*re David Murray* [56] ) concerned the issue whether parents can validly waive their child's right to privacy. In this case the CA ruled that a child's right to privacy is distinct from that of its parents. The *Murray* case concerned the publication of a photograph of J K Rowling's son, David Murray, in the *Sunday Express* magazine in April 2005, accompanied by an article on the Joanne Rowling's attitude to motherhood. The child, aged 19 months at the time, was photographed in a buggy as the famous Harry Potter author was strolling in a public street in Edinburgh. The photo had been taken covertly in November 2004 with a long lens by a photographer from Big Pictures, a celebrity photo agency which licenses its photos in the UK and internationally.

The CA stated that the circumstances in which a child has a legitimate expectation of privacy are wider than those in which an adult has such expectations: adults can expect a greater degree of intrusion as part of their daily lives whilst a little child may be unaware of media hype. Citing the ‘legitimate expectation’ test in *Campbell,* Lord Hope questioned:

*… what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity?* [57]

Returning to the present case of the Leeds killer Will Cornick, an application was made by Guardian News and Media, Associated Newspapers, News Group Newspapers, the Press Association and Telegraph Media Group for the judge to lift an order he made at the start of legal proceedings in April 2014. The order, made under section 39 CYPA banned identification of the defendant, Cornick, as well as all witnesses who were under 18, such as the pupils at the Corpus Christi Catholic College in Leeds who had witnessed the tragic stabbing of Spanish teacher Ann Maguire. The order was to last until their 18th birthday.

The *Guardian* and legal representatives from other newspapers argued that this case was of ‘exceptional public interest’, citing article 10 (1) ECHR - the right to freedom of expression - and section 12 (4) HRA 1998 (‘freedom of expression’ - and ‘the public interest test’). The media also pointed out that as Cornick had already admitted the murder there was no danger of him being identified in the context of a high-profile trial, only to be subsequently absolved of all responsibility. The *Guardian* lawyers argued that identification could serve as a deterrent to others - later picked up by Mr Justice Coulson in his justification to lift the section 39 order.

The application was opposed by Richard Wright QC, defending Cornick, who said naming his client would be ‘wholly contrary’ to the teenager's welfare. Wright told the court that the team responsible for Cornick's care did not want his name to be made public as it ‘would impede his management and treatment’. The boy had already been moved from one institution after other inmates worked out who he was, and there was a substantial risk he would be attacked should his identity be widely known. The barrister told Leeds Crown Court that Cornick was already on around-the-clock suicide watch and was being held in a complex needs unit for vulnerable prisoners. He also argued that Cornick's parents should be protected ‘because of the central role they will inevitably play in his treatment and rehabilitation in custody’. The lawyer also told the court that William's father, Ian Cornick, had written separately to the court to say the press intrusion had made his family ill. Cornick's mother, Michelle, said she had visited her son three to four times each week while he was on remand and hoped to continue regular visits ‘without the fear of being followed by the press’.[58]

Prosecutor Paul Greaney QC had taken no view on whether or not the section 39 order should be lifted. Ruling in favour of the media, Mr Justice Coulson said that he did not agree that Cornick would be at greater risk of suicide as a result of being named, given that he was already under constant watch. ‘It does not seem to me that the risk increases if he is identified as the killer of Ann Maguire,’ said the judge. Mr Justice Coulson told the court that there had been a ‘fine balance’ when considering whether Will Cornick should be identified, but decided in favour of the principle of open justice. Though he accepted that other prisoners may want to harm the boy, the defence had not demonstrated there was a ‘very real’ threat to his life. The judge agreed with the media that ‘there's a potential deterrent effect’ in naming him, ‘but I do not put it as high as the general interest in open justice’. He said: ‘There is a public interest in open justice. There is a public interest in naming defendants who are convicted of murder.’ The judge said he gave only ‘a little bit’ of weight to the media's argument that Cornick had already been widely named on the Internet and had been legally identified by the *Sun* before he was charged.

A section 39 order was designed to protect a perpetrator, not their family, said the judge, who paid tribute to Cornick's mother and ***Comms. L. 12*** father for supporting their son. They were the first parents who had ever asked for permission to sit in the dock with their child in 10 and a half years as

a judge, he added, saying: ‘They are plainly dedicated to [their son's] rehabilitation. They are more dedicated to his rehabilitation than he may be.’ This was unlikely to change as a result of reporting restrictions being lifted, he ruled, adding: ‘Ultimately his rehabilitation has to come from himself’.

Where the welfare and interest of a child is concerned, the Strasbourg human rights court has sought to protect the privacy of a child under article 8 and any court can now make an order prohibiting the identification of the child. However, human rights jurisprudence equally states that this power must be used carefully, balancing other interests protected by articles 6 and 10 of the Convention. It is then regarded as a fundamental human right not to disseminate public information concerning a child - such as family court or youth justice proceedings - which may impact on the future behaviour and development of a child. It is for this reason that ‘public’ proceedings are usually held in private where children are concerned and that the media are prevented from commercialising childhood or child offences.

## Law Reform: Criminal Justice and Courts Bill 2014

As we have seen, the law is confusing. How should representatives for the media, for instance, interpret section 39 of the 1933 Act and additionally section 45 of the Youth Justice and Criminal Evidence Act 1999**,** plus varying judgments in common law? The question remains whether open disclosure on juvenile offenders is always in the interest of justice? The courts should balance a child's right to privacy against the public interest under section 12(4) HRA. Following the lifelong anonymity order by way of a permanent injunction on Jon Venables and Robert Thompson in 2001, this was never going to appease those who believed the public had an absolute right to know the whereabouts of the Jamie Bulger killers - such as former editor of the *Sun,* Kelvin Mackenzie, who appeared to make it his quest to name and shame the Bulger killers from the day they received their ‘lenient’ sentence.

In 2010, Jon Venables (then 27) was returned to prison for a new set of offences. James Bulger's mother, Denise Fergus, encouraged by a number of ‘red top’ newspapers demanded that Venables' identity be disclosed and the *contra mundum* order be lifted. The then Labour Justice Secretary Jack Straw reiterated the lifelong anonymity order on V and T made nearly 10 years earlier by Dame Elizabeth Butler-Sloss, by refusing to reveal Jon Venables' identity. V had pleaded guilty by video link at the Old Bailey on 23 July 2010, after admitting downloading and distributing indecent images of children. Mr Justice Bean, sitting at the Old Bailey, sentenced Venables to two year's imprisonment and said it would be ‘wrong’ for Venables' sentence to be increased because of his previous murder conviction; thought the judge partially lifted reporting restrictions to reveal Venables had been living in Cheshire at the time of the offences and that the case was dealt with by Cheshire Police and the Cheshire Probation Service.[59]

The Criminal Justice and Courts Bill 2014[60] deals, inter alia, with reporting restrictions and lifetime reporting restrictions in criminal proceedings for witnesses and victims under 18, amending section 45 of the Youth Justice and Criminal Evidence Act 1999 (‘power to restrict reporting of criminal proceeding involving persons under 18’).[61] A new inserted section 45A proposes the following amendment:

*45A Power to restrict reporting of criminal proceedings for lifetime of witnesses and victims under 18 [applying in]*

*(a) any criminal proceedings in any court (other than a service court) in England and Wales, and*

*(b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.*

*(2) The court may make a direction (“a reporting direction”) that no matter relating to a person mentioned in subsection (3) shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as being concerned in the proceedings.*

*(3) A reporting direction may be made only in respect of a person who is under the age of 18 when the proceedings commence and who is --*

*(a) a witness, other than an accused, in the proceedings;*

*(b) a person against whom the offence, which is the subject of the proceedings, is alleged to have been committed.*

*For the purposes of subsection (2), matters relating to a person in respect of whom the reporting direction is made include -*

*(a) the person's name,*

*(b) the person's address,*

*(c) the identity of any school or other educational establishment attended by the person,*

*(d) the identity of any place of work of the person, and*

*(e) any still or moving picture of the person.*

*(5) The court may make a reporting direction in respect of a person only if it is satisfied that --*

*(a) the quality of any evidence given by the person, or*

*(b) the level of co-operation given by the person to any party to the proceedings in connection with that party's preparation of its case, is likely to be diminished by reason of fear or distress on the part of the person in connection with being identified by members of the public as a person concerned in the proceedings.*

Such an order would be valid in relation to publication in England and Wales, Scotland and Northern Ireland - which would alleviate the present confusion that exists in English versus Scots law in relation to reporting on juveniles (ie 16 in Scotland and 18 in England and Wales).

Furthermore, the Bill proposes amended changes to section 39 of the *Children and Young Persons Act 1933* ('power to prohibit publication of certain matter in newspapers'). The amendment proposes to deleted the wording: 'no newspaper report of the proceedings shall reveal or include any particulars calculated to lead to the identification,' - to be substituted by

*any particulars calculated to lead to the identification of a child or young person so concerned in the proceedings.*

***Comms. L. 13*** And 'publication' will now include wording fit for the internet age:

*any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme*[62] *shall be taken to be so addressed), but does not include a document prepared for use in particular legal proceedings.*

And the heading 'in the newspapers' will be omitted, substituted by:

*39A Prohibition on publication of certain matters: providers of information society services Schedule 1A makes special provision in connection with the operation of section 39 in relation to persons providing information society services.* [63]

## Conclusion

The HRA and ECHR have enabled the law of confidence to develop to protect a child's right to life (under art 2 ECHR) and his or her right not to be subjected to torture or to inhuman or degrading treatment or punishment (under art 3 ECHR) which would arguably include anonymity orders on reporting on young criminals under the age of 18. By naming Will Cornick, the 16-year-old Leeds killer, he will now forever be exposed to danger from other prisoners and will, just like the Jamie Bulger killers (Venables and Thompson) remain in the public eye in spite of their *contra mundum* injunction. Cornick's innocent and blameless family (including his siblings) will have to go into hiding and most likely assume new identities in order to be safe from media intrusion. How could the public interest really have been served by knowing Cornick's identity? It would have been easier, looking back at the lifting of reporting restrictions on Venables and Thompson in 1993, to pertain their anonymity until young adulthood (say age 21), at which point the judge could have revisited the section 39 order. Will Cornick would then have had a realistic chance of rehabilitation, as was the intention of the 1933 Act.

Arguably, it is then absolutely right and in the interest of justice that section 39 orders are strictly applied and upheld by the courts; not only involving child killers but also post-release in order to

uphold the rehabilitative principle enshrined in the Children and Young Persons Act 1933. To date the Attorney General has not yet advanced any public interest argument against the granting of protective lifelong injunctions, as mentioned by Lord Woolf CJ in *A v B (a company)* (2002).[64]

Will the proposed amendments to the Criminal Justice and Courts Bill suffice to see this issue addressed? Given that one can find any name on the internet or via social networking sites, there needs to be a wider social and legislative debate whether anonymity orders are realistic in the age of the world-wide-web. And if a section 39 order is breached should the current 'contempt' proceedings not be dealt with as indictable offences at crown court level by the Attorney General? The time has come for fresh guidance which would take account of developments in common law over the past two decades in juvenile proceedings. The new proposed legislation should balance the open justice principle with the protection of young criminals with a possible right to anonymity until the age of 21, so that they are not subjected to additional punishment by media. Given that increasingly in terrorism-related cases, the public (and often the media) are excluded, why can Parliament not issue new and updated guidance in statutory format which restricts media reporting of legal proceedings for children and young persons under the age of 18?

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Source: *Daily Mail Online* headline and article written by Chris Brooke, 6 November 2014.

Comms. L. 2015, 20(1), 5-14

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1. Section 39 *Children and Young Persons Act 193* 3, 'Power to prohibit publication of certain matter in newspapers'.

2. See: Sentencing remarks by Mr Justice Coulson in *R v William Cornick,* Leeds Crown Court, 3 November 2014 at: http://www.judiciary.gov.uk/wp-content/uploads/2014/11/r-v-cornick.pdf.

3. Source: 'The unbearable horror of being the mother of a hate-filled killer,' by Sarah Vine for the *Daily Ma* il, 5 November 2014.

4. Source: 'British schoolboy William Cornick jailed for stabbing teacher Ann Maguire to death in class', by Michael Holden for the *Sydney Morning Herald,* 4 November 2014.

5. Pursuant to s. 53 (1) *Children and Young Persons Act 1933.*

6. See n 3.

7. See n 3.

8. Source: Sarah Vine in n 4.

9. *Venables and Thompson v News Group Newspapers Ltd* [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908; [2001] EMLR 10; [2001] FLR 791; [2001] UKHRR 628; (2001) *Times,* 16 January; (2001) *Independent,* 17 January; (2001) *Daily Telegraph,* 16 January (Fam Div) (also cited as '*Thompson and Venables v NGN'* ).

10. *X CC v A* [1985] 1 All ER 53 (sub nom 'Re X (a minor) (wardship injunction - a woman formerly known as 'Mary Bell'). Mary Bell was convicted of manslaughter by diminished responsibility on 17 December 1968 at Newcastle Assizes for killing two boys aged three and four. After conviction, her name was released to the public, resulting in permanent media interest and applications to lift reporting restrictions. Mary (X) spent 12 years in secure units, young offender institutions and subsequently prison, during which time her mother had repeatedly sold stories about her to the press. Bell was released in 1980 and given a new identity. There were three major periods when X's identity and whereabouts were discovered by the media. The first was after she formed a settled relationship with a man (the second defendant in *Re X* ), and gave birth to Y on 25 May 1984. Child Y was made a ward of court five days later, granted anonymity until her 18th birthday. In July 1984, the *News of the World* became aware of the birth and an injunction was granted by Balcombe J in *Re X* (1985). When Y reached 18 both X and Y applied to the Family Court Division to have their lifelong anonymity extended. Granting the order on 21 May 2003, Dame Elizabeth Butler-Sloss P made an injunctive order preventing the disclosure of their identities, addresses and other information that might identify them for life (see: *Re X (a woman formerly known as Mary Bell) and others v O'Brien and others* [2003] EWHC 1101).

11. The 1933 Act consolidated the Children and Young Persons Act 1932. In the latter Act the equivalent provisions to sections 39 and 49 of the Act of 1933 were all contained in section 81.

12. See: Part III Children and Young Persons Act 1933 'Protection of Children and Young Persons in relation to Criminal and Summary Proceedings'. Section 44 states specifically that the welfare of the child must be a consideration.

13. Upper limits for a Level 5 fine were abolished under s 85 *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (£5000 or more).

14. Source: 'Death of Ann Maguire: Youth Charged with Murder', CPS Press Release on 30 April 2014 at: http://www.cps.gov.uk/yorkshire_humberside/cps_yorkshire_and_humberside_news/death_of_ann_maguire

15. Under ss 39(2) and 49 (9) CYPA 1933.

16. Section 39 CYPA and s 57(4) *Children and Young Persons Act 1963.*

17. Section 49 CYPA also applies to appeals from the Youth Court, including an appeal by way of case stated; proceedings in the Magistrates' Court for breach, revocation or amendment of a Youth Rehabilitation Order and appeals against such proceedings under s 49(2) CYPA 1933. The Crown Court must hear an appeal from the Youth Court in public even though reporting restrictions apply automatically. However, it may order such a hearing to be in private (CPR 63.7) and prosecutors should usually make an application for a private hearing unless the appeal concerns a matter of law of general importance.

18. Section 49(5)(a) CYPA 1933.

19. Section 49(4A).

20. Representatives of the media must comply with r 16 CPR by giving notice of the application to all the parties and providing an explanation as to why the reporting restriction should be varied or removed.

21. See: Jack Straw's White Paper, *No More Excuses: A new approach to tackling youth crime in England and Wales,* Home Office (1997) November 1997, CM 3809.

22. s. 1 Crime and Disorder Act 1998 (CDA); s. 19 for Scotland.

23. s. 8 CDA.

24. s. 14 CDA

25. *R v Southwark Crown Court ex parte Godwin and Others* [1992] QB 190 (CA (Civ Div); [1991] 3 WLR 689 at p.196.

26. Section 159 'Orders restricting or preventing reports or restricting public access'. This section permits a person aggrieved to appeal to the Court of Appeal against 'any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings'.

27. *R v Lee (Anthony William) (a Minor)* [1993] 1 WLR 103 (CA (Crim Div)).

28. Source: 'The three young thugs brought fear to suburbia', by Liz Hull and Rebecca Camber, *Daily Mail,* 17 January 2008.

29. For a more detailed discussion see: U. Smartt (2014) *Media and Entertainment Law,* 2nd ed pp 265- 68. Oxford, Routledge.

30. Cited in *Venables and Thompson v News Group Newspapers Ltd and Others* [2001] 2 WLR 1038 at 441.

31. Editor of the *Sun* 1981 - 1994. On 8 March 2010, Mackenzie urged the then Labour Justice Secretary, Jack Straw, to lift the lifelong anonymity order on Jon Venables (27) after he had been returned to prison.

32. *Secretary of State for the Home Department, ex parte Venables; R v Secretary of State for the Home Department, ex parte Thompson* [1998] AC 407.

33. Source: *Times,* 10 October 1995.

34. (1999) 30 EHRR 121 (ECtHR).

35. Lord Woolf LCJ reinforced the new legislation by a Practice Direction, stating that *'… all possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should, so far as necessary, be adapted to meet those ends.'* Source: Practice Direction by the Lord Chief Justice of England and Wales (Woolf LCJ): Trial of Children and Young Persons in the Crown Court of 16 February 2000.

36. Schedule 2, YJCEA 1999 contains amendments relating to reporting restrictions under the following: Children and Young Persons Act 1933; Sexual Offences (Amendment) Act 1976; SI 1978/460 Sexual Offences (Northern Ireland) Order 1978; Sexual Offences (Amendment) Act 1992; SI 1994/2795 Criminal Justice (Northern Ireland) Order 1994.

37. [2001] Fam Div 430 [Dame Elizabeth Butler-Sloss P].

38. Home Secretary from 2001-04.

39. See also: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191.

40. See also: *R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115 at 137.

41. See also: *Sunday Times v United Kingdom* (1979) 2 EHRR 245.

42. [2001] Fam 430 at 457 (Dame Elizabeth Butler-Sloss P).

43. See: *Osman v United Kingdom* (23452/94) [1999] 1 FLR 193.

44. Section 46 Children and Young Persons (Scotland) Act 1937.

45. UN Convention on the Rights of the Child. Document A/RES/44/25 of 12 December 1989.

46. [1999] 1 WLR 788.

47. B had been sentenced to three years' detention for an offence contrary to s 1 Criminal Attempts Act 1981.

48. [1995] 1 WLR 139 (CA (Crim Div)).

49. [2004] UKHL 47 (HL).

50. *Gazette Media Company Ltd & Ors, R (on the application of) v Teeside Crown Court* [2005] EWCA Crim 1983 (CA (Crim Div).

51. Ibid, at 138.

52. [2000] 164 JP 355 (DC).

53. Contrary to s 12 Theft Act 1968 (‘taking a vehicle without the owner's consent’).

54. [2002] EWHC 1129 (Admin) of 20 May 2002 (QBD (Admin).

55. [1999] 1 WLR 788.

56. *Murray v Express Newspapers and others* [2008] EWCA Civ 446 (CA) (also known as: ‘Murray v Big Pictures’)

57. *Campbell v MGN Ltd* [2004] 2 AC 457 (HL).

58. Source: ‘Lawyer for Ann Maguire's killer says rules on anonymity must be overhauled’, interview with *Guardian* reporter Jamie Doward on 8 November 2014.

59. Source: ‘Bulger killer Venables jailed over child abuse images’, BBC News online, 23 July 2010.

60. Government Bill. Sponsors: Chris Grayling, Minister for Justice, and Lord Faulks, Ministry of Justice. Final stage of the Bill debated in House of Lords on 21 January 2015. A date for Royal Ascent has not been set. This was the final stage of the Bill's passsage through Parliament before the dissolution of Parliament in April 2015.

61. Clause 62.

62. ‘Relevant programme’ means a programme included in a programme service within the meaning of the Broadcasting Act 1990.

63. As the new section 39A extends to Scotland this will also include the reference to ‘publication’ and ‘newspapers’ in Scotland.

64. *A v B plc (a company )* [2002] EWCA Civ 337.