

You can't silence justice

The secrecy surrounding the proceedings of the family courts has long been a blot on the face of English justice.

These courts decide some of the most painful issues affecting individuals and their families. They are where households are divided between warring husbands and wives, or where decisions are taken which may involve removing a child from one or both of its parents.

The sensitivity of such proceedings has always been used to justify the secrecy in which they are held. Neither Press nor public are allowed into court.

The reason invariably given is the need to protect the interests of vulnerable people — particularly children — from the prying gaze of a prurient public.

Such an excuse, however, has never held water. It is perfectly possible to report such cases anonymously, thus protecting the privacy of everyone involved.

It has long been suspected that the real reason was the instinctive desire to keep from the public gaze proceedings where power largely resided with professionals such as social workers, who did not want to expose their often all-too-flaky evidence to the cold light of day.

This went against the principle that justice should be seen to be done, and created the ineradicable suspicion that such courts were presiding over an intolerable measure of injustice.

Now, at last, things are changing. The Government has said it intends to open up family court proceedings to accredited journalists. This week, an Appeal Court judge, Lord Justice Wall, told a legal conference that he was in favour of giving the media access to family court proceedings, provided the cases were reported anonymously, in the

interests of public accountability. So far, so gratifyingly enlightened.

But no sooner had he said this than the judge lurched into dubious and alarming territory. For he went on to express his 'cynicism' about allowing the Press into the family courts because of what he called the sensationalism, distortion and irresponsibility of some reporting.

In particular, he singled out this newspaper — though not by name — for the way it reported a key case last year, in which the two children of an Essex couple were removed for adoption by social workers.

As is argued on the facing page, this paper stands by every word of that report — which brought to light the hitherto unrecognised scandal of social workers routinely removing children from their families on account of nothing more than the presumed impact upon them of their parents' low IQ.

But with this story uppermost in his mind, Lord Justice Wall went on to say that to minimise such "tendentious, inaccurate or sensationalist" reporting, the issue for the judges was: "Which journalists do we admit to the courtroom?"

His solution, it would appear, was to use the system of accrediting journalists as a threat. If newspapers were to continue to "sensation-alise" or "distort" such proceedings, the courts might withdraw accreditation — whether from individual newspapers or all of them was not clear.

This was an astonishing suggestion for a judge to make. Although he added: "This is not a road down which I wish to travel", the threat was all too plain.

If newspapers produce reports which the judges don't like, their journalists will be barred from the courtroom and prevented from reporting the proceedings.

The idea that the judges would allow in those journalists whom they deem a safe pair of hands while excluding those of whom they disapprove is an outrageous abuse of power.

The principle of a free press is that it is indeed free, not that such freedom is conditional upon its message being agreeable to those whose professional activities are under media scrutiny.

This would lead to a manipulation of the media by those in authority, which is totally unacceptable in a

democratic society.

Indeed, in some ways it would be even worse than the policy of excluding the Press from the courtroom altogether.

Permitting only an approved reporting of proceedings would open the way to the Press being forced to censor itself in order to keep on the right side of the judges — thus producing a truly distorted picture with a likely collapse altogether of public confidence.

And if the threat is to withdraw accreditation from the Press in general, this would equally be an abuse of authority by imposing a blanket denial of access on the grounds of perceived misbehaviour by certain sections of the media.

This is not to say the media are always lily-white in their conduct; of course not. But if the Press oversteps the bounds in reporting cases in other courts, it is rebuked or even punished by established procedures such as actions for contempt of court, where newspaper editors can be fined or even jailed.

No one has ever suggested that those newspapers should be barred from future court reporting. That would rightly be considered utterly oppressive.

Deciding that people with learning difficulties make inadequate parents is an issue which ignites strong passions.

The essence of Lord Justice Wall's complaint, however, was that the Essex children were not taken away because of the low intelligence of their parents, as he said Press reports claimed, but because of evidence of the harm these parents might do to them.

But this evidence was itself deeply questionable. The courts emphasised that the parents had done nothing wrong. The charge that they might nevertheless harm their children was frankly bizarre.

This included claims that the mother in particular failed to stimulate the children, that the parents failed to set appropriate boundaries and had not established "consistent and appropriate routines around mealtimes and bedtimes".

For heaven's sake, about how many thousands of other parents might these things also be said — and worse?

Yet no one suggests their children should be taken away for adoption — even when they are brought up in conditions infinitely worse than the loving, clean and orderly home provided by the Essex couple.

So it was entirely reasonable to infer that the real issue was the parents' allegedly low intelligence.

And this was said not just by the media, but by the chairman of the Essex social work panel and by a local councillor - who fought a gagging order to bring the case to light because he thought it was so disturbing.

Incidentally, the Press reporting of this case made clear that only the mother had a low IQ; the father was mistakenly classified as such by social services.

This error was itself only brought to light by the "tendentious and illicit" reporting of this case.

Is it not more than a little worrying, therefore, that a Lord Justice of Appeal, threatening to fetter Press freedom because of "distorted" reporting, himself misreported the media and also failed to note the sloppiness of the social workers' false description of the father in the case?

Is it not equally alarming that the Appeal Court itself, which dismissed the couple's appeal, was preoccupied not by the many contradictions in the evidence, but instead by the same perception of media misreporting as Lord Justice Wall?

It is hard not to conclude that what is going on here is merely a rearguard action by a hidebound judiciary which, while paying lip-service to the opening up of the family courts, is determined to keep its hands on the levers of power and secrecy which have served the cause of justice so ill for so long.

Daily Mail Melanie Phillips 09:14am 1st November 2006