

# reviews

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## How doctors' anonymity in family courts is under threat

Parents, their advocates, and journalists are campaigning to end secrecy—and it could mean paediatricians' identities are no longer protected

It's not every day that you see a solicitor done up to the nines, wearing snakeskin-print shoes and strutting her stuff for a fashion magazine outside the Royal Courts of Justice. But then it's not every day that a solicitor finds herself elevated to the status of media hero after being suspended for misleading a High Court judge and unlawfully distributing confidential family court papers.

The appearance in the pages of *Harper's Bazaar* in March this year of Sarah Harman, celebrated by the magazine as a "freedom fighter" for her campaign to "end the invidious secrecy of our family courts," was a measure of the extent to which the media has driven the campaign to influence government policy in this vital area of child protection.

The coverage of the case that catapulted Harman to fame also offered an insight into the world of collusion between parents, their advocates, and agenda-driven journalism that has fuelled so many of what Professor Alan Craft, then president of the Royal College of Paediatrics and Child Health, described—in a letter to all members and fellows of the college on 11 February 2004—as the "unprecedented number of media attacks on paediatricians." The impact on child protection, he said, had been enormous. In five years, one in 10 paediatricians had been the subject of a complaint relating to child protection work. Many were now "reluctant to act as expert witnesses in these complex cases," Professor Craft said in a letter to the *Times* on 2 February 2004.

Now, as the campaigners for more transparency in the family courts seem certain to get their way, the threat of campaigns

against individual experts looms over those whose evidence has, until now, been given in anonymity. As the consultation document *Confidence and Confidentiality: Improving Transparency and Privacy in Family Courts*, issued by the Department for Constitutional Affairs in July this year, makes clear, the identities of families and children will continue to be protected. But those of experts probably will not ([www.dca.gov.uk/consult/courttransparency1106/cp1106.htm](http://www.dca.gov.uk/consult/courttransparency1106/cp1106.htm)).

## Criminal and family court lawyers alike worked feverishly to hitch their clients' cases to the Cannings bandwagon—and Harman worked more feverishly than most

In 2004 Harman's client, Mrs B, had sought permission from the courts to reveal to the press the name of one of the doctors in her case, as part of her campaign to persuade public opinion and the appeal court that she had been the victim of a miscarriage of justice in care proceedings on the basis of a misdiagnosis of Munchausen's syndrome by proxy (now known as fabricated and/or induced illness, or FII). Permission to name "Dr Y" was not granted, but the

case seems to have acted as a lever on government thinking.

The origin of the impetus to reform the family courts can be traced to 19 January 2004, the day the Court of Appeal handed down its judgment quashing the convictions of Angela Cannings for the murder of two of her children. The judgment included 30 words that sent a shockwave through the medicolegal community: "If the outcome of the trial depends exclusively or almost exclusively on a serious disagreement between distinguished and reputable experts, it will often be unwise, and therefore unsafe, to proceed."

Criminal and family court lawyers alike worked feverishly to hitch their clients' cases to the Cannings bandwagon—and Harman worked more feverishly than most. Her client, Mrs B, had in September 2003 become subject to a family court order placing the youngest of her three children in the care of the paternal grandparents. The Cannings judgment, as Harman admitted in her *Harper's Bazaar* interview in March, had "breathed new life into a case that we had previously thought was unappealable." The case of "Mrs B" was poised to become a cause célèbre.

Mrs B lost no time in turning to the press to plead her case, before making a more conventional court appeal against the court order. On 21 January 2004, within two days of the Cannings judgment, the *Daily Mail* was telling the sad story of "Sheila,"

**THE REVIEW**

**POLITICS**

### Freedom fighter

Lawyer Sarah Harman, sister of government minister Harriet, comes from a long line of inspirational women, but she's now making her own name by campaigning to end the invidious secrecy of our family courts, says CASSANDRA JARDINE

A photograph of the first Harman girl...  
The career generation of Harman...  
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How *Harper's Bazaar* covered Sarah Harman's campaign

whose youngest child had, she alleged, been taken from her solely on the unproved suspicion that she had caused a series of fits by poisoning her.

It was another week before Harman made an application to the Family Division of the High Court on behalf of Mrs B, for leave “to disclose . . . specified documents in the proceedings into the public domain.” The mother, wrote Harman in a witness statement tendered in support of her client’s application, “feels an affinity with other families who argue that their children have been separated from them through reliance by the Court on Munchausen by Proxy experts.” She also wanted to name Dr Y and pass on the details to “investigative journalists working on Munchausen by Proxy cases.”

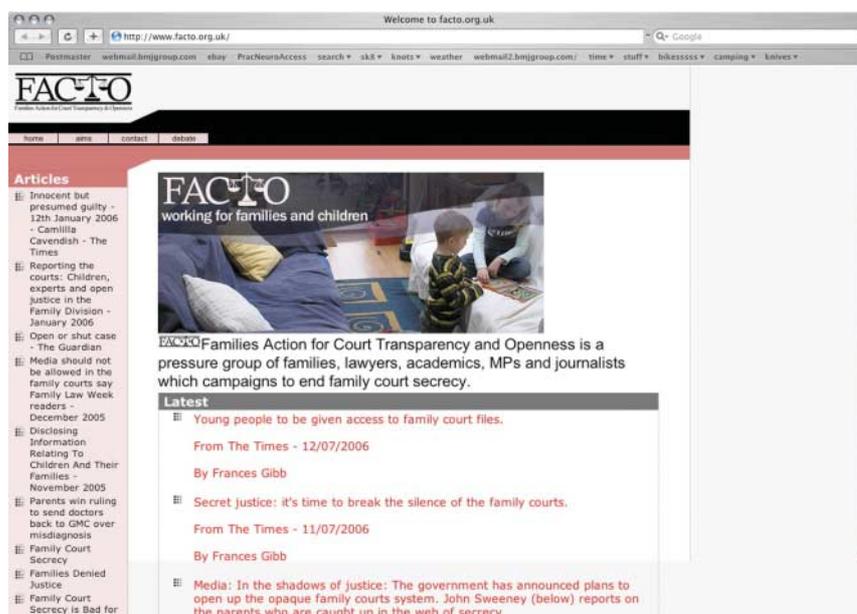
But, as Mr Justice Munby discovered when he came to hear the case almost a month later, the application for permission for disclosure was “in fact all a charade” (The Honourable Mr Justice Munby, High Court of Justice Family Division. In the Matter of B (A Child) And in the Matter of the Children Act 1989, case No. CT01C00052, March 19, 2004). Not only had the mother already given details of her case to the *Daily Mail*, but on the day that story was published the solicitor herself had sent copies of case documents to the then solicitor-general, who just happened to be Sarah Harman’s younger sister, Harriet.

Munby discovered that over the next few days Sarah Harman had sent out yet more documents related to the case—to Margaret Hodge, the children’s minister, and to journalists working for the BBC, GMTV, and the *Guardian*. To one she sent this covering note, described by Justice Munby as “illuminating”: “I believe my client . . . who was featured in the *Mail* on January 21, has a case which merits review . . . the Court of Appeal is not the best or only place to do this.”

Munby noted that by 5 February 2004 “the mother had been committing contempts of court for some months, as had her solicitor, albeit for a rather shorter period . . . Both the mother and Ms Sarah Harman have displayed a remarkable and disquieting lack of candour with the court.”

In November 2005 Harman was found guilty by the Solicitors Disciplinary Tribunal of conduct unbefitting a solicitor, in improperly disclosing documents and misleading the High Court. She was suspended from practice for the first three months of this year and in the meantime set up an organisation called Facto—Family Action for Court Transparency and Openness. Facto is described on its website ([www.facto.org.uk/](http://www.facto.org.uk/)) as “a pressure group of families, lawyers, academics, MPs and journalists which campaigns to end family court secrecy.”

It isn’t clear which if any of the articles that have been written about Mrs B or the family court system have been penned by “Team Facto” journalists, because none of the authors has declared such an allegiance in their pieces. And Harman—curiously, per-



The website of Facto, the pressure group to end family court secrecy

haps, for the founder of an organisation campaigning for great openness—refused, in emails to me dated 19 June 2006, to disclose who they are.

Nevertheless, since January 2004, when Harman began leaking documents about the case, journalists have rallied to Mrs B’s cause and written indignant articles about the supposed shame of Britain’s closed family courts. The courts “have acquired a reputation for being Kafkaesque instruments of oppression,” wrote Cassandra Jardine in the *Harper’s Bazaar* article. They are out of control and tearing apart perfectly normal families on the basis of mere suspicions in the “crazed mind of a State that has gone too far,” according to Camilla Cavendish in the *Times* on 20 June 2005. The paramountcy principle to which all doctors and child protection professionals are committed by law—that the welfare of the child should be the over-riding consideration—was nothing more than “a mantra used to protect the professionals,” wrote Cavendish in the *Times* on 12 January 2005.

Facto members or not, not one journalist writing about the case of Mrs B has told the full story. Harman’s client has been presented only as an innocent woman unfairly hounded by dogmatic, incompetent doctors who had falsely accused her of poisoning her child, yet the reality was far more complex. There was, for instance, no hint in two articles in Nick Cohen’s articles in the *Observer* (16 January and 4 December 2005) that the decision to take the child into care had revolved around far more than a mere difference of medical opinion over what might have caused a series of fits, even though by the time of these articles the appeal court had rejected Mrs B’s appeal, ruling that the case for the care order had been sufficiently strong even without the disputed medical evidence (LU (A Child) and LB (A Child), Court of Appeal (Civil

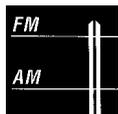
Division), Case No. B1/2004/0182 PTA, May 14, 2004).

The sad and disturbing litany of problems suffered by the mother can be found in the appeal court judgment on the Courts Service website ([www.hmcourts-service.gov.uk/judgments.htm](http://www.hmcourts-service.gov.uk/judgments.htm)). The judgment also refers to the original family court findings (Mrs Justice Bracewell, Re B (a Minor), January 10, 2003), unchallenged on appeal, that the mother was “undoubtedly a skilled and persistent liar, who over the years has sought to and succeeded in conning doctors.” None of this, however, was allowed to spoil the media’s story of yet another mother falling foul of the “discredited theory” of Munchausen’s syndrome by proxy.

It is hard to say what influence the misleading media version of the story of Mrs B has had on the decision to reform the family courts, but there is little doubt that the government will be flinging open the doors to the press as soon as decently possible after its consultation ends on 10 October. Announcing her proposals for change on 11 July, the minister for family justice said: “People don’t understand the complexity and importance of the work of the family courts, but that is an unfortunate yet inevitable consequence of sitting in secret. Public confidence depends on public scrutiny.”

The name of the minister? Harriet Harman, formerly the solicitor-general at the heart of her sister’s “Mrs B” controversy. Quite how the media will live up to her expectations of it as a scrutineer of fairness and balance in the family courts remains to be seen, although its performance in the reporting of the case of Mrs B could be read as a poor omen.

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## Living with AIDS

Four programmes on BBC Radio 4: the first, *Blood Brothers*, on 11 November at 8 pm, and the rest, *The Global Challenge*, on 13, 14, and 15 November at 11 am

Rating: ★★★★★

Radio 4's *Living with AIDS* series focuses on disparate experiences of the HIV pandemic. In the first programme, *Blood Brothers*, we are reminded of the men with haemophilia who contracted HIV in the early 1980s through factor VIII. In the United Kingdom 25% of patients receiving factor VIII were infected with HIV before doctors fully understood the problem.

We hear from Mick, who realised that he was infected with HIV only when instructions for a special diet for people with AIDS arrived in the post. He was told he had two years to live, and recalls receiving little support or advice beyond "Go out and enjoy yourself ... but don't have sex!"

While gay men had close social networks and a legacy of rights activism from which to draw strength, men with haemophilia were

geographically dispersed, and did not naturally identify with one another. The onset of HIV left many feeling isolated. Eventually, a support group emerged—Birch Grove, named after a pub in Cardiff, where founding members met. It soon gained national membership, and helped launch compensation claims. And now a real birch grove exists—a poignant "living memorial" with a sapling planted for each of the 800 plus people with haemophilia who have died from the NHS's "greatest medical disaster."

The next three programmes, *The Global Challenge*, turn to sub-Saharan Africa, where over 60% of the 40 million people currently living with HIV reside. Uganda is often hailed as a success story in reducing prevalence rates, and the programme traces the development of the ABC prevention approach—Abstinence, Being Faithful, Condoms—exploring the current controversy over the appropriateness of this message.

Religious leaders suggest that abstaining before marriage and monogamy within it are the only sustainable means of slowing the virus's spread, while condoms promote promiscuity. Others advocate a more balanced view that considers women's limited ability to control sexual activity and relationships. "ABC does not work for women," states Beatrice, who was infected by her husband.

This series goes beyond grim statistics, and privileges the voices of those personally

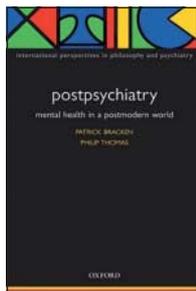
affected by the disease, using their recollections and explanations rather than relying on doctors and other "experts." Formal narration is kept to a minimum. The programme uses excerpts from the "Living Stories" archives set up to document the feelings and experiences of men with haemophilia and HIV. The episode from Uganda records one young woman's giggling attempt to purchase a packet of condoms—it's more daunting than she expects.

Another strength of the programmes is how they deal with the increasing availability of antiretroviral treatment. While the drugs are shown to offer real hope to people who previously believed they carried a "death sentence," they are not without their own complications. In Uganda, young people now talk complacently about HIV being as innocuous as the common cold, while some people with haemophilia who believed that they had just a year or so to live have found it difficult to adjust to planning long term futures. The programmes strike a good balance in showing how far we've come since the confusion and panic of the early days, yet how complex and difficult the challenges of the HIV pandemic continue to be.

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## Postpsychiatry: Mental Health in a Postmodern World

Patrick Bracken, Philip Thomas



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Rating: ★★★★★

You would imagine thinking about thinking to be the province of psychiatry. This, surprisingly, is not the case. There are many differing views and approaches to the mental world, but these largely reside in the discipline of philosophy. Psychiatry has been taken over by a biomedical model, leaving little space for other considerations; this book attempts to open up that space.

The path for psychiatry was largely determined by two major social processes of the 18th and 19th centuries: the development of institutions for the insane and the

Enlightenment. As society became increasingly complex, institutions emerged for not only the insane but for poor and unemployed people; over time medical care became concerned with the madness within their walls. Parallel to this, the process in European thinking called the Enlightenment broke free from the spiritual and moved to rationalism, science, and the hope of self determination.

Crucial to psychiatry was the work of Karl Jaspers, linking the philosophical study of phenomenology with mental disorder and inventing a new science of psychopathology. Derived from Descartes' notion of dualism—that the mind is separate from the body and therefore open to inquiry as an independent thing—psychiatry and all its allied disciplines are based on a rational scientific inquiry into the mind, on diagnosis of fault and treatment of disorder.

There are alternative models—the authors deriving theirs from the philosophers Foucault, Heidegger and Wittgenstein—that do not separate mind from body or from the social discourse and that do not validate a snapshot of mental activity. What matters most in mental phenomena is meaning. To regard a person's utterances simply as symptoms of a disease rather than to engage in exploration of meaning may deny that person opportunity to make sense of their unusual experiences.

Placing the person at the centre, empowering and enabling, has become the dominant social process in the field of disability, but those with mental disorder are far from that goal. Campaigns against stigma may only serve to reinforce notions of otherness. The linkages between mental illness and public risk have become too close and psychiatry, with its roots in the coercive institutions of the past, still plays a role of social policing.

The enmeshed relationship between psychiatry and the pharmaceutical industry promotes the illness model. The power of the industry has become great, guiding research and teaching, even influencing policy. Is it the wealth of Big Pharma or is it the success of the biomedical model that drives the current system? The evidence may be questioned and our models of thinking falsely reduced.

The book is a worthwhile though not an easy read; it is postmodern in its complexity. The authors do not dismiss science or medication. They are not calling for medicine to abandon mental health. They wish to recapture models of thought lost in the intensity of the scientific gaze and apply these in practice.

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## PERSONAL VIEW

## Doctors must not be lapdogs to drug firms

Last month I gave a talk at Presbyterian Hospital in Albuquerque, New Mexico, about the influence of the drug industry on continuing medical education. As usual, pharmaceutical companies contributed funds to the conference, and there was a small exhibition area with the usual monopoly of drug firms.

Immediately after my talk, one pharmaceutical company representative announced to a conference organiser that her company would no longer support the annual conference. Another packed up his exhibit and walked out. Other drug representatives were observed muttering angrily into their cell phones, which may, or may not, have been related to the near total exhibitor boycott the next day. Only one exhibitor showed up, prompting a physician friend of mine to remark, "Maybe he missed your talk."

I had been so thrilled to receive my first US invitation (outside of my university) to speak about how pharmaceutical companies manipulate prescribing. OK, to be entirely accurate, I was invited to speak about herb-drug interactions. But my "buy one get one free" lecture offer was taken up, and the organisers arranged a debate with a sales representative on whether pharmaceutical companies should fund continuing medical education for physicians. The drug representative who agreed to the debate later backed out on the advice of "legal." Despite having been offered equal time, this is the same person who announced that her company would not support future conferences.

My talk covered the costs of drugs, the costs of promoting drugs to doctors, the salaries of drug representatives, the funding of continuing medical education, and the connection between polypharmacy and adverse drug events. I also covered psychological profiling and monitoring of physicians, including prescription tracking.

The audience of physicians, nurses, and allied health professionals seemed immensely interested—and acutely aware of the rarity of an occasion in which the relationship between medicine and the drug industry was questioned. Several physicians noted on their comment forms that the organisers were brave to address the subject. Some delegates even offered to pay higher registration fees in the future to offset the drug firms' defection.

However, the conference organisers were inclined to mollify the miffed companies, perhaps by explaining that my talk was important to prescribers. That will not work, of course, because the pharmaceutical firms are not interested in presenting information

important to prescribers, unless it is also important to the drug industry. The suggestion that we need only soothe ruffled feathers gives drug representatives the status of offended friends. The notion that explaining our stand will buy forgiveness gives drug representatives the status of colleagues. Grovelling might work, says a colleague who used to be a drug rep. An apology, for example, could persuade drug companies to restore funding to the conference at Presbyterian—in exchange for, say, a promise never to invite me to speak again.

Corporate support of continuing medical education courses, meals, and treats are not merely our just rewards for being hard-working, dedicated doctors. The illusion that the relationship between medicine and the drug industry is collegial, professional, and personal is carefully maintained by the drug industry, which actually views all transactions with physicians in finely calculated financial terms. Drug representatives are paid to be nice to us, as long as we cooperate, sustaining our market share of targeted drugs and limiting our continuing medical education lectures to messages that increase drug sales. This is an unspoken agreement, but no less clear for being covert. The drug industry is happy to play the generous and genial uncle until physicians want to discuss subjects that are off limits, such as the benefits of diet or exercise, or the relationship between medicine and pharmaceutical companies.

If corporate sponsorship of medical meetings is deemed indispensable, why limit sponsorship to pharmaceutical companies? Surely the manufacturers of cars, luggage, and travel services would pony up for the opportunity to sell their goods to physicians. Conference organisers could solicit sponsorship from firms that market practice management software, office furniture, or other business related goods. As a last resort, we physicians could actually pay for our continuing education, as do lawyers, accountants, business people, and aerobics teachers, to mention a few. Medicine must shed both its docility and the corporate leash. Let us not be a lapdog to Big Pharma. Rather than sitting contentedly in our master's lap, let us turn around and bite something tender. Freedom calls.

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Competing interests: see [bmj.com](http://bmj.com)

## SOUNDINGS

## An Auchendreich farewell

Our newest consultant orthopod, a Mr Palchoudri, toys nervously with his haggis pakora. "I really wasn't sure about this evening. Lovely to be invited, though perhaps one should have declined. Dr MacEachern was exceptionally kind at my interview, but as a very new boy in school, so to speak..." A senior general practitioner pats his arm. "Not at all, laddie. It's a great way o' meeting folk, a farewell dinner."

It certainly is. Everyone who is anyone in the Auchendreich medical world is here in the Royal Dreichside Tandoori Palace, where a lively reception—cava and popadums—has set the tone, and dinner and the speeches will see us through to midnight. The retirement of Ecky MacEachern, once aptly described as "the last of the gentleman medical directors," is indeed an important occasion in our history.

Pakora, bhaji, mulligatawny soup, murgh tikka, lamb biryani, rogan josh, halva, and kulfi come and go, washed down with lager, cava, and—for the few on call—our world famous Dreichmore sparkling water. Around the tables Ecky stories abound: his masterly handling of the almost forgotten urology debacle of 20 years ago; his ultimately triumphant guile and persistence in the long struggle between the Royal Dreich Infirmary and the now defunct Inverdreich General; and his astonishing influence—for the greater good of Auchendreich, it should at once be emphasised—in the mysterious business of merit awards.

In a long tribute a senior urologist summarises Ecky's career: beginning with a complicated tale—from their time together as housemen—involving a fire escape, a bottle of Mateus Rosé, and the then student nurse who for the last 40 years has been Ecky's wife; and ending with a litany of committee achievements that had, as he put it, made certain that the voice of Auchendreich was heard in the highest councils of the land.

The young orthopod seems to have enjoyed the evening. Over a late liqueur I ask about his recent move. He replies: "London's all very well for one's training, but living is far more important, and we've always loved Scotland. My wife is Scottish, a MacEachern, actually, and they have some wonderful shooting on the estate. So there's a lot to be said for Auchendreich, and with time one could even get used to haggis pakora."

**Colin Douglas** *doctor and novelist, Edinburgh*