



Witness Anonymity: "I Want to Look Into The Eyes Of My Son's Killer And Know His Name"

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Protective measures

- **Anonymity:** where the name and other identifying details of the individual witness are withheld, a pseudonym is used, Officer A or X, and no questions may be asked that might lead to the identification of that witness.
- **Screening:** the witness is screened from the public and/or the parties while giving evidence.
- **Other protective measures,** such as redaction of documents and distortion of the witness' voice.

"I want you to know I gave Jacob life, I experienced the pain of child birth bringing him into this world. I reared him, for better or worse. Now a police officer, who I do not know, ended my son's life. If, Jacob was up to no good or not when his life ended this inquest will examine that. No doubt the police will have to account for their actions, and if they were justified in taking my son's life that will be revealed in court, but do not tell me I cannot look into the eyes of the man who took my son's life when he explains why he did it."

- Sally Rose

Open justice at common law

- Open justice means that, by default, court proceedings are held in public. The identities of the parties and witnesses are public, the evidence is heard in public, the judgment is public, and the press are free to report on it.
- Open justice is a fundamental common law principle: *Scott v Scott* [1913] AC 417.
- Some established exceptions, such as family and criminal court proceedings involving children.
- Judges can depart from open justice in an individual case, but must treat the question “*as one of principle, and as turning, not on convenience, but on necessity*”.

Articles 2 and 3 ECHR

- Article 2: Right to life.
- Article 3: Right to be free from torture and inhuman or degrading treatment or punishment.
- Anonymity may be required if there is a 'real and immediate risk' of death or ill-treatment and giving evidence without anonymity would materially increase that risk (*Re Officer L* [2007] UKHL 36).
- Articles 2 and 3 are absolute rights, so if the 'real and immediate risk' test is met it trumps everything else.
- But Article 2 is also relevant in another way. In inquests Article 2 imposes a duty to properly investigate state-involved deaths, including the right of the family of the deceased to participate – which can weigh against anonymity.

Articles 8 and 10 ECHR

- Article 8: Right to private and family life.
- Article 10: Right to freedom of expression.
- The Article 8 rights of witnesses may be affected if anonymity and screening are not granted.
- But anonymity and screening are a serious interference with the Article 10 rights of the press and others to report the proceedings.
- Both Article 8 and Article 10 are qualified (i.e. non-absolute) rights.
- Neither article has automatic precedence over the other. The court or tribunal has to carry out a balancing exercise.

Anonymity and Article 10: the importance of names

Re Guardian News and Media [2010] UKSC 1

“What's in a name? “A lot”, the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed... More succinctly, Lord Hoffmann observed in Campbell v MGN Ltd... “judges are not newspaper editors”... This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.”

Why might the police want anonymity in an inquest?

- Risk of violence/reprisals
- Protection of sensitive information, e.g. sensitive investigative techniques or undercover officers
- Protection of the private and family life of officers

Issues for the coroner to consider

- Is there a “real and immediate risk” to life so that Articles 2/3 are engaged?
- If not, a balancing exercise is required – weighing the principle of open justice and the Article 10 rights of the press and others against the arguments for anonymity.
- Several options for the coroner:
 - Anonymity but no screening
 - Anonymity, plus screening the witness from the press and public (but not the family)
 - Anonymity, plus screening the witness from the family

Why is it so important for the family to see the witnesses?

- To secure trust in the investigation
- To allow the family to see the demeanour and body language of the witnesses
- To secure accountability
- To bring about catharsis
- See *R (Hicks) v HM Senior Coroner for Inner North London* [2016] EWHC 1726 (Admin) at [22]: “*the power of being in the same room as the person that one holds responsible for a death*” and “*a personal element that is lost ... by not being face to face with that person or with those persons.*”

Examples of anonymity in inquests

- James Brady
- Michael “Mick” Fitzgerald

The limits of the coroner's powers

- The coroner cannot order a 'closed material procedure' (*R (Secretary of State for the Home Department) v HM Assistant Deputy Coroner for Inner West London* [2010] EWHC 3098 (Admin); see also *Al-Rawi v Security Service* [2011] UKSC 34).
- So the coroner cannot have closed hearings from which the family are excluded or hear evidence in the absence of the family.
- Where a 'closed material procedure' is needed, the inquest may have to be converted to an inquiry, as happened in the case of Anthony Grainger.

The latest case on anonymity and inquests

- *Chief Constable of West Yorkshire Police v Dyer* [2020] EWCA Civ 1375
- Police sought to be screened from the bereaved family, because of an alleged risk from a different family member who was not involved in the inquest. They alleged that the family might pass on information about the officers.
- The coroner ordered screening and the deceased's partner challenged it in the High Court. The High Court (Jefford J) held that it was not necessary to screen all the officers from the family.
- But on appeal the Court of Appeal restored the coroner's order, in a 2-1 decision (Flaux and Lewison LJ; Males LJ dissenting)

Conclusion

- The bereaved family needs to be centered in the inquest process.
- Sometimes there is a good reason for anonymity and screening – but it should not be granted too readily.
- Coroners should be very cautious about screening witnesses from the bereaved family.