# NAME SUPPRESSION, THE MEDIA AND JUVENILE OFFENDERS

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## Introduction

The purpose of this paper is to examine the law surrounding name suppression in relation to children who commit crime. In particular it will focus on those young offenders who are tried in the adult courts, where name suppression is purely discretionary. I will examine some well known cases in both New Zealand and the United Kingdom to illustrate that name suppression is in the best interests of both the offender and the public, in cases involving serious juvenile offenders.

Name suppression is a prohibition on publication of an offender's name and may be automatic or discretionary.[1] In the case of automatic name suppression it is an offence to publish the names of certain persons, or particulars likely to lead to their identification, in a report of court proceedings. No direction needs to be given by the court, as the names are automatically suppressed.[2] Name suppression is automatic in the Youth Court. In all other courts, section 140 of the Criminal Justice Act[3] gives the court power to order suppression of name. So varied are the circumstances that the legislature has not thought it wise to lay down rules to regulate its exercise.[4] It is argued that name suppression opposes the principle of open justice and freedom of expression, however, as I will demonstrate, any so called restrictions it places on these principles are minimal at best, and reasonably justified.

Under the Criminal Justice Act the court is required to balance

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1 J. Burrows and U. Cheer. *Media Law in New Zealand* (5th ed.) Oxford University Press, Auckland, New Zealand, 2005, 333.

2 Ibid.

3 Criminal Justice Act 1985 (NZ), s 140.

4 Burrows and Cheer, above n 1.

opposing interests. Fisher J summarised these as follows: [5]

> Supporting suppression are the accused's privacy interests, the presumption of innocence, the risk of irrecoverable harm notwithstanding ultimate acquittal, the possibility of serious harm to family and others associated with the accused and the risk that a fair trial could be indirectly affected by public pressure and personal stress of identification prior to verdict. Supporting publication are the public interest in freedom of information, the importance of allowing the public to know what is going on in their own public institutions, the possibility that identification will encourage other relevant witnesses to come forward, the removal of unfair suspicion from others, and protection of the accused against arbitrary and secret oppression by state authorities.

I believe people underestimate the power of the media. Many people take what they read in the paper and see on television as the absolute truth. The media have quite an effect on public attitudes and opinions towards juvenile justice. Media portrayals of crime are also not always accurate. I feel this has resulted in increasingly punitive attitudes towards juveniles, treating them as adults and not as the children they are.

### B. The New Zealand Experience

The Michael Choy trial was New Zealand's most notorious and well known serious juvenile offender case.[6] Eight accused faced charges of murder, aggravated robbery, attempted aggravated robbery and theft. Of the eight, six were children or young persons as defined by the Act.[7] One of them was Bailey Kurariki, who, aged twelve at the time of the incident, is now New Zealand's youngest convicted killer. Due to all the accused and especially Kurariki's age there was intense media interest in the case. All eight applied for continuation of name suppression on committal from the Youth Court to the High Court for trial. Justice Fisher granted it for Bailey Kurariki (the youngest) and also for an accused who was facing a less serious charge of attempted

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[5] *R v Whatarangi Rawiri, Casie Rawiri, PK, AP, RR, DH, JK and BK* (3 July 2002), HC, Auckland T014047, Fisher J at pp 3-4.

[6] See *Rawiri,* above n 5.

[7] Children, Young Persons and their Families (CYPF) Act 1989 (NZ) s 2.

aggravated robbery. However following conviction, name suppression was lifted and the media onslaught continued.

Bailey Kurariki has since become somewhat a 'celebrity' in his own right. In an article entitled "Young Killer No Star" the Southland Times writes "Bailey Kurariki is right about one thing. He is a celebrity."[8] The paper describes Kurariki as being a "big noter" at the Kingslea Residential Centre in Christchurch. It states that he is aware his picture is on the front page of the newspaper and that other inmates want his autograph, the effect of this is that "he has become puffy in the knowledge that whatever else has happened to him, at least now he seems to matter to people." The article quotes Kingslea Residential Centre manager, Shirley Johnson as saying that Kurariki's high profile after his crime is sending a terrible message to other young people. The paper goes on to note that "of course there is public outrage at this latest revelation that he is enjoying his new celebrity status." I think it seems ironic that it was this attention and 'outrage' that caused his perceived heightened status in the first place. This brings me to the question of whether name suppression should have been lifted. Does open justice always ensure justice is done and should public "interest" override the interests of the child?

This paper will explore whether, in the case of juvenile offenders, judges should in fact have discretion in ordering name suppression under the Criminal Justice Act.[9] I will argue that the principle of open justice can cause more harm than good in situations involving young offenders. It will further be argued that name suppression orders do not actually restrain open justice in practice, nor inhibit the public interest in media reporting. It is suggested that our current obsession with open justice and wide publication of the identities of serious young offenders may actually be causing higher rates of recidivism and crime, and that this "naming and shaming" goes against the principles of youth justice in New Zealand. It is also proposed that to ensure a fair trial, all children should be tried in either private adult courts or the Youth Court. The paper will further illustrate that it is the media who

[8] "Young Killer is No Star" *The Southland Times* (Southland, New Zealand, 2 September 2002), page 6.

[9] Criminal Justice Act 1985 (NZ), s 140.

are contributing to the punitive nature of society by creating a false impression of juvenile delinquency.

### B. Open Justice

One of the most prominent and widely used justifications for disallowing name suppression is the principle of open justice. Burrows and Cheer state that the starting point for the courts is always the principle of openness.[10] The Privy Council in *McPherson v McPherson*[11] reflected on the question of what is open justice. Lord Blanesburgh regarded public access as a fundamental feature of the openness of proceedings. He stated:

> [t]he actual presence of the public is never necessary […] the court must be open to any who may present themselves for admission. The remoteness of the possibility of any public attendance must never by judicial action be reduced to the certainty that there will be none.

The principle is entrenched in Article 10 of the Universal Declaration of Human Rights which provides for a "fair and public" hearing of criminal charges,[12] as well as in Article 14(1) of the International Covenant of Civil and Political Rights[13] which stipulates: "…In the determination of any criminal charge against him […] everyone shall be entitled to a fair and public hearing." Baylis[14] states by including "public" in Article 14 it may in modern terms be reasoned to encompass radio and television reporters.

Baylis[15] describes Article 14[16] as allowing some exceptions to the

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[10] See Burrows and Cheer, above n 1.

[11] *McPherson v McPherson* [1936] AC 177, this was a case concerning the legality of divorce proceedings which had taken place in the Judges' law library. One of the grounds the applicant appealed on was that the hearing had not taken place in an open court.

[12] Universal Declaration of Human Rights 1948, Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

[13] International Covenant of Civil and Political Rights 1976, Article 14(1).

[14] C. Baylis "Justice done and Justice seen to be done – the Public Administration of Justice" (1991) 21 VUWLR 177.

[15] Ibid.

[16] See *ICCPR*, above n13

general principle of open justice. She interprets it as affirming that at the very least open justice requires the actual judgment of the court to be made public, except in very limited circumstances.[17] However the wording of the Article raises an interpretation question as to whether "judgment" means the judges' reasoning and the finding, or just the decision or judgment. If we take a strict black letter approach to interpretation this will limit the requirements of public justice by a much greater amount, to perhaps just the actual judgment. Baylis[18] goes on to note that the Criminal Justice Act[19] clarifies this, in that in the criminal context, the requirement of publicity is that only the decision and sentence need to be made public. It states that:

> The announcement of the verdict or decision of the court […] and the passing of sentence shall in every case take place in public; but if the court is satisfied that exceptional circumstances so require, it may decline to state in public all or any of the facts, reasons, or other consideration that hit has taken into account in reaching its decision or verdict or in determining the sentence passed by it on any defendant.

This seems to imply that it is acceptable for the trial or hearing to be held in private or restricted access under the open justice principle. Baylis[20] also adds that Article 14 is framed in such a way to entail that the publicity principle protects only an individual's right to a public hearing. This could mean that the public and media could be excluded if the parties wanted to give up this right. She does however state that in New Zealand it has, by and large been accepted that there is not only the individuals' entitlement to a public hearing but also generally a public entitlement of access to proceedings.

In relation to the granting of name suppression under the Criminal Justice Act,[21] the courts have stressed that there is always a prima facie

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[17] Ibid, Article 14: "…any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

[18] See Baylis, above n 14.

[19] Criminal Justice Act 1985, (NZ) s 138(6).

[20] See Baylis, above n 14.

[21] Criminal Justice Act 1985 (NZ), s 140.

presumption in favour of openness in reporting. In *R v Liddel* the Court stated:

> The starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as 'surrogates' of the public.[22]

The Court of Appeal also emphasized it was to be departed from only for "compelling reasons" or "very special circumstances". In *Lewis v Wilson & Horton* the Court of Appeal said that "the balance must come down clearly in favour of suppression if the prima facie presumption in favour of open reporting is to be overcome."[23]

Baylis[24] states that the public administration of justice has developed to be viewed as a fundamental trademark of a democratic society, and that the overriding concern is to ensure that justice is done, both between the parties and in the wider sense. Slevin[25] discusses the importance of publicity, as having long been regarded as society's most effective guarantee of judicial accountability and that therefore, the principle of open justice should only be compromised for the most important reasons. What is in the public interest however, is not always certain. It has been held in cases such as *H v Police*[26] that there is a public interest in the offender being rehabilitated anonymously and in some circumstances this will prevail over any other interest the public may have.

In analysing the reasons for the publicity principle Baylis[27] examined its historical basis. She noted that it was claimed by Chief Justice Burger in

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[22] *R v Liddell* [1995] 1 NZLR 538 at p 456.

[23] *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 at 559. Lord Stein also said 'from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be very much a disembodied trial': *Re S (a child)* [2004] 4 All ER 683 at 697.

[24] See Baylis, above n 14.

[25] G Slevin "Name Suppression, Questioning the Law Commission's Reasoning" (2004) NZLJ 223-224.

[26] *H v Police* (1989) 4 CRNZ 215.

[27] See Baylis, above n 14.

*Richmond Newspapers, Inc v Virginia*[28], that throughout the history of the common law courts, there has always been a presumption that the public can attend trials, and therefore the public must be allowed to continue to attend. However, using a historical background as a rationale may be criticised. Resnik claims that "simply because we have, in the past, either included or excluded the public does not confirm we should do the same today."[29] Customs may change over time. An example of this is that historically family and juvenile matters were heard in open courts. Baylis[30] notes that the perception of the morality of these separations has changed, so that today the public has very limited access to both the Family and Youth Courts. What was traditionally an area of public access has changed as public attitudes have developed. Puplick[31] thinks that the concept of open justice has also been changed by the advent of the internet. This has meant that the protective barriers of time and space, which traditionally made open justice socially acceptable, have been abolished and replaced with a potential global audience, and that this is perhaps reason for restricting it.

Various benefits and the theoretical underpinning of open justice have been said to include; enhanced fact finding, improved quality of testimony, to induce unknown witnesses to come forward, and to act as a deterrent and a punishment.[32] It has been suggested that publicity encourages judges to educate themselves in public morality and thereby avoid public criticism, and educates the public about the legal system as well as social problems. Baylis[33] notes that because ignorance of the law is no excuse, there must be some way for the public to know what the courts are determining. Justice must be seen to be done. An open justice system stops the public from building up an imaginary and uncomplimentary picture of the courts.[34] Open justice may be said to lead to people having more trust in the system.

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[28] *Richmond Newspapers, Inc v Virginia* 448 US 555, 580 (1980), 573.

[29] J. Resnik "Due Process: A Public Dimension" (1987) 39 U. Florida L.T. 405, 409.

[30] See Baylis, above n 14.

[31] C. Puplick "Open Justice to Whom?" (2002) 6 TJR 95.

[32] C. Davis "The Injustice of Open Justice" (2001) 8 JCULR 92.

[33] See Baylis, above n 14.

[34] See Burrows and Cheer, above n 1.

The key to the benefits listed above however, is not the openness of the court proceedings, but the publicity given to them. The majority of people are totally uninterested in court proceedings, open or closed, until such proceedings affect them personally. Without media coverage of court cases, few people would have knowledge of the court system and processes.[35] Lord Diplock in *Attorney General v Leveller Magazine*[36] agreed that the media play a function in the notion of a public justice system. He described this role in that the media circulate and broadcast reports of court proceedings to society, meaning a far greater number of the public will learn about the court hearing. Lord Denning certainly agrees with this proposition, he states:[37]

> A newspaper reporter says nothing but writes a lot. He notes all that goes on and makes a fair and accurate report of it. If he is to do his work properly and effectively we must hold fast to the principle that every case must be heard and determined in open court. It must not take place behind locked doors. Every member of the public must be entitled to report in the public press all that he has seen and heard.

This often means that what people know is determined by individual reporters and what news media outlets determine newsworthy enough to cover. It takes us back to what Lord Justice Cooke said in *R v Liddel*[38] when he described the media as surrogates of the public.

The word surrogate is defined in the Oxford English Dictionary as meaning "a person who stands in for another in a role or office."[39] So is this really true, do the media really act as a substitute or stand in for the public in court? Clausen[40] argues that by determining where the public interest lies and what the public interest is when considering section 140 applications,[41] the courts are effectively controlling what the media will report to the public. In doing so, the courts are usurping

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[35] See Davis, above n 32.

[36] *Attorney General v Leveller Magazine* [1979] AC 440, 450.

[37] L.J. Denning "A Free Press" (1984) 17 Bracton LJ 13.

[38] See Liddell, above n 22.

[39] C. Soanes *Oxford English Dictionary* (Oxford University Press, Oxford, 2002) at p843.

[40] B. Clausen (1998) "Redefining and Restricting the Veil of Anonymity: Name Suppression for Defendants in Criminal Proceedings." Dissertation LLB(Hons), University of Auckland, 1998.

[41] Criminal Justice Act 1985, (NZ) s 140.

the media's roles as 'surrogates of the public.'[42] Davis,[43] on the other hand, contends, and I agree, that the media are commercial organizations driven by commercial objectives and not non-profitable bodies there to serve the public good. She argues that the priority for many media companies is profit, not the welfare or education of the community, and suggests that to say the media represent the public in court "is naïve at best."[44] When the media dispute an application for a name suppression order, it may be that the incentive for this is more likely to be related to its own vested business-related interests rather than a drive to serve public interest. Davis[45] goes on and describes large media organizations as powerful opponents, due to the economic and legal resources on hand to them, and their easy access to a most effective instrument, the media, for influencing politicians and the community to support their cause, often dressed up as a 'public interest of open justice argument.' Baylis[46] describes negative aspects of the media's role as 'surrogates' of the public as including when reports of proceedings are sensationalized, or when pre-trial publicity may put at risk the fair trial of the accused. She also notes that as publicity may have a punitive effect and given that the media do not cover all trials without bias, this arbitrary coverage of cases does not sit well with the concept of every person being treated equally by the justice system. Baylis states "If the amount of publicity that a particular person is likely to receive means that they are punished to a much greater extent that would ordinarily be the case, this may justify a permanent name suppression order."[47]

The question then is whether open justice really is impeded by suppression orders. Davis[48] proposes that name suppression may be seen as an effective compromise between the rights of the media and the rights of individuals. I think this is especially so in the case of young offenders who because of the seriousness of the charge, are in the adult courts, but would otherwise have their name suppressed. Name

[42] As stated in Liddell, above n 22.

[43] See Davis, above n 32.

[44] Ibid, at p 99.

[45] See Davis, above n 32.

[46] See Baylis, above n 14, at 180.

[47] Ibid, at 206.

[48] See Davis, above n 32.

suppression orders do not affect the ability of the media to publish or air their story, including those sensational facts their readers or listeners want to know, nor do they go to the extent of closing the court to everyone, as is the practice of the Youth Court. This was recognized in the case of *R v his Honour Judge Noud: Ex Parte McNamara*[49] where Justice Williams acknowledged the significant distinction between closing courts and suppression orders. The public therefore are still informed of the pressing social problems and court processes which are in the 'public interest.'

Although the open justice principle is fundamental to our legal systems, it is suggested that the theoretical basis of the principle and general perception of the role of the media in its implementation are unsound.[50] In the case of Bailey Kurariki[51], public interest, including publication of the names of parties before the court, has prevailed over private interests. I think it is doubtful in most cases whether there is a "public interest" in knowing the identities of parties before a court, although it is undoubtedly interesting to the public. This is especially true in cases of serious offending by young persons which, because of the rarity and traditional 'innocent perceptions' of children, attract significant media attention. I would suggest that in the case of juveniles the ultimate "public interest" should lie in their rehabilitation and reintegration back into the community and to avoid criminal behavior carrying on into adulthood.

### C. Children: A special case?

This paper suggests that juvenile delinquents are a special case and that the court should not have discretion to order name suppression under section 140.[52] All criminal trials involving juveniles should be conducted in private or if in public, the media should not be permitted to publish any name or identifying information. It has been recognized that children do not have the same developmental levels as adults and statistics have shown that a high degree of violent offending amongst

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[49] *R v his Honour Judge Noud: Ex Parte McNamara* [1991] 2 Qd R 86.

[50] See Davis, above n 32.

[51] See Rawiri, above n 5.

[52] Criminal Justice Act, 1985, (NZ), s 140.

youths tails off once offenders reach their twenties.[53] In a recent Court of Appeal decision Justice Hammond referred to a report by registered consultant psychologist, Dr Ian Lambie, which set out the reasons as follows:[54]

> It is widely accepted that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults (Steinberg & Scott, 2003). Adolescents have difficulty regulating their moods, impulses and behaviours (Spear, 2001). Immediate and concrete rewards, along with the reward of peer approval, weigh more heavily in their decisions and hence they are less likely than adults to think through the consequences of their actions. Adolescents' decision-making capacities are immature and their autonomy constrained. Their ability to make good decisions is mitigated by stressful, unstructured settings and the influence of others. They are more vulnerable than adults to the influence of coercive circumstances such as provocation, duress and threat and are more likely to make riskier decisions when in groups. Adolescents' desire for peer approval, and fear of rejection, affects their choices even without clear coercion (Moffitt, 1993). Also, because adolescents are more impulsive than adults, it may take less of a threat to provoke an aggressive response from an adolescent.

Hammond J described the report as being grounded on "well accepted professional literature."[55] Wolff, Alexander and McCall[56] contend that as children get older their maturity of reasoning, and their grasp of moral issues increase and that this point is inadequately recognized in the law today.

The impact of peer pressure can be seen in the James Bulger case.[57] Robert Thompson was seen to be the ringleader, Venables followed his

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[53] *R v Slade & Hamilton* (28 February 2005) CA245/04, CA266/04, Anderson P, Hammond and William Young JJ – in this case Slade and Hamilton, along with a third offender violently attacked a passer by, who later died of massive head injuries. Their appeal concerned their sentence of 17 years and the application of Youth Justice Principles.

[54] Ibid, Hammond J at para [43].

[55] See *Slade*, above n53, per Hammond J at para 45.

[56] S. Wolff, R Alexander & A. McCall Smith "Points of Law: *Child Homicide and the Law; Implications of the Judgments of the European Court of Human Rights in the Case of the Children who Killed James Bulger*" (2000) 5 Child Psychology and Psychiatry Review 133.

[57] *R v Secretary of the State for the Home Department, Ex p Venables, Ex p Thompson* [1998] AC

lead. Both were convicted of manslaughter. If children are mentally so different to adults, then why is it that, in the case of serious offences, they are treated the same? The seriousness of the offence does not make them any more of an adult, or any less of a child. The irony is that our youth justice system does, to some extent, recognize the fact that a child's mental culpability develops as they grow older, but this seems to be ignored in the case of serious offending. I do not think, as an inescapable consequence of growing up, that this should be the case for child offenders. It is contradictory that the principles developed in the Youth Court are not relevant to offenders who are still youths, yet in the adult courts.

### D. Criminal Culpability of Children

In New Zealand children do not become criminally responsible upon reaching one specific age, instead there are four separate age categories to which different rules apply.[58] This is what known as a graduated approach.

> (1) Children under 10 years: No criminal prosecution can be brought.[59]
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> (2) Children aged 10-13 years: Can only be charged with murder, manslaughter or minor traffic offences and the prosecution must prove they knew their act was wrong or illegal.[60]
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> (3) Young people aged 14-16 years: Can be charged with any criminal offence but usually their case will be heard and decided in the Youth Court.[61]
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> (4) Young adults aged 17: Can be charged with any offence

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[58] Robert Ludbrook *Criminal Responsibility of Minors,* Brookers Family Law Database (Child Law) <http://www.brookersonline.co.nz.ezproxy.auckland.ac.nz/databases/modus/family/childlaw/DISC-CHILD!21~GRP1.YJ2?tid=8770509&si=15> at 1 August 2006.

[59] Crimes Act 1961, (NZ), s 21.

[60] Crimes Act 1961, (NZ), s 22.

[61] See *Brookers Child Law*, above n 58.

> and the charges will be heard in an adult Court, namely the District Court or High Court.[62]

In New Zealand we have a separate court, the Youth Court which has jurisdiction over any child or young person who commits an offence. The Children, Young Persons and Their Families (CYPF) Act,[63] defines 'child' as "a boy or girl under the age of fourteen" and 'young person' as "a boy or girl over the age of fourteen, but under the age of seventeen." The Youth Court's jurisdiction however, is not absolute. A child or young person who is charged with murder or manslaughter is dealt with in the High Court in the same way as if the charge was brought against an adult.[64] For those offences classified as 'purely indictable' offences, which are those at the more serious end of the spectrum, for example sexual violation or aggravated robbery, if a child or young person pleads 'not guilty' and the Youth Court considers there is sufficient evidence for the matter to be tried, it may decide whether to commit the offender to the District or High Court for trial, or to hear the matter itself.[65] Alternatively the offender may elect to have their case heard by trial in which case it would most likely be heard in the District Court.[66] In summary therefore young offenders charged with either summary or indictable offences will generally have their cases dealt with in the Youth Court.

There are two bills currently before Parliament which, if enacted, will introduce another exception to young offenders being generally dealt with by the Youth Court. If enacted, clauses 17 and 20 of the Children, Young Persons and their Families Amendment Bill (No. 4) 2004 will give a judge in the Youth Court power to commit a young person to the District or High Court where he finds that the offence arose out of the same event or series of events as an indictable offence or offence for which the young person has elected trial by jury. The Young Offenders (Serious Crimes) Bill,[67] if enacted, will expand the scope of offences for which a young person over twelve can be charged with in

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[62] Ibid.

[63] See CYPF Act, above n 7, s 2.

[64] See *Brookers Child Law*, above n58.

[65] Ibid.

[66] Ibid.

[67] Young Offenders (Serious Crimes) Bill, March 2006, introduced by Ron Mark.

the adult courts. The most likely effect of both bills will be that more juveniles will end up in the adult courts. At the same time however, there is international pressure from the United Nations Committee on the Rights of the Child[68] to raise the age of criminal responsibility to be better in alignment with our responsibilities under the convention.[69] It does seem somewhat inconsistent that a child aged ten can be charged with murder, and be treated with the same level of responsibility as an adult in court, yet is not considered old, or responsible enough to stay home alone or baby-sit another under current New Zealand law.

### E. Children, Young Persons and Media Reporting

For those cases that are heard in the Youth Court, offenders are granted automatic name suppression; this is absolute. Media are allowed to attend the Youth Court, but this is only with permission of the judge and proceedings are mostly conducted in private. Under section 438(1) CYPF Act[70] no report on any proceedings in the Youth Court can be published without leave of the court that heard the proceedings. If leave is granted to any report, name suppression shall still apply and nothing may be published that names the young person, their parent or guardian, the school they were attending or anything else that may lead to the identification of the young person or school.[71]

These restrictions do not apply when a young person is tried in, or transferred to the District or High court for sentencing.[72] In the 'adult courts' name suppression is at the discretion of the judge. This was confirmed by Chambers J when he held that the protection accorded by section 438[73] which restricts publication of a young persons name, applies only to reports under that Act.[74] Justice Fisher, in the well known New Zealand case of *R v Rawiri (Choy Trial)* confirmed that

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[68] New Zealand's First Report: CRC/C/15 Add 71, 24 January 1997 at para 10 and 23, New Zealand's Second Report: CRC/C/15 Add 216 at para 4, 5 and 9.

[69] United Nations Convention on the Rights of the Child, 1990, ratified by New Zealand on 14 March 1993.

[70] See CYPF Act, above n 7, s 438(1).

[71] Ibid.

[72] *Police v Young Person* (1991) 8 FRNZ 609.

[73] See CYPF Act, above n 7, s 438.

[74] *R v Fenton*, 1/2/00, Chambers J, HC, Auckland T992412.

section 438[75] ceased to apply once the accused were committed to the High Court for trial.[76]

For those children who are committed to the District or High Court for trial or sentencing, name suppression may still be granted under section 140 of the Criminal Justice Act.[77] Section 140 states that the court may prohibit publication of names "or any particulars likely to lead to any such persons identification." It gives no indication of when a judge should order name suppression, which means all considerations relevant to an application by an adult for name suppression will be just as relevant for youth, as well as the important qualification of the offender's age. Munday[78] argues that this has left the court with a broad discretion and considerable leeway in making its decisions. There are a number of criteria which have commonly been considered relevant in applications for name suppression. These were referred to in *Lewis v Wilson*.[79] One of the criteria, where publication may "militate against his or her established prospects of rehabilitation," is especially relevant in relation to children.[80] This is consistent with the objective of the Youth Court and the CYPF Act[81] which take a restorative rather than a punitive approach to juvenile delinquents.

### F. Naming, Shaming and the Restorative Justice Basis of our Youth Justice system

Though not premised on restorative justice ideas, our system of youth justice in New Zealand is broadly compatible with them.[82] The Youth Court website advises that our youth system in New Zealand is the "first legislated example of a move towards a restorative justice

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[75] See CYPF Act, above n 7, s 438.

[76] See *Rawiri*, above n 5.

[77] Criminal Justice Act 1989, (NZ), s140.

[78] R. Munday "Name Suppression: an adjunct to the Presumption of Innocence and to mitigation of Sentence – 1" (1991) Criminal Law Review 753.

[79] See *Lewis v Wilson*, above n 23.

[80] See *Brookers Child Law*, above n 58.

[81] See *CYPF Act*, above n 7.

[82] Achieving Effective Outcomes in Youth Justice, Final Report February 2004, Ministry of Social Development, Wellington, New Zealand.

approach" to offending.[83] This means that it focuses on "repairing harm, reintegrating offenders, and restoring balance within the community."

It is proposed that one reason for not granting name suppression is accountability on the part of the accused, and the implication of public shame for what they have done.[84] The idea of re-integrative shaming provides much of the theoretical basis for restorative justice.[85] Yet as Winfree Jnr[86] contends, there are two different kinds of shaming. Shaming is disintegrative (or stigmatising) if it blames offenders and denies them re-entry into the community. Re-integrative shaming, on the other hand, first establishes the wrongfulness of the act or deed (as opposed to the person's evilness) and then provides a public means of bringing them back into the community or group. In summary re-integrative shaming may help rehabilitation whilst disintegrative shaming may do the opposite.

If the goals and principles of our youth justice system are to focus on "repairing harm and reintegrating offenders," and to prevent re-offending, then one would assume that we would be trying to practice re-integrative shaming. To some extent this is correct. In the Youth Court offenders may be referred to a family group conference, where those affected by the crime have a chance to contribute, as well as the offender and only those directly involved with the crime know the offender's identity. However, this is not the case for those that are tried in the adult courts, who do not receive automatic name suppression. If name suppression is not granted, their names are put into the public arena where naming and shaming takes on a new life, and has a far different effect.

As an extreme example take the Bulger case.[87] Dame Elizabeth Butler Sloss in considering the threat to the boy's lives under Article 2[88]

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[83] Ministry of Justice, *About Youth Justice – Overview of Principles and Process,* <http://www.justice.govt.nz/youth/aboutyj.html> at 10 August 2006.

[84] T. Winfree Jnr "New Zealand Police and Restorative Justice Policy" (2004) 50 Crime and Delinquency 189.

[85] Ibid.

[86] Ibid.

[87] See *Secretary of the State for the Home Department*, above n 57.

looked into the kind of newspaper items concerning the case. She noted the Sunday Mirror, 31 October 1999 which ran an article titled "Society must be protected from this pair of monsters" and another on 27 August 2000 was titled "Throw away the Key." *The Guardian*, 31 October 2000 titled "Bulger Father Vows to Hunt Killers down" and many more of this kind, including hate mail to the boys' secure units and threatening phone calls.[89] In New Zealand after the Michael Choi killing, the Sunday Star Times[90] ran an article titled "teenagers doomed for life of crime", and The Southland Times; "Young Killer is no Star."[91] This seems much more like stigmatization, focused on the offender's personality.

Braithwaite[92] argues that when people shame us in this kind of stigmatizing and degrading way it poses a threat to our identities. One way that people deal with this is to "reject our rejecters." He makes a connection between this type of shaming and criminal subcultures. Stigmatization increases the attractiveness of these criminal subcultures as disrespect begets disrespect, because 'you don't respect me, I won't respect you.' As these people have no hope of gaining a respected identity under the community's values, they turn to delinquent subcultures which look more promising as a basis of respect. Winfree Jnr[93] proposes that these groups of stigmatized mutually reinforcing criminal subcultures provide the perfect learning environment for crime and other illegitimate activities, and may therefore create continued and perhaps increased crime. I would argue that this would be more powerful in young people who by nature care much more than adults about what others think of them, and are in a phase of their lives in which they are already seeking for both their identities and acceptance. Cast out by the community, this lowers their chances of re-entry and rehabilitation significantly.

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[88] European Convention on Human Rights, 1950, Article 2.

[89] *Venables v News Group Newspapers Ltd and Others, Thompson v Newsgroup Newspapers Ltd and Others* [2001] 2 WLR 1038 page 457.

[90] E. Wellwood "Teenagers Doomed for Life" *The Sunday Star Times* (Auckland, New Zealand, 25 August 2002), edition A, page 1.

[91] See *"Young Killer No Star"*, above n 8.

[92] J. Braithwaite "Shame and Criminal Justice (Changing Punishment at the Turn of the Century)" (2000) 42 Canadian Journal of Criminology 281.

[93] See Winfree Jnr, above n 84.

Granting name suppression would turn the focus of such newspaper articles and public debate onto the nature of the crime, the act and "not the person's evilness."[94] Only those people directly involved would know the perpetrator's identity. Braithwaite justifies this approach by theorising that when we do something wrong, the people who are in the best position to communicate the shamefulness of what we have done are those we love. Our family and friends are those we respect and have the most influence over us, and because these relationships are based on love and respect, when they shame us they will do so re-integratively.

Lord Judd, commenting on the naming and shaming of young offenders under the United Kingdom's Anti-Social Behaviour Act 2003 questions what is important; venting our frustration by naming and shaming the young person or working on the tougher job of helping the child become a responsible member of the community and "do something that will overcome a repetition of the problem in the future."[95] Lord Judd also discusses a "badge of honour" among some young people, in that they may feel it fascinating or desirable to have their name in a newspaper. He questions whether this would really help with rehabilitation and enabling the child to understand the damage and harm their conduct has done to others. This notoriety may in fact feed into the young person's sense of satisfaction about causing trouble. We can see evidence of this in Bailey Kurariki, after the media frenzy that followed his case, as discussed above. There was also evidence of this "badge of honour" attitude in Ngatia Rewiti, the fourteen year old boy who threw a concrete slab from an over-bridge, killing passing driver Christopher Currie.[96] In a New Zealand Herald article titled "The Streets of No Shame" the paper describes how the mechanism of justice seemed like a 'badge of honour' for the boys, that Rewiti had become a star. "He's achieved the sort of fame TKS (south Auckland young person's gang) adores - a Tupac Shakur-style exit from court,

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[94] See Braithwaite, above n 92.

[95] Lord Judd, Lord Hansard Home page 2006, <http://www.shaka.mistral.co.uk/lord hansard.htm> at 1 August 2006.

[96] *TV3 v R and Ngatai Tamahou Rewiti* HC-Auckland, 2006, CRI-2005-092-14652, Winkelman J.

captured by the cameras for the evening news."[97] The reference to a "Tupac Shakur-style exit" is to that of a celebrity, with cameras flashing in all directions. It was also reported that Rewiti was proud of what he had done, boasting to other children at school before he was apprehended, "he was the kid all those people were talking about."[98] This bad publicity is getting such children the attention that they may lack at home, attention that they revel in and want more of.

Equally for those who want to make a fresh start, for whom being caught and reprimanded has had an effect, the impact of negative publicity about them can only prolong their problems in engaging with their community more positively. People, who may never have known them or met them, will know them only as a troublemaker, long after their behavior has changed. The rehabilitative work that social workers and psychologists would have carried out with the offender during their time in custody would be put to waste, as the community only knows them by name as a criminal. So then what about Bailey Kurariki who will come out of prison still a teenager, after spending seven years in jail (provided he does not get paroled earlier), does he have any realistic chance of reintegration and a normal adult life?

## G. The English Experience

The 'James Bulger'[99] case as it is known, is the most notorious child murder case in the United Kingdom. Two English schoolboys, Jon Venables and Robert Thompson were tried and convicted in November 1993 for the murder of two-year old James Bulger. They had dragged their victim from a supermarket for four kilometres, then stoned him to death and left his body on the railway track so as to try to conceal their crime. The boys were at the time of the trial eleven years old and ten at the time of the murder, only just able to be convicted of a crime at all. There was so much intense pre-trial publicity that the trial was moved from Liverpool, where the killings had occurred, to Preston Crown Court. Both boys received name suppression during trial, however this was lifted following conviction. The attitude of the public and media was menacing. Two further cases

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[97] "Streets of No Shame" *The New Zealand Herald* (Auckland, New Zealand, July 9 2006).

[98] Ibid.

[99] See *Secretary of the State for the Home Department*, above n 57.

which I will examine resulted from the original trial. The first was the appeal the European Court of Human Rights[100] and the second was the application by both boys for permanent identity suppression following their release (with new identities) from the secure units and their attaining the age of majority.[101]

### H. Name Suppression Before and During Trial

Venables and Thompson appealed to the European Court of Human Rights. One of the bases of their appeal was a violation of Article 6(1) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that everyone has a "Right to a Fair Trial." The court found that a child is denied this right when he or she cannot effectively participate in his or her trial.[102] It stated that a public trial in an adult court must be regarded 'in the case of an eleven year old child as a severely intimidating procedure. Taking into account the applicants' age it found that "the application of the full rigours of an adult, public trial deprived him of the opportunity to participate effectively in the determination of the criminal charges against him."[103]

I agree with Sentlinger who contends that the decision tends to suggest that children should be tried in private, less formal proceedings in order to allow the offenders to participate in the process and reduce intimidation by the public.[104] Dyer goes farther and argues that the decision suggests that children who are Venables' and Thompson's age should never be tried in adult criminal proceedings again. Indeed, although the judgment avoids the issue, the court said that "it is highly unlikely that the applicant would have felt uninhibited, in the tense courtroom and under public scrutiny."[105] This may be read to conclude that a private trial may be required to ensure an element of fairness to the child.

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[100] *V v United Kingdom* (2000) 30 E.H.R.R. 121.

[101] See *Venables v News Group Newspapers Ltd* above n 89.

[102] See *V v United Kingdom*, above n 97.

[103] Ibid.

[104] E. D. Sentlinger, "*V v United Kingdom*: Is it a "New Deal" for Prosecuting Children as Adults" (2000) 16 Conn. J. Int'l L. 177.

[105] See *V v United Kingdom*, above n 100, at para 90.

In both the United Kingdom and New Zealand, courts are encouraged to take the best interests of the child into consideration at all stages of the proceedings. Buckley argues that without doubt the interests of the child should always come before satisfying public opinion.[106] Sentlinger[107] contends that closing the doors to a juvenile criminal trial increases the ability of the child to participate in the proceedings. By excluding the public, courts can create an atmosphere that benefits the interests of the child while also serving the interests of justice. Given the public scrutiny and its potential effects on the child's ability to participate, the question of a public or private trial is central to determining whether a child can effectively participate at trial. In addition the child's ability to handle the rigors of a public trial should be considered in determining whether to remove a child to an adult criminal court. It has been said that during trial Venables and Thompson heard tapes of their emotionally charged police interviews, Venables cried most of the time until he found a way to distract himself from listening to the proceedings, by counting in his head or drawing circles on the floor with his feet.[108] Bailey Kurariki was given pen and paper to draw on during proceedings. They could not pay attention to something they did not understand. Although the decision of the European Court is not binding on New Zealand, it is persuasive. If Bailey Kurariki had been tried in a private, age appropriate setting, he may have been able to better understand and appreciate the seriousness of what he had done, instead of being sidetracked, reveling in media attention. In the same way Ngatai Rewiti wouldn't have received his "Tupac Shakur-style exits" from the court room, and both boys would not be celebrities in the eyes of their peers, not to mention themselves.

Wolff, Alexander and McCall Smith contend that for children under fourteen there should neither be a public trial, or revelation of their names, to avoid the damage done by publicity and labeling. Justice[109] also recommends that children under fourteen should not be liable to a public trial in adult criminal courts and that for homicides committed

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[106] F. Buckley "One Murder, Three Victims, James Bulger, Robert Thompson and Jon Venables" [2002] C.O.L.R. (10).

[107] See Sentlinger, above n 104.

[108] See *Wolff, Alexander & McCall Smith*, above n56.

[109] Justice (1996) "Children and homicide: Appropriate Procedures for Juveniles in murder and homicide cases". London: Justice.

by children between fourteen and eighteen there should be a public hearing in a crown court with the judge able to rule about restrictions on reporting and revelation of identity. Children must be able to understand the trial procedure as it may well constitute the beginning of treatment. International legislation supports a closed trial. The International Covenant on Civil and Political Rights[110] provides "in the case of juvenile persons, the procedures shall be such, as will take account of their age and the desirability of promoting their rehabilitation. The Beijing Rules[111] which preceded New Zealand's own Child, Young Persons and their Families Act, provide:

> 8. Protection of Privacy
>
> 8.1 The Juvenile's privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling
>
> 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Fisher J refers to the enactment of section 329[112] and 438[113] of the CYPF Act as being entirely consistent with the Beijing rules. The CYPF Act however is limited to the Youth Court, while the Beijing Rules extend to all courts. The Beijing Rules were followed by the United Nations Convention on the Rights of the Child.[114]

The European judgment and international legislation clearly weigh in favour of at least name suppression before and during trial, and perhaps even further to the extent of a closed court. Our own experience in New Zealand illustrates that this may have resulted in a far better outcome in the cases of Bailey Kurariki and Ngatai Rewiti. I think it is integral that all children receive their fundamental right to

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[110] See ICCPR, above n 13.

[111] United Nations Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Although these rules are not binding on New Zealand the significance is that they directly preceded our own CYPF Act (Fisher J in *R v Rawiri*). See Appendix.

[112] See CYPF Act, above n 7, s 329

[113] Ibid, s 438.

[114] See Convention on the Rights of the Child, above n 69, Article 40.

participate in their own trial, and that media interest and presence is likely to frustrate such a right.

### I. Post-Trial Permanent Suppression

On attaining majority and pending the release of the two from their secure units with new identities, Venables and Thompson sought indefinite prohibition of anything which would identify them.[115] Dame Elizabeth Butler Sloss found that there was a real threat to their lives and possibility of revenge attacks. She noted that the media were in a unique position to provide the information that could lead to this risk and found that therefore the law of confidence could be extended to cover the indefinite injunctions sought in this case. She found the right to life was an overriding right and therefore a reasonable limit on freedom of expression.[116]

She did however note that she was uncertain whether it would have been appropriate to grant such injunctions if only Article 8[117] were likely to be breached. She said:

> Serious though the breach of the claimants' right to respect for family life and privacy would be, once the journalists and photographers discovered either of them, and despite the likely serious adverse effect on efforts to rehabilitate them into society, it might not be sufficient to meet the importance of the preservation of the freedom of expression in Article 10(1).[118]

She expressly stated it was not necessary for her to conclude on this issue due to the real risk of a breach of the rights of the claimants under Articles 2 and 3.[119] She placed emphasis on the intense media interest which remained seven years later and the continued hostility toward the claimants. The judgment is indicative that only in the case of a threat to the offender's life on release would permanent identity suppression be

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[115] See *Venables v News Group Newspapers*, above n 89.

[116] Ibid.

[117] See ECHR, above n 88, Article 8 'Respect for private and family life'.

[118] See *Venables v News Group Newspapers Ltd*, above n89, at para 464.

[119] See *ECHR*, above n 88, Article 2 "Right to life" and Article 3 "right to not be subjected to torture."

granted. I do however think that the adverse effect media attention would have on their rehabilitation and reintegration justifies a limit on freedom of speech.

Any restriction placed upon the media and reporting in the Youth Court and any grant of name suppression limits freedom of expression under the New Zealand Bill of Rights.[120] The question then, is whether these limits can be demonstrably justified in a free and democratic society.[121] In the Canadian case of *Southam Inc.,*[122] the court said that these limits could, so as to promote the rehabilitation of young offenders. As a means to achieve this objective the state chose to protect young offenders from the harmful effects of publicity. Martin[123] questions this objective. He asks whether society in fact has an equal interest in promoting the rehabilitation of adults. "If the rehabilitation of young offenders is prejudiced by the harmful effects of publicity, why should it not create a similar protection for adult offenders? Are adult offenders not going to be affected by publicity?" Martin[124] argues that the reasons of the court for protecting young offenders must stand or fall on a comparison of the recidivism rates for young offenders and the recidivism rates for adult offenders. He argues that if it turned out that the recidivism rates of young offenders were significantly lower than adult offenders, then we could conclude the limits were justified in a free and democratic society.

I think that the fact alone that young offenders are still in their formative years surely means that there is a much higher chance of rehabilitation than in adults. Young children are very impressionable and those that offend have often been led down the wrong track and just need someone to care enough to lead them in the right direction again. The CYPF Act recognizes this in having rehabilitation as one of

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120 New Zealand Bill of Rights Act 1990, s 14 'Freedom of Expression.'

121 Ibid, s 5 'Justified Limitations.'

122 *Southam Inc. v. R.* (1984), 48 O.R. (2d) 678 (H.C.J.) – In this case the applicant sought a declaration that the Young Offenders Act limited or denied their fundamental freedom of expression under the Canadian Charter and sought to get a court order excluding the public and press from the court to be set aside. The court agreed that their rights were limited but thought it was a reasonable limitation which could be demonstrably justified in a free and democratic society.

123 R. Martin *Media Law* (2nd ed) Irwin Law, Toronto, 2003.

124 Ibid.

it objectives.[125] It seems absurd that after having spent many years and resources helping Venables and Thompson develop into mature respectable young adults, the court would allow it all to be reversed. On all accounts it is reported the boys are genuinely very remorseful for what they have done and have grown into likeable young adults with little chance of re-offending. The boys would forever be caught in their past and not allowed to move on with their lives. They have served their punishment; the media should not be able to inflict a further and possibly indefinite one. Wolff, Alexander and McCall Smith argue that with proper care and treatment child offenders can become very different adults from the children they once were.[126] The European Court of Human Justice[127] recommended that the penal system of countries should in the case of children have objectives of social integration and education and that strictly punitive approaches are inappropriate. I think that the court, in considering name suppression must take into account the punitive approach the media take to create controversy and public interest to sell papers.

The victims of the crime often want the offender's name published to serve as additional retribution. Revenge is sweet, but it is a very basic human instinct and as members of a civilized society we must ask ourselves whether in the long run it is in our best interests. If our approach promotes re-offending the cost to the public will be far greater than one which helps produce citizens who are able to contribute effectively to society. I think that given that they are children and have many more years to live, society would prefer they rehabilitate, rather than cause much more potential harm by following a life of crime. So, given the evidence, why are the public continuing to demand harsher treatment of juvenile offenders? Could the media be to blame for this as well?

### J. The Media and Public Perception of Juvenile Offenders

Davis[128] argues that for the media to fulfil their so called role of 'informer' and 'educator' of the public as surrogates in court, the press

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[125] See CYPF Act, above n 7, at s 4.

[126] See Wolff, Alexander & McCall Smith, above n56.

[127] See *V v United Kingdom*, above n100.

[128] See Davis, above n32.

should be able to and should make every effort to report on everything that happens in court. This would be so to ensure no bias so the public are allowed and able to form their own opinions on cases and on our justice system in general. In reality however, news media will only allocate resources to cases that are deemed newsworthy, which results in only a select few cases being reported in the press. Serious juvenile offender cases are usually deemed 'newsworthy' as they are sure to invoke strong public reaction and sell papers.

Public attitudes and opinion unavoidably depend on public knowledge. However, few people know much about the juvenile justice system or how it works. Their knowledge tends to be filtered through the mass media and often involves notorious ("newsworthy") cases such as the Bulger and Choy cases discussed above. Roberts[129] contends that news media coverage of youth crime conveys a distorted portrait of the cases being processed by the courts and that youth crime in the papers is heavily skewed towards violence. He refers to studies by Dorfman and Schiraldi who conclude:[130]

> Rather than informing citizens about their world, the news is reinforcing stereotypes that inhibit society's ability to respond effectively to the problem of crime, particularly juvenile crime.

Roberts[131] goes on to add that coverage of youth crime in the media may affect public reaction to youth justice by promoting an offence-based view of processing and sentencing. If people do this they are less likely to take account of the offender's age and more likely to oppose mitigated punishments for young offenders and criticize the Youth Court for doing so. This is significant, as the existence of our separate youth justice based system is founded upon the recognition that the offender's age affects his degree of culpability. I think this is evident in that many people claim to support lifting name suppression on the basis of the seriousness of the offence, although as I mentioned before, the seriousness of the offence does not make them any less a child or any more of an adult.

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[129] J. V. Roberts "Public Opinion and Youth Justice" (2004) C & J 11.

[130] Dorfman, L., and V. Schiraldi (2001) "Off Balance: Youth, Race and Crime in the News." Building Blocks for Youth, 20.

[131] Ibid.

The abduction and murder of James Bulger became a global media event. Alison Young contends that it also became a kind of global benchmark against which to measure the extent of juvenile crime as a problem or the depths of national depravity.[132] Young describes how the media portrayed Bulger as "the quintessential child: small, affectionate, trusting, vulnerable, high spirited. He was frequently referred to as 'baby James.'"[133] She also discusses how James' photo accompanies most articles, wearing a t-shirt or pyjama top adorned with the words "Teenage Mutant Hero Turtles." He is taken as representing many of the symbolic ideals of childhood and most importantly, he appears to be what he is, innocent. Newspaper headlines included ones such as "Death of the Innocence". In stark contrast Thompson and Venables are portrayed as "*appearing* to be children, but they are not, they are more like miniature evil adults or monsters in disguise."[134] Young argues that James Bulger's status as a child was elevated, while Venables and Thompson were subjected to strategies by the media which undercut their childlike appearances, treating them more like adults. Franklin and Horwath[135] describe how the newspapers seemed unwilling to pay any serious attention to the mitigating circumstances which may help to explain the behaviour of Thompson and Venables, "without recourse to accounts based on biblical notions of 'inherent evil.'"[136] They argue the most worrying effect of this type of media abuse is the cultivation of the image of a child as a powerful, destructive being.[137]

I think that this message that children are bad or evil can have a spiraling effect. The public see these people who, although biologically children, as adults with adult minds capable of realizing the effects of their crime and therefore demand they receive adult treatment and punishment. It adds to the perception that children are becoming more

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[132] A. Young "In the Frame: Crime and the Limits of Representation" (1996) 29 ANZJ Crim 81.

[133] Ibid.

[134] Ibid, p 84.

[135] B. Franklin & J. Horwath "The Media Abuse of Children" (1996) 5 Child Abuse Review 310.

[136] Ibid, p 313.

[137] Ibid, p 316.

violent and out of control, which in turn intensifies the punitive nature of society today, and leads to demands for harsher treatment. The idea that a child such as Robert Thompson or Jon Venables fully understands the effect of what he did at such a young age is plainly wrong. Children do not have the life experience to understand the long term effects of what they do. These are children who only learnt to read and write not so long ago and who are not even a quarter of the way through their lives.

Roberts[138] argues that the public are encouraged by the media to draw general inferences about young people on the basis of a few specific instances. This public misconception of juvenile justice influences public attitudes towards juvenile justice policies. New Zealand is becoming more and more of a punitive society with promises of harsher treatment of juvenile offenders being given frequently in election campaigns and two bills before parliament which if passed will mean more unforgiving treatment of young offenders.[139] The portrayal of children as calculating, wicked and conniving gives the public and the government reasons to justify their harsher treatment and leads them to become desensitized to the offenders' needs. Hill[140] refers to the analogy of dropping a stone into a pond to explain the ripple effect of the social amplification and dissemination of information by the media. This negative media imagery creates the wrong impression of children, which leads to a public response that is wrongly based, and punishments that are not in the best interests of the child or the community.

## Conclusion

Bailey Kurariki will have served his sentence by 2009.[141] Although his appearance would have changed with age, there are not many people in New Zealand who will not remember or recognize his name. If any

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138 See *Roberts*, above n129, p 11.

139 Child, Young Persons and their Families Amendment (No 4) Bill and Young Offenders (Serious Crimes) Bill 2005.

140 A. Hill "Media Risks: The Social Amplification of Risk and the Media Violence Debate" (2001) 4 Journal of Risk Research 209, at 215.

141 Sensible Sentencing Trust *Junior Bailey Kurariki* <http://www.safe-nz.org.nz/Data/kurarikibailey.htm> at 1 August 2006.

further cases involving murder or manslaughter committed by a child occur, the media are likely to drag his name through the papers and on television all over again. He will probably have trouble finding meaningful employment if he ever tries. Robert Thompson and Jon Venables on the other hand will not have such trouble. They are free to enjoy the rest of their lives in peace. Having completed their sentence, and punishment for their crime, they are able to move on with their lives and look into the future, have goals, ambitions, and dreams. They have a chance of becoming good, contributing members of society. Bailey Kurariki and Ngatai Rewiti will have no such opportunity.

Had Bailey Kurarirki and Ngatai Rewiti been granted name suppression they would at least have the opportunity to start afresh on release. The public could still have been informed that a child had killed and the media would have been able to report on the sequence of events. The 'public interest' and principle of open justice would not have been hampered in any significant way. Instead, stigmatized, Kurariki and Rewiti are likely to become more involved in criminal subcultures, with gangs of other youths who perhaps saw them on television, or their picture in the paper and look on them as celebrities, icons perhaps. If Kurariki and Rewiti follow this path, chances are high they will end up back in prison as adults, and the cost to society will be far greater than if it had worked harder on their rehabilitation and reintegration. If they were to ever get in trouble with the law again, the media attention would intensify and the cycle would repeat itself.

We have a Youth Court that is strong on reintegrating the offender into society and yet when a child commits a serious offence this aim seems to be thrown out the window. This contradiction should not be present. As recognized by the Youth Court, name suppression in particular plays a large role in the prospects of reintegration and rehabilitation. It should therefore be applied to all child offenders, because they are children, not conditional on what crime they committed. Although Thompson and Venables were not granted permanent name or identity suppression initially, I believe that this would be more expedient, efficient and far less costly for our justice system, than going through the process of creating and maintaining new identities on release. It also promotes consistency with the overall treatment of youth offenders as dictated by the CYPF Act and the Youth Court. To pour huge resources into creating a new life for these

offenders, I feel, creates public resentment, as the victims have to live the rest of their lives with their loss. This resentment is easily avoidable.

For these purposes a child is someone who, but for the seriousness of their crime, would have had their case heard by the Youth Court. The seriousness of their crime should not mean that they are treated as an adult. They should be treated as a child with permanent name and identity suppression until they are no longer considered a 'child' or 'young person' as defined by the CYPF Act. In New Zealand this would be until they are eighteen. On reaching age eighteen I propose that the offender may apply to the court for further suppression, and if the court thinks that this is necessary for their rehabilitation and reintegration into society, or as in Thompson and Venables' case, their safety, it may be granted.

The word child has connotations of innocence, playfulness and vulnerability. However when a child commits a serious crime, for most people, those connotations disappear and instead are replaced by a belief this child has displayed an adult behaviour and must therefore be mature. I believe this to be wrong. A child's brain is not yet fully developed, and neither are their thought processes. With a child, previous history is hopefully minimal and definitely short, while the potential for change is huge. Let us not ignore this potential. Surely a child should get a second chance. Name suppression will go a long way towards this.