

CONDITIONAL ACCESS TO JUVENILE COURT PROCEEDINGS: A PRIOR RESTRAINT OR A VIABLE SOLUTION?

INTRODUCTION

Statutory juvenile laws do not acknowledge an unconditional public¹ right of access to juvenile courts.² In a majority of states, juvenile hearings are closed to the public and the press.³ "Confidentiality" is an important distinguishing factor between juvenile courts and traditional

1. Throughout this Note, the word "public" is used interchangeably with the terms "press," "news media," "media," and "general public." This Note does not discuss the First Amendment rights of broadcast media within the juvenile courts; the focus is strictly on the rights of newspapers and other types of printed media.

2. State courts differ in their opinions of whether there is a qualified right of access to juvenile proceedings. *See, e.g.*, San Bernardino County Dep't of Pub. Social Servs. v. Superior Court, 283 Cal. Rptr. 332, 338-39 (Cal. Ct. App. 1991) (stating that a First Amendment right of access does not extend to juvenile delinquency hearings); *In re T.R.*, 556 N.E.2d 439, 450 (Ohio 1990) (holding that there is no presumption of openness in juvenile court and that the press has no qualified right of access to these proceedings), *cert. denied*, 111 S. Ct. 386 (1990); *Edward A. Sherman Publishing Co. v. Goldberg*, 443 A.2d 1252, 1258-59 (R.I. 1982) (holding that because the press has no constitutional right of access to juvenile proceedings, Rhode Island's statute restricting access is valid); *In re J.S.*, 438 A.2d 1125, 1131 (Vt. 1981) (concluding that a Vermont statute mandating closed juvenile proceedings is constitutional). *Cf.* *United States v. Cianfrani*, 573 F.2d 835, 862 (3d Cir. 1978) (Gibbons, J., concurring) (noting that the Supreme Court implied that the public has a right to be informed about the conduct of judicial proceedings); *In re Hughes County*, 452 N.W.2d 128, 131 (S.D. 1990) (holding that because the press has a qualified right of access to juvenile hearings, the court can close juvenile proceedings only after balancing the state's interests against the press' rights); *Associated Press v. Bradshaw*, 410 N.W.2d 577, 580 (S.D. 1987) (concluding that the juvenile court abused its discretion to bar the media from a transfer hearing because the court failed to balance the parties' interests properly).

3. *See infra* note 15 and accompanying text explaining the exception to this rule and providing the illustrative statutory provisions.

adjudicatory hearings.⁴ Restricting press access, however, may violate a constitutional right to attend court proceedings. Although the Supreme Court found it implicit in the First Amendment that the press shall have access to criminal trials,⁵ it has not addressed the issue of whether this holding extends to juvenile proceedings.⁶ This lack of guidance has left states to create their own statutes⁷ which may potentially infringe upon the press' First Amendment right of access to the courts.⁸ Moreover, these statutes may create prior restraint⁹ problems by prohibiting the press from freely publishing truthful information that is of interest to the public.¹⁰

4. See *infra* notes 23-37 and accompanying text discussing the traditional purpose of the juvenile court and the theories behind confidentiality of juvenile court proceedings.

5. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), the Supreme Court held that an unarticulated right of access is found within the penumbra of the First Amendment and applied to the states through the Fourteenth Amendment. Therefore, the Constitution protects the press' right to publish public information gathered inside the courtroom. *Id.* at 575-81. See also *infra* notes 63-90 and accompanying text discussing the history of the press' access to adult criminal courts.

The Supreme Court has found several other unenumerated rights embodied within the Constitution. *Shapiro v. Thompson*, 394 U.S. 618 (1969) (right to travel); *United States v. Guest*, 383 U.S. 745 (1966) (the right of privacy); see also *Roe v. Wade*, 410 U.S. 113 (1973) (the right to privacy in personal, marriage, family, and sexual decisions); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (the right to sexual privacy); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (the right to privacy in marriage); *NAACP v. Alabama*, 357 U.S. 449 (1958) (the right of association); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (the right of privacy with respect to childrearing and education); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (same).

6. See *infra* notes 91-95 and accompanying text discussing lower courts' reaction to this lack of guidance.

7. See *infra* notes 13-20 and accompanying text, which discusses the different state statutes that affect access to juvenile proceedings and distinguishes them according to the type of restrictions placed on the news media.

8. Several scholars have proposed that the public has a fundamental right of access to the juvenile courts. See generally Gilbert Geis, *Publicity and Juvenile Court Proceedings*, 30 ROCKY MOUNTAIN L. REV. 101 (1958); Stephan Jonas, *Press Access to the Juvenile Courtroom: Juvenile Anonymity and the First Amendment*, 17 COLUM. J.L. & SOC. PROBS. 287 (1982); Note, *The Public Right of Access to Juvenile Delinquency Hearings*, 81 MICH. L. REV. 1540 (1983).

9. A prior restraint is an official order that "chills speech" because it prohibits the press from publishing certain kinds of information. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). See *infra* notes 101-111 and accompanying text for a thorough discussion of prior restraints and the news media.

10. The Supreme Court has held that a state cannot criminally punish a publication if it truthfully publishes information that was obtained lawfully. *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 101-06 (1979) (holding that a state cannot prohibit the

This Note questions the constitutionality of statutory juvenile laws that place restrictions on the press' right to disseminate and publish information obtained in juvenile courts.¹¹ Part I looks at a variety of state codes that place restraints on access to juvenile proceedings. Part II examines criteria that courts have considered when deciding whether to close or open juvenile hearings. Part III analyzes statutes that open the juvenile court to members of the press but place speech-related restraints on what they can divulge and publish. Part IV addresses the policy reasons why the Supreme Court should address this issue and proposes model state legislation that aims to protect the First Amendment rights of the press as well as the Fourteenth and Sixth Amendment rights of the juvenile delinquent.¹²

truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper). *See also* Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 837-42 (1978) (stating that the First Amendment prohibits imposing criminal sanctions on the news media for divulging or publishing truthful information); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 495-97 (1975) (holding that a newspaper may publish the name of a deceased rape victim if lawfully obtained from records available for public inspection).

11. This Note is based on the premise that there is no constitutional right of access to juvenile courts. Once access is granted, however, the press immediately gains a First Amendment right to publish truthful and lawfully obtained information. Any limitations that hinder the First Amendment right of free speech must be strictly scrutinized by the courts.

The scope of this Note includes a historical analysis of the "right of access" argument, and primarily focuses on the conflict between the First Amendment right of freedom of speech and the privacy concerns of the juvenile courts.

12. The Supreme Court has not addressed the issue of whether juveniles have a fundamental due process right to keep their hearings private and closed to the public. Most juvenile courts have jurisdiction over dependency, neglect, and adoption proceedings, as well as status offenses and more violent "adult-like" crimes committed by juvenile delinquents. A status offense is an act by a juvenile that would not be illegal if committed by an adult. *See* F. LEE BAILEY & HENRY B. ROTHBLATT, *HANDLING JUVENILE DELINQUENCY CASES* 20 (1982). Juveniles involved in dependency, neglect, or adoption proceedings may have a qualified right to a private hearing. *In re T.R.*, 556 N.E.2d 439, 449 (Ohio 1990), *cert. denied*, 111 S. Ct. 386 (1990). Juveniles suspected of status offenses and "adult-like" crimes are not as privileged. For instance, the Supreme Judicial Court of Massachusetts recently upheld a statute that permits juvenile courts to remain open when a juvenile is charged with murder. *News Group Boston, Inc. v. Commonwealth*, 568 N.E.2d 600, 603 (Mass. 1991) (upholding MASS. GEN. LAWS ANN. ch. 119, § 65 (West 1991)). The court held that juveniles who commit heinous crimes are not a suspect class and, therefore, legislation that opens their transfer hearings to the public will be valid if it is "a rational means to serve a legitimate end." *Id.* at 603 (quoting *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 442 (1985)). *See also* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *CRIMINAL JUSTICE INFORMATION POLICY: PRIVACY AND JUVENILE JUSTICE RECORDS* 18 (1982) [hereinafter

I. STATE LAWS RESTRICTING THE PRESS' ACCESS TO THE JUVENILE COURTS

Access to juvenile courts varies from state to state.¹³ The majority of statutes provide that the judge has the discretion to admit the public into juvenile proceedings.¹⁴ These proceedings are usually closed unless there is evidence that an outside party has a "direct" or "proper" interest in the case.¹⁵ The court also considers whether opening the hearing to the public is in the best interest of the child.¹⁶ If publicity

CRIMINAL JUSTICE INFORMATION POLICY] (suggesting that juvenile delinquents, like adult offenders, forfeit their right of privacy when they commit a crime).

Nevertheless, juveniles are not deprived of all constitutional protection. In *Kent v. United States*, 383 U.S. 541, 561-62 (1966), the Supreme Court held that juveniles have a right to a fair trial and to due process of law. See *infra* notes 41-43 and accompanying text discussing the ramifications of the *Kent* decision.

13. *Access to Juvenile Courts: A Reporter's Guide to Proceedings & Documents* (The Reporters Comm. for Freedom of the Press, Washington, D.C.), Fall 1991 [hereinafter *Access to Juvenile Courts*] (comparing state statutes governing access to juvenile courts).

14. Thirty-nine states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands, grant judges the discretion to exclude the public and the press from juvenile proceedings.

Traditionally, press access is decided by the juvenile judge on a case-by-case basis. Unfortunately, this method is inefficient and creates a backlog in the juvenile courts. The court wastes more time arguing with members of the press than it does in serving the best interests of the juveniles. See *infra* notes 141-45 and accompanying text for a proposal advocating a uniform approach.

15. Twenty-nine state rules or statutes provide that the court may grant access to those parties which have a "direct" or "proper" interest in the case. See, e.g., ALA. CODE § 12-15-65(a) (1986); ARIZ. JUV. CT. R. P. 19; CAL. WELF. & INST. CODE § 346 (West 1984); D.C. CODE ANN. § 16-2316(e) (Michie 1981); GA. CODE ANN. § 15-11-28(c) (Michie 1990 & Supp. 1992); HAW. REV. STAT. § 571-41(b) (1992); IDAHO JUV. R. 22(b) (Michie 1992); KY. REV. STAT. ANN. § 610.070(3) (Michie 1990); LA. CODE JUV. PROC. ANN. art. 69 (West 1983); MASS. GEN. LAWS ANN. ch. 119, § 65 (Law. Co-op. 1975 & Supp. 1992); MINN. STAT. § 260.155(1) (West 1992); MO. REV. STAT. § 211.171(5) (1986); NEV. REV. STAT. ANN. § 62.193(1) (Michie 1991); N.Y. FAM. CT. ACT § 741(b) (Mckinney 1986); N.D. CENT. CODE § 27-20-24(5) (Michie 1991); OHIO REV. CODE ANN. § 2151.35(A) (Page 1992); OKLA. STAT. tit. 10, § 1111(A)(1) (West 1987 & Supp. 1993); 42 PA. CONS. STAT. § 6336(d) (Purdon 1982); P.R. LAWS ANN. tit. 34, § 2208 (1991); R.I. GEN. LAWS § 14-1-30 (Michie 1981); S.C. CODE ANN. § 20-7-755 (Law. Co-op. 1991); TEX. FAM. CODE ANN. § 54.08 (West 1986 & Supp. 1993); UTAH CODE ANN. § 78-3a-33 (Michie 1992); VT. STAT. ANN. tit. 33, § 5523(c) (1991); V.I. CODE ANN. tit. 5, § 2517(f) (Butterworth Supp. 1992); WASH. REV. CODE § 13.34.110 (West 1991); W. VA. CODE § 49-5-1(d) (1992); WIS. STAT. § 48.299(1)(a) (West 1988); WYO. STAT. § 14-6-224(b) (1992).

A majority of courts grant access to members of the press because most newspapers have a legitimate and proper interest in keeping their readers informed about important issues developing within the law. *Access to Juvenile Courts*, *supra* note 13, at 2.

16. Five states hold closed hearings if the judge finds it is in the best interest of the

has an adverse effect on the minor, the judge may grant a closure order to keep the press out of the courtroom. Closure orders, however, are highly scrutinized. The judge's decision must be supported by a significant amount of evidence that the juvenile would suffer if access were granted.¹⁷

A few states have granted access to juvenile proceedings based on the seriousness of the charged offense.¹⁸ Under these laws, delinquents charged with crimes such as murder, rape, armed robbery, or aggravated assault are subject to the same treatment as that of an adult criminal. There is a legitimate public interest in the "proper disposition" of these crimes, regardless of whether the offender is a juvenile or an adult.¹⁹

Finally, four jurisdictions expressly grant access to the news media

child or community. *See, e.g.*, ALASKA STAT. § 47.10.070(a) (1992); COLO. REV. STAT. § 19-1-106(2) (West 1990); IND. CODE ANN. § 31-6-7-10(b) (Burns 1985); IOWA CODE § 232.39 (West 1985 & Supp. 1992); N.J. REV. STAT. § 2A:4A-60(g) (West 1987). For an overview of changes in the laws for juvenile court access since 1983, see also Note, *supra* note 8, at 1540-46.

17. *Ex parte* Columbia Newspapers, Inc., 333 S.E.2d 337, 338 (S.C. 1985). In *Columbia Newspapers*, the court held that the judge's decision to close the transfer hearing of two 15-year old brothers charged with the murder of their mother must be "supported by findings which explain the balancing of interests and the need for closure of the proceeding." *Id.* *See also* San Bernardino Dep't of Pub. Social Servs. v. Superior Court, 283 Cal. Rptr. 332, 345 (Cal. Ct. App. 1991) (stating that the court must recognize the importance of confidentiality in the juvenile court as well as the values of open court proceedings); *In re* T.R., 556 N.E.2d 439, 451 (Ohio 1990) (noting that because juvenile court proceedings are neither presumptively open nor presumptively closed, the court needs to weigh the competing interests for and against public access), *cert. denied*, 111 S. Ct. 386 (1990); *Associated Press v. Bradshaw*, 410 N.W.2d 577, 579 (S.D. 1987) (holding that if access is a qualified right, the court must balance the First Amendment rights of the public and press together with the state's desire to protect the delinquent's anonymity and the juvenile's right to a fair trial).

18. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 119, § 65 (Law. Co-op. 1977 & Supp. 1992) (stating that except when a child is charged with first or second degree murder, the court shall exclude the general public, unless they have a direct interest in the case); UTAH CODE ANN. § 78-3a-33 (Michie 1992) (providing expressly for media access at judge's discretion if the crime would be considered a felony when committed by an adult). *See also* DEL. CODE ANN. tit. 10, § 972(a) (Michie 1975) (mandating that "proceedings in a crime classified as a felony shall be open to the public"); ME. REV. STAT. ANN. tit. 15, § 3307(2) (West 1980 & Supp. 1993) (forbidding the exclusion of the public from proceedings involving serious crimes); MINN. STAT. ANN. § 260.155(1) (West 1992) (allowing for open hearings when it is alleged that a child has committed an offense that would be a felony if committed by an adult); MONT. CODE ANN. § 41-5-521(5) (1986) (same).

19. *News Group Boston, Inc. v. Commonwealth*, 568 N.E.2d 600, 603 (Mass. 1991). *See supra* note 12 for a discussion of the two types of juvenile proceedings.

in juvenile courts, yet prohibit any person from disclosing information that identifies the minor or the minor's family.²⁰ Each of the above-mentioned statutes compromise the press' freedom of speech. This Note analyzes whether these statutes act as a prior restraint or a viable solution to the conflict between First Amendment rights of access on the one hand and the need for privacy within the juvenile courts on the other.

II. KEEPING THE PRESS OUT OF THE JUVENILE COURTROOM: THE COURT'S REASONS AND CONCERNS

A. Introduction

Legislation restricting access to the juvenile courts is often ambiguous and misleading.²¹ As previously mentioned, the majority of statutes provide that persons with a direct or proper interest have a right of access to juvenile proceedings. Yet, how does the legislature define "direct" or "proper"? Does the press fall within this inclusion? In each state, juvenile courts have answered these questions differently. The courts' analyses generally focus on three basic criteria: maintaining the structure and confidentiality of the juvenile courts; analyzing the history of First Amendment access to courtrooms; and balancing the interests of the press and the minors involved.²² In order to understand why certain restrictions placed on the press are accepted by the courts, it is necessary to explore each of these concerns.

B. Philosophy Behind the Juvenile Justice System

The American juvenile court system has its roots in England's Chancery Courts, which were established to protect and supervise delin-

20. See, e.g., ALA. CODE § 12-15-65(a) (1993) (allowing court to admit press on the condition that the press does not divulge the minor's identity); D.C. CODE ANN. § 16-2316(e) (1992) (giving courts discretion to admit the press but the press cannot disclose minor's identity); ILL. REV. STAT. ch. 37, para. 801-5(6) (1992) (giving the court discretion to prevent the press from disclosing the minor's identity); V.I. CODE ANN. tit. 5, § 2517(f) (1992) (giving the court discretion to admit persons contingent on nondisclosure of the child's identity).

21. By relying on unclear terminology, juvenile judges implement overbroad protective orders during proceedings. In many instances, the protective orders go well beyond what is authorized by the statute. See, e.g., *In re M.B.*, 484 N.E.2d 1154, 1159 (Ill. App. Ct. 1985) (finding the trial court's order overbroad).

22. See *San Bernardino Dep't of Pub. Social Servs. v. Superior Court*, 283 Cal. Rptr. 332, 345 (Cal. Ct. App. 1991).

quent children.²³ Children accused of serious criminal acts, however, did not fall within the Court's defined jurisdiction.²⁴ Juvenile delinquents were placed with other criminals and tried as adults.²⁵ Early reform movements of the nineteenth century sought ways to change the system so that children would not consort with adult criminals and be subject to their penalties and lifestyles.²⁶ This new court system sought to rehabilitate rather than punish the delinquent minors for their committed wrongs.²⁷

In order to achieve this goal, the juvenile court restructured itself into an informal, nonadversarial system.²⁸ Hearings were considered

23. CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 11 (citing EDWARD ELDEFONSO, *LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER* (3d ed. 1978)). For an in-depth discussion of the origins of the juvenile court system, see Jonas, *supra* note 8, at 288.

24. CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 11.

25. *Id.* See also Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 106 (1909). Instead of rehabilitating these children, the system reinforced a negative environment and permitted them to become outlaws. *Id.* at 107. "It criminalized them by the very methods it used in dealing with them." *Id.*

26. See *In re Gault*, 387 U.S. 1, 15 (1967). Reformers believed it was society's duty to play a parental role in order to help rehabilitate delinquents, rather than subject them to the harshness of substantive and procedural criminal law. *Id.* In the nineteenth century, reformers visioned a separate juvenile court system to deal with offenders in a "more humane, less criminal and presumably more effective manner . . ." CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 11. These early reformers considered the minor child to be inherently good and believed that society should "treat" and "rehabilitate" delinquents in a non-institutionalized environment. *In re Gault*, 387 U.S. at 16. See generally Jonas, *supra* note 8, at 288 (discussing the origins of the juvenile court system).

27. CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 12-15; Mack, *supra* note 25, at 107. "The juvenile court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation . . . not to fix criminal responsibility, guilt and punishment." *Kent v. United States*, 383 U.S. 541, 554 (1966). For a thorough discussion of the rehabilitative objectives of the juvenile courts, see Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 282-320 (1967).

28. To fulfill the rehabilitative goals of the juvenile court, traditional adversarial proceedings were eliminated. *San Bernardino Dep't of Pub. Social Servs. v. Superior Court*, 283 Cal. Rptr. 332, 338 (Cal. Ct. App. 1991) (citing *In re Gault*, 387 U.S. at 26-27).

The state took the role of *parens patriae* to help those children who could not help themselves. It became the state's responsibility to be the "ultimate guardian"; to place the child under its wing, "not as an enemy, but as a protector." Mack, *supra* note 25, at 107. See also BAILEY & ROTHBLATT, *supra* note 12, at 4-5 (describing the juvenile court's early role as *parens patriae*).

“civil” instead of “criminal”; findings and decisions were made without following normal criminal procedural rules.²⁹ In this new atmosphere, proponents hoped that reformed child offenders would enter adulthood free of the stigma of being a “former delinquent.”³⁰

Although several of the original Juvenile Court Acts³¹ did not require closed proceedings, over time, advocates of the Acts insisted on confidentiality within the system.³² Many courts believe that publicity interferes with the rehabilitation of juvenile delinquents.³³ Public hearings have the potential to create negative publicity and take away from

29. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 544 n.5 (1971) (quoting from a task force report and describing the underlying theories of the juvenile court system).

30. Note, *supra* note 27, at 282. The purposes of the juvenile justice reform include: To get away from the notion that the child is to be dealt with as a criminal; to save it from a brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma.

Mack, *supra* note 25, at 109.

31. The first separate and independent juvenile court system was adopted in 1899 by the State of Illinois. *In re Gault*, 387 U.S. 1, 14 (1967). This Act created a unique courtroom that reviewed cases involving all juveniles, those charged with minor truanancies as well as those suspected of crimes “which would be criminal if done by an adult.” CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 12. See also Geis, *supra* note 8, at 103-05.

Today, all fifty states have their own Juvenile Justice Acts, which mandate separate courts for juvenile and adult crimes. See *supra* notes 14-16 and 18-20 and accompanying text for a summary of these Acts.

32. Geis, *supra* note 8, at 103-05. Historically, states have shielded the public from juvenile proceedings. *San Bernardino County Dep’t of Pub. Social Servs. v. Superior Court*, 283 Cal. Rptr. 332, 339 (Cal. Ct. App. 1991) (citing *In re J.S.*, 438 A.2d 1125, 1127 (1981)). “The Juvenile Court Law’s purpose is to protectively rehabilitate juveniles and that the maintenance [sic] of confidentiality is a necessary corollary of that purpose.” *Id.* at 339 (quoting *Wescott v. County of Yuba*, 163 Cal. Rptr. 385 (Cal. Ct. App. 1980)). See also *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 105 (1979) (noting that almost every state has adopted a shield law providing for confidentiality in the juvenile courts); *Davis v. Alaska*, 415 U.S. 308, 319 (1974) (declaring that states have a compelling interest in preserving the anonymity of a juvenile delinquent); *Kent v. United States*, 383 U.S. 541, 556 (1966) (noting that historically, statutes shield juvenile offenders from publicity); *In re J.S.*, 438 A.2d 1125, 1127 (1981) (stating that there is no absolute right of access to juvenile hearings, which traditionally have been closed).

33. See Geis, *supra* note 8, at 102 (“Publicity has consistently been regarded as one of the taboos of juvenile court procedure, devoutly to be avoided.”). Embarrassment, emotional trauma, and stress caused by open hearings directly interfere with the goals of rehabilitation. *San Bernardino*, 283 Cal. Rptr. at 340. See also *Daily Mail*, 443 U.S. at 107-08 (Rehnquist, J., concurring) (“Publication of the names of juvenile offenders may seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths’ prospects for adjustment in society and acceptance by the public.”) (quoting

the system's informal atmosphere.³⁴ Moreover, courts have a responsibility to protect minors and their families from any emotional or physical harm.³⁵ If a juvenile has committed a serious crime, it is possible that publicity could jeopardize any opportunity for a fair trial.³⁶ These philosophies have been criticized widely as more and more faults and misperceptions surface concerning the juvenile justice system.³⁷

EDWARD ELDEFONSO, LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER 166 (3d ed. 1978)).

The Supreme Court of Ohio succinctly summarized the dangers of an open juvenile courtroom: "When the evidence presented at a juvenile hearing is given wide coverage in the press, the effectiveness of the confidential records statutes and rules is weakened. Public access has the potential to endanger the fairness of the proceeding or disrupt the orderly process of adjudication." *In re T.R.*, 556 N.E.2d 439, 451 (Ohio 1990).

34. *San Bernardino*, 283 Cal. Rptr. at 340; Note, *supra* note 27, at 285. Pioneers of the juvenile courts hoped to avoid "the adult system's reliance on publicity as a deterrent" and aimed for a inherently rehabilitative system. *Id.* at 286.

35. *In re M.B.*, 484 N.E.2d 1154, 1160 (Ill. App. Ct. 1985). Intense publicity may psychologically harm the minor, "making it more difficult, if not impossible, for the child to recover from those events." *In re T.R.*, 556 N.E.2d at 451. See also *In re a Minor*, 537 N.E.2d 292, 294 (Ill. 1989) (noting that the trial court closed juvenile proceedings to protect the juvenile offender from physical threats).

36. For example, in a recent decision by the District of Columbia Court of Appeals, the court held that the press should be excluded from a juvenile proceeding if there is no reasonable assurance that the juvenile's name will remain confidential. *In re J.D.C.*, 594 A.2d 70, 79 (D.C. Cir. 1991). *In re J.D.C.* involved a fatal shooting of one teenager by another. *Id.* at 72. Several days before the trial, the *Wall Street Journal* identified the defendant by name and stated that the defendant had shot his friend. *Id.* The defendant filed a motion to exclude all members of the media, explaining that any further publicity would severely impair his reputation in the community. *Id.* The District of Columbia statute grants the press access to juvenile proceedings under the condition that they refrain from disclosing the minor's identity. D.C. CODE ANN. § 16-2316(e) (1992). Relying on this statute, the juvenile judge denied the motion to exclude all representatives of the media from the courtroom. 594 A.2d at 72. It did, however, deny access to the *Wall Street Journal* for publicly disclosing the juvenile's name before the trial. *Id.* The District of Columbia Court of Appeals reversed this order and concluded that the trial judge did not give sufficient weight "to the underlying policy of the statute." *Id.* at 77. The court found that "fidelity to the statutory scheme requires [the court] to hold that the [minor's] right to anonymity trumps the media's interest in attending and reporting on proceedings in a specific juvenile case." *Id.*

The court also has a responsibility to protect minor witnesses and juveniles involved in dependency and adoption hearings from adverse publicity. Confidentiality is even more necessary in proceedings involving abused, dependent, or neglected children. See *In re T.R.*, 556 N.E.2d at 449 ("The delinquent child is at least partially responsible for the case being in court; an abused, neglected or dependent child is wholly innocent of wrongdoing."). But see *In re a Minor*, 537 N.E.2d at 302 (holding that the judge must have more than "vague intimations" that the juvenile offender is in danger, or any restriction on the press is not warranted).

37. Confidentiality within the juvenile courts is an effective way to promote the re-

C. *Problems with the Juvenile Court System*

In theory, the goals of the juvenile court system appear attainable. In practice, however, their achievement is hindered by real life obstacles.³⁸ First, the system is not always fair to the juvenile. Due to the nonadversarial, noncriminal nature of juvenile proceedings, there is no requirement that juvenile courts follow any formal procedures.³⁹ As a result, juveniles often are denied due process of law.⁴⁰ For example, it was not until 1966, in *Kent v. United States*,⁴¹ that the Supreme Court expressly afforded minors the right to representation by counsel during certain proceedings.⁴² The *Kent* Court held that neither the court nor the state could deprive a juvenile of the basic requirements of due pro-

habilitative process and minimize the stigmas that attach to a finding of delinquency. Note, *supra* note 27, at 282. However, some critics claim that confidentiality harms the system, while open proceedings help maintain and enforce the goals of the court. See, e.g., Note, *supra* note 8, at 1550.

38. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 534 (1971) ("There has been praise for the system and its purposes, and there has been alarm over its defects.").

39. See *Kent v. United States*, 383 U.S. 541, 556 (1966) ("There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.").

40. The juvenile courts overlook the fact that juvenile delinquents are still being tried for a committed wrong. An "informal" proceeding does not give the court the right to abuse its power at the expense of the juvenile.

The court in *In re Gault*, noted that the three most important elements of due process are (1) a court with jurisdiction; (2) proper notice to parties; and (3) a fair hearing. *In re Gault*, 387 U.S. 1, 19 n.25 (1967) (quoting Arthur T. Vanderbilt, *Foreword to VIRTUE, BASIC STRUCTURE FOR CHILDREN'S SERVICES IN MICHIGAN* at x (1953)). In order to treat the child as a human being, instead of as chattel, juveniles must be afforded all three. *Id.*

41. 383 U.S. 541 (1966).

42. *Id.* at 561-63. In *Kent*, a 16 year-old was charged with rape, robbery, and housebreaking. *Id.* at 543. The juvenile court waived its exclusive jurisdiction without conducting an investigation. *Id.* at 546. The case was tried in the district court, where the jury found the juvenile "not guilty by reason of insanity" on the rape count and guilty of the six counts of housebreaking and robbery. *Id.* at 550. On certiorari, the Supreme Court held that the waiver of jurisdiction was invalid because it deprived the petitioner of his constitutional right to due process and the assistance of counsel. Instead, a juvenile is entitled to a hearing, to access by counsel to social records and probation reports, and to a statement of the reasons for waiving jurisdiction. *Id.* at 557-63. However, because juvenile proceedings are "civil" and not criminal trials, juveniles are not afforded certain protections available in criminal cases. *Id.* at 555. See also *infra* note 45 and accompanying text for discussion of the rights to which juveniles are not entitled.

cess and fairness.⁴³ Five years later in *McKeiver v. Pennsylvania*,⁴⁴ the Court took a step back from its earlier position and held that the Constitution did not entitle those tried in juvenile court to a jury trial.⁴⁵ Although this holding attempts to cast juvenile proceedings as more rehabilitative than adversarial, those convicted of serious crimes may be subject to a less fair trial than if they were convicted in a criminal court.

Second, the juvenile court system has not successfully rehabilitated juvenile delinquents.⁴⁶ Critics suggest that the rehabilitative goal of the courts will work only if those offenders capable of rehabilitation remain in the system.⁴⁷ Yet the number of juvenile delinquents who have committed violent criminal acts⁴⁸ has increased gradually within in the last decade.⁴⁹ These statistics show that the current rehabilitation process is unsuccessful because delinquents are not deterred from committing crimes. Moreover, the confidentiality rule has not stopped employers from gaining access to juvenile records and using that information to bar delinquents from future employment.⁵⁰ Consequently,

43. *Kent*, 383 U.S. at 560-63.

44. 403 U.S. 528 (1971).

45. *Id.* at 545. Due to the rehabilitative nature of the juvenile hearing, the Court found it unnecessary to treat it similarly to a criminal trial. *Id.* at 545-47. The Court concluded that not all rights granted to adults should be afforded to juveniles. *Id.* at 545. Juveniles are not entitled to bail, a speedy and public trial, indictment by a grand jury, immunity against self-incrimination, or confrontation of their accusers. *Kent*, 383 U.S. at 555.

46. *In re Gault*, 387 U.S. 1, 21-22 (1967) (noting the recidivism rate among juveniles). See also CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 18-19 (noting the increased juvenile crime rate).

47. Note, *supra* note 27, at 283 (“[T]he rehabilitative purposes of the juvenile court system can be fulfilled only if the scope of the regime is limited to those offenders who are capable of rehabilitation.”).

48. This Note defines violent criminal acts as murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

49. Although juvenile arrest rates for overall reported offenses declined between 1979 and 1989, the arrest rates for violent criminal acts increased 16% between 1985 and 1989. IRA M. SCHWARTZ ET AL., CENTER FOR THE STUDY OF YOUTH POLICY, UNIV. OF MICH. SCH. OF SOCIAL WORK, JUVENILE ARREST, DETENTION AND INCARCERATION TRENDS: 1979-1989, at 3 (1991). The arrest rates for some property offenses and other delinquent offenses increased 11% between 1983 and 1989. *Id.*

50. Both private and governmental employers are able to obtain police and court reports if they are interested in an applicant's juvenile court contacts. Note, *supra* note 8, at 1558. See also Douglas E. Mirell & David C. Fainer, Jr., Comment, *Delinquency Hearings and the First Amendment: Reassessing Juvenile Court Confidentiality Upon the Demise of “Conditional Access,”* 13 U.C. DAVIS L. REV. 123, 156-57 (1979) (“Those

the stigma associated with juvenile delinquency remains with juvenile offenders for most of their lives.⁵¹

Finally, the system is often unfair to the general public. The public, as well as members of the press, play an important role in courtroom proceedings.⁵² In an open courtroom, reporters can act as the eyes and ears of the general public. By closing the doors to juvenile proceedings, the public is unable to discover and perhaps solve the problems within the system.⁵³ This lack of access arguably hurts juveniles in custody. Public access has the potential to play a positive role in the juvenile courts by serving many of the social values recognized in the context of criminal trials.⁵⁴ Both the public and the press can help to discourage perjury,⁵⁵ assist with more accurate fact-finding,⁵⁶ and check judicial

interested in the background of the juvenile . . . seek out cumulative records of individual's past conduct, rather than specific, isolated news reports."). *But cf.* Note, *supra* note 8, at 1558 ("Potential employers, moreover, probably do not screen old newspaper files to determine the criminal record of a youthful applicant Thus, public access to juvenile delinquency hearings may contribute minimally, if at all, to the juvenile's . . . loss of occupational and educational opportunities.").

Moreover, it is society's duty to warn employers and educators who hire delinquents that certain juveniles may be dangerous or violent. *See* CRIMINAL JUSTICE INFORMATION POLICY, *supra* note 12, at 111-12. *See also In re B.C.L.*, 413 A.2d 335, 343 (N.J. 1980) ("The gravity of the offense can also be a sufficient warrant for disclosure Implicit in the public's recognized right to be informed is its ability to have the information necessary for its security.").

51. Society associates the term "delinquent" with "criminal." The stigma will plague juvenile offenders regardless of whether their hearings remain confidential.

52. "[T]he United States Supreme Court has repeatedly recognized the salutary function served by the press in encouraging the fairness of trials and subjecting the administration of justice to the beneficial effects of public scrutiny." *Brian W. v. Superior Court*, 574 P.2d 788, 792 (Cal. 1978) (citing *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559-60 (1976); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)).

53. "Public access serves an important educative function." *San Bernardino County Dep't of Pub. Social Servs. v. Superior Court*, 283 Cal. Rptr. 332, 342 (Cal. Ct. App. 1991). Access can lead to informed public discussion about the problems and issues surrounding the juvenile courts. *In re T.R.*, 556 N.E.2d 439, 451 (Ohio 1990). *See also In re N.H.B.*, 769 P.2d 844, 849 (Utah 1989) ("[P]ublic awareness and understanding of the juvenile court system . . . would promote public involvement in the governmental processes and might deter inappropriate actions on the part of some participants.").

54. *San Bernardino*, 283 Cal. Rptr. at 341. The *San Bernardino* court noted that access to trials is no less compelling in a juvenile court. "The public's ability to understand how the system operates and, in turn, its ability to make informed decisions regarding the need for positive changes to the system will be enhanced by allowing access to the proceedings." *Id.* at 342 (citing *In re N.H.B.*, 769 P.2d at 849).

55. *See id.* at 341; *In re T.R.*, 556 N.E.2d at 450; *In re N.H.B.*, 769 P.2d at 849.

56. "[P]ublic scrutiny of a criminal trial enhances the quality and safeguards the

abuse.⁵⁷ The public therefore has a legitimate interest in scrutinizing the work of the juvenile courts.⁵⁸

D. *Whether a First Amendment Right of Access Should Extend to Juvenile Court Proceedings*

The Supreme Court recently acknowledged that the "Freedom of Press" Clause of the First Amendment⁵⁹ gives the media a constitutional right of access to government-controlled, newsworthy information.⁶⁰ A purpose of the First Amendment is to arouse open discussion of governmental affairs;⁶¹ a democracy requires all citizens to have an opportunity to participate in "our republican system of self-government."⁶² Therefore, rules which infringe upon the press' right of access must be scrutinized carefully and balanced against any conflicting state interests.

Since 1980, the Supreme Court has maintained that there is a constitutional right of access to criminal court proceedings.⁶³ In an adult criminal trial there is a presumption of openness;⁶⁴ any publicity sur-

integrity of the fact finding process, with benefits to both the defendant and to society as a whole." *In re N.H.B.*, 769 P.2d at 846 (quoting *Globe Newspaper v. Superior Court*, 457 U.S. 596, 606 (1982)).

57. *San Bernardino*, 283 Cal. Rptr. at 341. Public scrutiny discourages biased and secret decisions and any misconduct among participants. See *Richmond Newspapers v. Virginia*, 448 U.S. 555, 569 (1980). See also Note, *supra* note 8, at 1550-52 & nn.58-70 for an in-depth discussion on potential abuses of the system by public officials.

58. *In re T.R.*, 556 N.E.2d at 450. Open trials assist the general public in understanding and appreciating the American legal system. *San Bernardino*, 283 Cal. Rptr. at 336-37 (quoting *Richmond Newspapers*, 448 U.S. at 572). See also *Brian W. v. Superior Court*, 574 P.2d 788, 790-91 (Cal. 1978) (suggesting that juvenile courts should actively encourage greater participation by the press).

59. The First Amendment states in part: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." U.S. CONST. amend. I.

60. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982).

61. *Id.* at 604 (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

62. *Id.*

63. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) was the first case in which the United States Supreme Court held that the press had a First Amendment right of access to criminal trials. *Id.* at 558.

64. See *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984); *Richmond Newspapers*, 448 U.S. at 569-71. In *Richmond Newspapers*, Chief Justice Burger noted that both civil and criminal trials historically have been open to the public. *Richmond Newspapers*, 448 U.S. at 580 n.17. But see *Globe Newspaper*, 457 U.S. at 611 (O'Connor, J., concurring) ("[N]either *Richmond Newspapers* nor the Court's decision today [carries] any implications outside the context of criminal trials.").

rounding these proceedings is expected and demanded by society.⁶⁵ The Supreme Court upheld this presumption in *Richmond Newspapers, Inc. v. Virginia*.⁶⁶ The Court looked to uncontradicted history and concluded that the press serves as a check on the fact-finding process and enhances the judicial system's integrity and quality.⁶⁷ However, this constitutional right is not absolute.⁶⁸ It is within the court's discretion to exclude members of the press and the public from a trial if their inclusion impairs fairness of the proceeding or infringes upon the defendant's constitutional rights.⁶⁹

The right to deny access to the public is subject to a strict scrutiny

65. *Richmond Newspapers*, 448 U.S. at 570. This presumption goes back to the English legal system, where courts emphasized the importance of public participation and attendance at public criminal trials. *Id.* at 565-66. The public character of criminal trials has remained constant. *Id.* at 567. The "presumptive openness" is a necessary part of a trial because it promotes justice. *Id.* Moreover, open access ensures citizens the opportunity to remain informed about everyday governmental affairs. *Globe Newspaper*, 457 U.S. at 604 (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). See *infra* note 67 and accompanying text explaining the importance of open proceedings.

66. 448 U.S. 555 (1980).

67. *Id.* at 569-71. Furthermore, public access creates an image of fairness within the court and raises public respect for the judicial process. *Globe Newspaper*, 457 U.S. at 606. See also *Richmond Newspapers*, 448 U.S. at 570-71 (noting that public trials provide an "outlet" for natural public reactions of outrage); *Gannett Co. v. DePasquale*, 443 U.S. 368, 428-29 (1979) (Blackmun, J., concurring in part and dissenting in part) (commenting on the role of fairness in open trials); *Levine v. United States*, 362 U.S. 610, 616 (1960) (noting that the public trial provision of the Sixth Amendment reflects the common law tradition of justice.); *In re Oliver*, 333 U.S. 257, 268-71 (1948) (noting the common law distrust of secret trials).

68. See *San Bernardino County Dep't of Pub. Social Servs. v. Superior Court*, 283 Cal. Rptr. 332, 338 (Cal. Ct. App. 1991) (stating that "the right of access does not extend automatically to every proceeding in court"); *Associated Press v. Bradshaw*, 410 N.W.2d 577, 578 (S.D. 1987) (noting that "the Media has no absolute constitutional right of access to any phase of a criminal trial"). Cf. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 570 (1976) (commenting that the Supreme Court has often denied that First Amendment rights are absolute); *In re N.H.B.*, 769 P.2d 844, 847 (Utah 1989) (holding that "[t]he right of public and press access is not absolute, . . . and may be denied if it is 'shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest' ") (quoting *Globe Newspaper*, 457 U.S. at 606-07).

69. *Richmond Newspapers*, 448 U.S. at 580-81. See also *Gannett Co. v. DePasquale*, 443 U.S. at 393-94 (holding that neither the public nor the press has a constitutional right of access to pretrial proceedings if the court agrees to closure in order to assure defendant's Sixth Amendment right to a fair trial); *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (emphasizing that a judge has an affirmative duty to prevent adverse publicity from endangering defendant's ability to receive a fair trial). But see *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (holding that although the right of the accused to a fair trial is crucial, it is difficult to distinguish his or her

analysis.⁷⁰ Applying this standard, the Court in *Globe Newspaper Co. v. Superior Court*⁷¹ struck down a Massachusetts statute that excluded the public from the courtroom when a minor was the victim of a sex crime.⁷² The Court held that the state's interest in protecting the juvenile's physical and psychological demeanor was not compelling enough to justify a blanket exclusionary rule.⁷³

In dissent, then Chief Justice Burger criticized the majority's decision for overlooking the significant number of state statutes that afford juvenile delinquents protection against publicity.⁷⁴ Ironically, the majority's opinion contradicted current trends in juvenile statutory law.⁷⁵ Nevertheless, this decision laid the foundation for a new constitutional right of access to the press.

The Supreme Court extended *Richmond's* and *Globe's* "presumption of openness" rationale in *Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I)*,⁷⁶ finding that the press has a constitutional right to attend the jury selection process in criminal trials.⁷⁷ In *Press-*

interests from "the right of everyone in the community to attend the voir dire which promotes fairness").

The Court in *Richmond Newspapers* noted that legitimate restrictions include those to ensure a quiet and orderly setting, as well as restrictions limiting capacity or access. *Richmond Newspapers*, 448 U.S. at 581 n.18.

70. Under strict scrutiny, the state must show that limitations on the press' right to disseminate information serve "a compelling governmental interest," and are narrowly tailored to serve that interest." *Globe Newspaper*, 457 U.S. at 607.

71. 457 U.S. 596 (1982).

72. *Id.* at 602. In *Globe Newspaper*, the state argued that it had a compelling interest in protecting the victims of sex crimes from further psychological damage and in encouraging victims to report and testify in court about these crimes. *Id.* at 607. In order to satisfy these interests, the state asserted that it was necessary to deny access to the press and the public during the testimony of the minor. *Id.*

73. *Id.* at 608-10. The Court held that other alternative means could prove equally effective for protecting the state's interest. For example, the court could use a case-by-case approach to determine whether public proceedings would harm the minor victim. *Id.* at 608. Closure could be based on a list of criteria such as the minor victim's age, the nature of the crime, whether the victim and his or her family wish to keep the proceedings closed, and the level of the victim's maturity. *Id.* This type of court discretion guarantees the press and the public that their First Amendment right of access will be protected except when the state's justification "is a weighty one." *Id.*

74. *Globe Newspaper*, 457 U.S. at 612 (Burger, C.J., dissenting).

75. See *supra* notes 14-20 and accompanying text for illustrative statutes protecting juveniles.

76. 464 U.S. 501 (1984).

77. *Id.* at 508 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-71 (1980)).

Enterprise I, the California Court of Appeals affirmed the lower court's decision prohibiting the press from viewing the voir dire for a trial involving the rape and murder of a teenage girl.⁷⁸ The Supreme Court reversed, holding that an open trial is essential for the appearance of a fair trial.⁷⁹ Because secret proceedings tend to make the public and the press lose confidence in the system,⁸⁰ the Court opined that the public has a legitimate interest in knowing what happens to persons accused of criminal acts, especially violent crimes.⁸¹

Two years later, the Supreme Court held in *Press-Enterprise Co. v. Superior Court of California (Press-Enterprise II)*⁸² that the First Amendment right of access extended to preliminary hearings.⁸³ The

78. *Id.* at 505. The trial judge supported the state's assertion that potential jurors would "lack the candor necessary to assure a fair trial" if the press was present during voir dire. *Id.* at 503.

79. *Id.* at 505. "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known." *Id.* at 508 (citing *Richmond Newspapers*, 448 U.S. at 569-71).

80. See *Press-Enterprise I*, 464 U.S. at 509 ("Closed proceedings, although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness."); *Richmond Newspapers*, 448 U.S. at 572 ("People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.")

81. *Id.* at 508-09. The Court noted:

Criminal acts, especially violent crimes, often provoke public concern [and] outrage and hostility; this in turn generates a community urge to retaliate and desire to have justice done. . . . When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions.

Id.

82. 478 U.S. 1 (1986).

83. *Id.* at 10. In *Press-Enterprise II*, the State of California accused nurse Robert Diez of murdering twelve of his patients. *Id.* at 3. The state alleged that Diez administered massive doses of the heart drug lidocaine, which caused a fatal reaction. *Id.* Consistent with California Penal Code § 868, the magistrate granted the defendant's motion to exclude the public from the preliminary hearing. *Id.* at 3-4. The case attracted national attention, so the court believed exclusion to be necessary in order to protect the defendant's right to a fair and impartial trial. *Id.* at 4. At the conclusion of the hearing, the state moved to release the transcript of the preliminary hearing to the public. *Id.* at 4-5. The Superior Court denied the motion, stating that public dissemination of the transcript "might prejudice the defendant's right to a fair trial." *Id.* at 5. The California Supreme Court affirmed the judgment, noting that while the public had no general constitutional right of access, the court could close the hearing when there is a reasonable likelihood of substantial prejudice. *Id.* at 5-6. The United States Supreme Court reversed, concluding that the public has a First Amendment right of access to prelimi-

Court based its decision on two complementary considerations: experience and logic.⁸⁴ First, the Court considered whether preliminary hearings were historically open to the press and general public.⁸⁵ Second, the Court questioned whether public access plays a significant and positive role in the process.⁸⁶ The Court concluded that the press had a First Amendment right of access if the proceeding in question passed this test of "experience and logic."⁸⁷ However, the Court emphasized once again that this right is not unconditional.⁸⁸ In limited circumstances, the press' First Amendment right can be outweighed by another constitutional guarantee.⁸⁹ To overcome the "presumption of openness," the court must show that closure is essential and that it is narrowly tailored to serve the state's compelling interest.⁹⁰

Because the Supreme Court has not extended this right outside the context of criminal trials, lower courts are left unguided as to whether there is a qualified right of access to juvenile proceedings.⁹¹ Courts are split on the issue even though all attempt to apply the standards set forth in *Richmond Newspapers* and its progeny.⁹² Hearings in juvenile

nary hearings and that this fundamental interest "cannot be overcome by the conclusory assertion that publicity might deprive the defendant" of a fair trial. *Id.* at 15.

84. *Id.* at 8-9. This formula is based on a compilation of the Court's previous decisions in *Richmond Newspapers*, *Globe Newspaper*, and *Press-Enterprise I*. *Id.*

85. *Id.* at 8. The Court found that there was a tradition of accessibility to preliminary hearings in California. *Id.* at 10. Trial by jury is a presumptively public process; closure is warranted only if the court can show good cause. *Id.* at 8.

86. *Id.* at 8-9. The Court found that the openness of certain trials supports "public confidence" in the system. *Id.* Just as public access to criminal trials and jury selection ensure the proper functioning of the criminal justice system, so does access to preliminary hearings. *Id.* at 12.

87. *Press-Enterprise II*, 478 U.S. at 9.

88. *Id.*

89. *Id.* The Court acknowledged that the right of the accused to a fair trial may outweigh the right of access. *Id.* See *infra* note 104 and accompanying text for cases upholding prior restraints.

90. *Press-Enterprise II*, 478 U.S. at 13-14. The Supreme Court has rejected several interests as "non-compelling" and, therefore, insufficient to justify an infringement on First Amendment rights. See *Worrell Newspapers of Indiana, Inc. v. Westhafer*, 739 F.2d 1219, 1223 n.4 (7th Cir. 1984) (listing cases and identifying the interests found to be not compelling).

91. See *supra* note 2 for an illustration of state cases which have addressed access to juvenile proceedings.

92. The standard is clearly set out in *San Bernardino County Dep't of Pub. Social Servs. v. Superior Court*:

(1) the right of access does not extend automatically to every proceeding in court; (2) whether the right extends to a particular proceeding depends on whether

courts are not traditionally open to the public and the press.⁹³ The historically private nature of juvenile proceedings distinguishes them from traditional criminal trials.⁹⁴ However, public access to juvenile proceedings plays a significantly positive role by promoting public support and ensuring fairness within the system.⁹⁵ Until the Supreme Court addresses this issue specifically, the degree to which courts can restrict access to juvenile proceedings remains unclear.

III. STATUTES WHICH GRANT THE PRESS ACCESS BUT PLACE SPEECH-RELATED RESTRICTIONS ON WHAT IT CAN DISSEMINATE AND PUBLISH

If the press has no constitutional right to attend juvenile proceedings, a court's decision to restrict access is subject to a lesser standard of review.⁹⁶ Under such a standard, juvenile laws may be as restrictive as necessary to protect the interests of the state.⁹⁷ A few state statutes close all juvenile proceedings to the public,⁹⁸ while others grant the

the particular proceeding passes the tests of experience and logic (*Press-Enterprise II*); (3) if the right does apply to a particular proceeding, a statute mandating that such proceeding be closed is unconstitutional (*Globe*); and finally; (4) if there is a constitutional right of access to a particular proceeding, any order closing all or part of that proceeding must be supported by articulated findings indicating that closure is necessary to serve an overriding and compelling state interest and that the order closing the proceedings is narrowly tailored to serve that interest.

283 Cal. Rptr. 332, 338 (Cal. Ct. App. 1991).

93. See *supra* notes 32-36 and accompanying text discussing the history of confidentiality within the juvenile court.

94. See *supra* notes 24-30 and accompanying text for a discussion of the treatment of juvenile delinquents. See also notes 63-81 and accompanying text discussing the presumptive openness of criminal trials.

95. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571-72 (1980) (noting that "where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted"). See also *supra* note 67 for discussion of the advantages of open proceedings.

96. The California Court of Appeals faced this issue in *San Bernardino*, 283 Cal. Rptr. at 334. The court held that if there is a constitutional public right of access then the court cannot exclude the public unless the state can show an overriding compelling interest for closure and that the exclusion is narrowly tailored to serve that interest. *Id.* at 336 n.4. However, if there is no constitutional right at issue, the court does not need to balance the press' First Amendment rights against the state's interests. *Id.*

97. See *infra* notes 134-40 and accompanying text for a discussion of the rationale behind restrictive juvenile laws.

98. See, e.g., N.H. REV. STAT. ANN. § 169-B:34 (1991) (allowing only parties, witnesses, and counsel to attend); VA. CODE ANN. § 16.1-302 (Michie 1992) (excluding the general public from all juvenile court hearings).

press access but prohibit any dissemination of information that identifies the minor or the minor's family.⁹⁹ The latter restrictions serve as a reasonable assurance that the primary goal of protecting a minor's anonymity will be achieved.¹⁰⁰ When a state places speech-related restrictions on the press, however, it creates a prior restraint.¹⁰¹ Prior restraints are not unconstitutional per se,¹⁰² but must be supported by a very important state interest in order to be valid.¹⁰³ Except in special circumstances,¹⁰⁴ the state does not have the power to prohibit the publication of information that has been publicly revealed and obtained through lawful means.¹⁰⁵ Prior restraints on speech are the most serious infringements on First Amendment rights.¹⁰⁶

Prior restraints and criminal sanctions are viewed similarly in the eyes of the Supreme Court in that they are both presumptively unconstitutional.¹⁰⁷ Since 1976, the Court has consistently held that a state

99. See *supra* note 20 for an enumeration of these statutes.

100. See, e.g., *In re J.D.C.*, 594 A.2d 70, 75 (D.C. Cir. 1991) (noting the legislature's paramount aim of protecting the juvenile's anonymity).

101. See *In re a Minor*, 537 N.E.2d 292, 300 (Ill. 1989) (noting the suspect nature of prior restraints because "a prior restraint freezes the flow of ideas during the course of litigation and tends to deprive the public of timely news, information and comment").

102. *Id.* See *infra* note 107 and accompanying text noting that prior restraints are presumptively invalid.

103. See *Worrell Newspapers of Indiana, Inc. v. Westhafer*, 739 F.2d 1219, 1222 (7th Cir. 1984) (noting that the state's interest must be compelling and pursued through the least restrictive means); *San Jose Mercury-News v. Municipal Court*, 638 P.2d 655, 662 n.12 (Cal. 1982) ("Normally a statute that directly affects protected speech or press rights cannot be upheld against a challenge . . . unless the law is necessary to accomplish a compelling state interest unrelated to speech and no means of serving that interest, less intrusive on speech, is available."). See generally *Jonas*, *supra* note 8, at 317-29 (analyzing First Amendment prior restraint doctrine as applied to juvenile court proceedings).

104. The Supreme Court has upheld prior restraints only in exceptional circumstances. *Near v. Minnesota*, 283 U.S. 697, 716 (1931). The immunity from prior restraints is limited to contexts where necessary to protect the national security, to protect against acts of violence or a forceful overthrow of government, or to prevent the publication of obscenity. *Id.*

105. See *In re a Minor*, 537 N.E.2d at 301. See also *State v. Stauffer Communications, Inc.*, 592 P.2d 891, 895 (Kan. 1979) (noting that the press has undeniable access to information once it is placed into the public domain); *Edward A. Sherman Publishing Co. v. Goldberg*, 443 A.2d 1252, 1256 (R.I. 1982) (holding that a statute cannot bar the press from reporting a juvenile's identity once this information is revealed outside of the juvenile court).

106. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

107. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) (stating that prior restraints on expression carry a "heavy presumption" of unconstitutionality).

may not impose sanctions on the truthful disclosure of information involving public judicial proceedings.¹⁰⁸ As long as the information is on public record, the state cannot prohibit the press from divulging and publishing its findings.¹⁰⁹ This rationale also applies to privileged information obtained during juvenile proceedings.¹¹⁰ Nevertheless, legislatures and state courts continue to uphold statutes that restrain the press from disclosing a juvenile's identity.¹¹¹

The Constitutionality of Restrictions Placed on the Press Once Inside the Courtroom: Two Distinct Views

Supporters of the media argue that juvenile courts may not restrain

108. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491 (1975). In *Cox*, the Court declared unconstitutional a statute that made it a crime to publish the name of a rape victim. *Id.* at 496-97. The Court reasoned: "By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby served . . . States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." *Id.* at 495. In *Craig v. Harney*, 331 U.S. 367 (1947), Justice Douglas made a very strong argument against punishing the media for their reporting of courtroom proceedings:

A trial is a public event. What transpires in the court room is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.

Id. at 374. See also *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 (1978) (declaring unconstitutional a state statute making it a crime to publish information regarding confidential proceedings before a state judicial review commission, because such reporting is protected under the First Amendment).

109. *Cox*, 420 U.S. at 492. The privacy interests of the accused decrease once information appears on public record, while the First Amendment interest of the public and the press remains constant. *Id.* at 494. Accordingly, the *Cox* Court held that the First Amendment protects the press when it publishes truthful information open to public inspection. *Id.* at 495. See *supra* note 108 for the Court's reasoning.

110. In *Oklahoma Publishing Co. v. District Court*, 430 U.S. 309 (1977), the Supreme Court held that if juvenile hearings are open to the public, even if they are normally closed, the state cannot bar the press from publishing truthful information obtained at the hearing. *Id.* at 311. Once information is placed in the public domain, the court cannot constitutionally restrain its publication or dissemination. *Id.* at 310.

In *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 106 (1979), the Court invalidated a West Virginia statute prohibiting the press from publishing the identity of a juvenile delinquent without approval of the juvenile court. The *Smith* Court held that the statute operated as a prior restraint on speech and was therefore unconstitutional. *Id.* at 100.

111. As long as the statute is narrowly tailored, courts will not invalidate these laws. See *infra* notes 134-40 and accompanying text discussing such a case.

the press from disclosing a juvenile's identity once the press is granted access to the courtroom.¹¹² Although there may not be a constitutional right of access to juvenile proceedings, once the court agrees to open its doors, any information revealed is by lawful means.¹¹³ This reasoning is consistent with those Supreme Court cases which ban prior restraints when the targeted information is already in the public forum.¹¹⁴ When the judge grants the press access to the courtroom, the state waives its right to withhold information from the public. The state can only invoke protective measures if publication would result in a serious threat to the juvenile's welfare and no other less speech-restrictive alternatives are available.¹¹⁵

The Supreme Court upheld, however, a prior restraint in *Seattle Times Co. v. Rhinehart*.¹¹⁶ In *Rhinehart*, the Court validated a court order prohibiting the dissemination, publication, or use of information obtained during discovery.¹¹⁷ The respondent, the spiritual leader of a

112. Because the Supreme Court has never addressed this issue, there is no concrete legal standard regarding permissible state regulation of press conduct. Several state courts have expressly turned down the opportunity to answer this question. *See, e.g., In re Hughes County Action No. Juv 90-3*, 452 N.W.2d 128, 134 (S.D. 1990) (refraining from determining the constitutionality of a statute that prohibited the media from disclosing a witness' identity when appearing in a juvenile proceeding); *Associated Press v. Bradshaw*, 410 N.W.2d 577, 580-81 (S.D. 1987) (same). *But see infra* notes 134-138 and accompanying text for discussion of a case holding that the press may be prohibited from releasing information obtained in the courtroom.

113. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 568 (1976) ("Once a public hearing has been held, what transpires there [cannot] be subject to prior restraint."). *See also In Interest of a Minor*, 563 N.E.2d 1069, 1080 (Ill. App. Ct. 1990) (Steigmann, J., dissenting) ("[T]he First Amendment strips the State of the power to proscribe the publication of information which has already been lawfully revealed and which has been obtained by lawful means.") (quoting *In re a Minor*, 537 N.E.2d 292, 301 (Ill. 1989)).

114. *See supra* notes 108-10 and accompanying text for a discussion of cases which have applied this rationale.

115. *See In re a Minor*, 537 N.E.2d 292, 300 (Ill. 1989) (noting valid prior restraints). Overbroad court orders restricting access and speech will not be sustained. For example, in *In re M.B.*, 484 N.E.2d 1154 (Ill. App. Ct. 1985), the Illinois Court of Appeals invalidated a protective order that placed more restraints on the press' freedom than the Illinois state statute. *Id.* at 1159-60. The Court reasoned: "The statute permits only the suppression of the minor's identity. Anything beyond that, and the order here goes far beyond, is suspect and subject to strict scrutiny." *Id.* at 1159.

116. 467 U.S. 20 (1984).

117. *Id.* at 29. In the State of Washington, a judge may issue a protective order during the discovery process only if there is a finding of "good cause," as required by Washington Superior Court Civil Rule 26(c). *Id.* at 25-26. The court relied on *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979), which stated that "the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn

religious organization,¹¹⁸ brought a damages action against several newspaper companies for defamation and invasion of privacy.¹¹⁹ During discovery, the petitioners demanded access to the identities of the members and donors in respondent's congregation.¹²⁰ Although the district court ordered the respondents to disclose the information, it also issued a protective order prohibiting petitioners from publicly divulging the identities of the donors.¹²¹ The Supreme Court upheld the protective order, concluding that it did not violate the First Amendment.¹²²

The *Rhinehart* Court applied a two-part test¹²³ to determine whether there is a constitutional right to disseminate information with-

and precise; and there must be no alternative means of protecting the public interest which intrudes less directly on expression." *Rhinehart*, 467 U.S. at 25 n.6 (quoting *In re Halkin*, 598 F.2d at 191).

118. Rhinehart is the spiritual leader for the Aquarian Foundation. 467 U.S. at 22. The common link between the 1,000 member, Washington-based organization is their belief in life after death. *Id.* The Aquarians employed Rhinehart as their primary medium to communicate with the dead. *Id.*

119. The *Seattle Times* and the *Walla Union-Bulletin* published eleven articles in over six years about Rhinehart and his religious practices. *Id.* Each article created an allegedly false description of the respondent and his associates. Rhinehart claimed that the petitioners knew or should have known that the statements were false. *Id.* at 23. Rhinehart further alleged that the negative publicity harmed Aquarian's financial status by discouraging contributions by current members. *Id.*

120. Rhinehart refused to disclose the identity of Aquarian's members on the grounds that it would violate its members' "privacy, freedom of religion, and freedom of association." *Id.* at 25.

121. The trial court found that publicizing the discovery requests could have an adverse effect on the members and donors and subject them to both personal embarrassment and physical harm. *Rhinehart*, 467 U.S. at 26-27. The Supreme Court of Washington affirmed the protective order, stating:

[Although a] protective order may fall . . . within the definition of a 'prior restraint of free expression,' we are convinced that the interest of the judiciary in the integrity of its discovery processes is sufficient to meet the 'heavy burden' of justification. The need to preserve that integrity is adequate to sustain a rule like [Washington Superior Court Civil Rule] 26(c) which authorizes a trial court to protect the confidentiality of information given for purposes of litigation.

Rhinehart v. Seattle Times Co., 654 P.2d 673, 690 (Wash. 1982).

122. *Rhinehart*, 467 U.S. at 37.

123. The test is extrapolated from *Procunier v. Martinez*, 416 U.S. 396, 413 (1974). It focuses on whether (1) "the practice in question [furthers] an important or substantial governmental interest unrelated to the suppression of expression" and whether (2) "the limitation of First Amendment freedoms [is] no greater than is necessary or essential to the protection of the particular governmental interest involved." *Id.*

out restraints when access is obtained through a court order.¹²⁴ First, the Court looked at the history behind the discovery process. Because the state creates discovery rules, petitioners in civil litigation are privileged with access to their opponent's records.¹²⁵ Furthermore, pretrial depositions and other discovery proceedings rarely take place in public.¹²⁶ Information revealed through discovery can often be irrelevant or inadmissible at trial.¹²⁷ Also, a court has a right to prohibit the dissemination of confidential data unrelated to the case if its publicity would have the potential for abuse.¹²⁸

Second, the Court considered whether the restraining order was overbroad or too intrusive on the petitioners' First Amendment freedoms.¹²⁹ The protective order at issue was limited to information gained during discovery; it did not restrict the publication of anything obtained from other outside sources.¹³⁰ The Court therefore concluded that the protective order was narrowly tailored and that any infringement was a minor imposition on the petitioners' First Amendment rights.¹³¹

Protective orders in civil discovery proceedings are analogous to the conditional restrictions issued by juvenile courts. In *Rhinehart*, the Court held that access to discovery materials grants a party a conditional right to use the information when preparing for and trying its case; the party does not have a protected right to release that informa-

124. *Id.* at 32. The relationship above parallels the situation where a juvenile judge grants access to the press, yet restrains them from publishing the identification of the juveniles.

125. "A litigant has no First Amendment right of access to information made available only for purposes of trying his suit." *Id.* at 32. See also *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965) ("The right to speak and publish does not carry with it the unrestrained right to gather information.").

126. *Rhinehart*, 467 U.S. at 33. See also *Gannett Co. v. DePasquale*, 443 U.S. 368, 389 (1979) (holding that discovery proceedings are private; the public was not afforded a right of access under English common law).

127. *Rhinehart*, 467 U.S. at 33.

128. *Id.* at 35.

129. *Id.* at 32, 36-37.

130. *Id.* at 37.

131. *Id.* at 34. On several occasions, the Supreme Court has validated speech-related restraints in order to ensure a fair trial. *Id.* at 32 n.18 (citing *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308, 310-11 (1977); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 361 (1966)). See also *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21 (1981) ("In the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors.").

tion to the public.¹³² Similarly, conditional access to juvenile proceedings gives the press the right to disseminate newsworthy information obtained during the proceeding, but there is no constitutionally protected right of the press to print everything heard in the courtroom.¹³³

The *Rhinehart* rationale was applied to juvenile proceedings in *In the Interest of a Minor*.¹³⁴ In that case, the Illinois Court of Appeals held that the press may be prohibited from publicizing the minor's identity if it obtained the information inside the courtroom.¹³⁵ The court noted that juvenile proceedings are traditionally closed to all but the direct parties involved; any access is conditional and based on the court's discretion.¹³⁶ As long as the press is unable to obtain the juvenile's identity through regular reportorial techniques, it is within the court's authority to restrain the press from publishing any privileged information.¹³⁷ The court implied that in order to prevent potential harm to the minor, the press must waive the right to use any information obtained contrary to the court's wishes.¹³⁸

132. See *supra* notes 125-28 and accompanying text discussing the Court's reasoning.

133. If the juvenile court grants access to members of the press based on the condition that certain information (such as the minor's identity) would not be released, the press is obligated to live up to its agreement. For example, in *In re Steinberg*, 195 Cal. Rptr. 613 (Cal. Ct. App. 1983), the California Court of Appeal for the Second District upheld a prior restraint placed against an employee who signed a secrecy agreement as a condition of employment. *Id.* at 617-18. The court held that the right of access was purely conditional; without the signed contract, the employee would never have had access to the confidential information sought to be published. *Id.* at 618.

134. 563 N.E.2d 1069 (Ill. App. Ct. 1990).

135. *Id.* at 1077. To be admitted into the proceedings, petitioner, the *Champaign News-Gazette*, was ordered by the juvenile court to refrain from identifying the two minor victims of parental physical and sexual abuse. *Id.* at 1071. The Court of Appeals held that the court's order was overbroad and constituted an impermissible prior restraint of the press. *Id.* at 1077. The court concluded, however, that limiting the restraint to information regarding the juveniles' identities revealed during the proceeding was permissible. *Id.*

136. *Id.* at 1076-77.

137. *Id.* at 1077. However, the court's order cannot be so overbroad that it restrains the press from publicizing information obtained both inside and outside the courtroom. *Id.*

138. *Id.* See also *Rhinehart v. Seattle Times Co.*, 654 P.2d 673, 681 (Wash. 1982) where the court stated:

[W]hen persons are required to give information which they would otherwise be entitled to keep to themselves, in order to secure government benefit or perform an obligation to that government, those receiving that information waive the right to use it for any purpose except those which are authorized by the agency of government which exacted the information.

It is a privilege to gain access to juvenile proceedings. History provides that there is a presumption of closure to the juvenile courts in order to protect the identity of minors.¹³⁹ It is therefore within the court's discretion to conditionally restrain the press from publishing information which may be damaging or abusive to the minor or the minor's family. Releasing the name of a juvenile delinquent is not essential to a well-written and newsworthy story.¹⁴⁰ This restraint can be narrowly tailored to serve the legitimate interests of the state as well as the constitutional rights of the press.

IV. A PROPOSAL THAT WITHSTANDS STRICT SCRUTINY ANALYSIS

Until the Supreme Court decides whether there is a constitutional right of access to juvenile court proceedings, courts will continue to place unnecessary barriers on the press' freedom of speech. Once admitted into the juvenile courtroom, the press has an undeniable First Amendment right to print the truth. Any infringement on this fundamental interest must withstand strict scrutiny in order to be upheld. By granting access to juvenile proceedings, however, the state does not relinquish its compelling interest in protecting juveniles from unwanted publicity. Ideally, the court should adopt a policy which grants the public access to juvenile proceedings yet ensures the offender a fair trial by protecting him or her from adverse publicity. A uniform approach, instead of the current policy of case-by-case discretion, is the most efficient solution.¹⁴¹

The Supreme Court, however, should not advocate an unconditional

Id.

139. See *supra* notes 32-36 and accompanying text discussing the traditions of confidentiality within the juvenile courts.

140. Justice Rehnquist's famous concurrence in *Smith v. Daily Mail* reiterates this belief: "The press is free to describe the details of the offense and inform the community of the proceedings against the juvenile. It is difficult to understand how publication of a youth's name is in any way necessary to performance of the press' 'watchdog' role." *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 108-09 (1979) (Rehnquist, J., concurring).

141. This proposal does not suggest implementing one Juvenile Justice Act for all states; it merely suggests that with regard to press access, a more uniform approach would decrease litigation and help ease the backlog within the juvenile courts. There are too many cases in juvenile court involving representatives of the media petitioning against protective or restraining orders. The proposed solution offers a viable alternative to the case-by-case discretionary approach. See *In Interest of a Minor*, 563 N.E.2d 1069, 1076 (Ill. App. Ct. 1990) (explaining that a case-by-case analysis "causes more delay in the commencement of proceedings designed to protect minors").

right of access. The Court should clarify that the public and the press are entitled to access on two conditions: (1) that they have a direct interest in the case before the court;¹⁴² and (2) that the juvenile offender's identity remains anonymous.¹⁴³ In addition, conditional access should apply to all juvenile adjudicatory proceedings. The following proposed statute incorporates these elements:

Part I. Juvenile Courtroom Procedures

Subchapter I. Access to Juvenile Courtrooms

§ 101. Rights of Parties to Proceedings

(a) Any persons, including members of the press, who have a direct interest in the case or in the work of the court, shall be admitted to the proceeding on the condition that they refrain from divulging information identifying the child or members of the child's family involved in the proceeding, provided that, no judge shall issue any protective order preventing members of the press or any other interested party from publishing or otherwise disclosing information legally obtained outside the court proceeding.¹⁴⁴

Adoption of a statute, modeled after the one proposed, would pass constitutional muster. The proposal is narrowly tailored to meet the compelling interests of the state.¹⁴⁵ Furthermore, it properly balances the privacy rights of the juvenile delinquent and the First Amendment rights of the press.

142. See *supra* note 15 and accompanying text explaining the requirement that the press have a direct interest in the juvenile adjudicatory proceedings. This limitation on access guarantees the public an opportunity to observe justice within the juvenile courtroom. Additionally, the court may continue to use its discretion by prohibiting non-parties from disrupting proceedings.

143. See *supra* note 140 and accompanying text suggesting that it is unnecessary for the press to identify minors when reporting cases involving juvenile delinquents.

144. This proposed model is based on the Juvenile Codes of the District of Columbia and Illinois. See D.C. CODE ANN. § 16-2316(e) (1992); ILL. REV. STAT. ch. 37, para. 801-5(6) (1992). See *supra* note 20 for a brief description of these statutes.

145. Several lower courts suggest this approach as a way to satisfy the interests of all parties. See, e.g., *Brian W. v. Superior Court*, 574 P.2d 788, 791 n.6 (Cal. 1978) (implying that conditional access based on the promise to keep the juvenile's identity confidential would be constitutional); *In re Hughes County Action No. Juv 90-3*, 452 N.W.2d 128, 134 (S.D. 1990) (conditional access is a viable "alternative to a totally closed adjudicative hearing").

V. CONCLUSION

The policy arguments for keeping juvenile proceedings are laudable. Juvenile delinquents deserve an opportunity to rehabilitate themselves. Society's goal of remolding juvenile offenders has a greater chance of success if the crimes are kept confidential. However, confidentiality does not mean secrecy. It is important for the public to understand how the juvenile court functions. Moreover, the public has a right to know about crimes committed by juvenile offenders as well as those crimes committed against minor victims. Conditional access to juvenile proceedings is a viable solution to end the present day conflict of rights. Conditional access proves beneficial because it does not unnecessarily restrict the freedom of the press. Restricted access also enables the public to receive valuable information, while refraining from upsetting the structure of the juvenile court. Access based on the suggested preconditions serves as a fair compromise for all those involved.

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