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PRIVACY V. PUBLIC ACCESS TO JUVENILE COURT PROCEEDINGS: DO CLOSED HEARINGS PROTECT THE CHILD OR THE SYSTEM?

JAN L. TRASEN*

...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.

*Kent v. United States, 1966.1

I. INTRODUCTION

S.E., a fourteen year-old girl, is now home with her grandmother. After five years in the foster care system, during which she called eight different foster placements and institutions “home,” a protracted court battle recently resulted in the return of S.E. to the grandmother who had raised her since infancy.2 The facts of S.E.’s case, which include allegations of child neglect and agency ineptitude, are unremarkable in the annals of family court proceedings.3 What is noteworthy, however, is this grandmother’s effort to gain public access to dependency hearings through her federal court challenge to the Court Closure provision of the Pennsylvania Juvenile Act.4

Sylvia Ernst, the maternal grandmother of S.E., raised S.E. since age two, when S.E.’s mother abandoned her.5 S.E. proceeded to attend six different schools before the age of eight, and concern for her behavior and truancy prompted Children and Youth Services of Chester County, Pennsylvania (CYS) to file a petition against Ernst, alleging

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* Editor in Chief, BOSTON COLLEGE THIRD WORLD LAW JOURNAL.
3 The vast majority of family court business—child protective proceedings, foster care reviews, custody cases, juvenile delinquency determinations—is frequently not recorded in state reporters, even at the appellate level.
4 Ernst, 1993 WL 343375 at *1.
5 Id.
neglect. A finding of prima facie dependency at an emergency hearing in May 1988 resulted in S.E.’s placement in a psychiatric institution for a complete psychiatric and psychological evaluation. Two weeks later, S.E. was officially determined to be dependent, and was ordered to remain in CYS custody for thirty additional days of psychiatric treatment. She was then placed in foster care.

And so nine year-old S.E. entered what would become an extended journey through the foster care agencies and institutions of Chester County, Pennsylvania—a journey from which she would not emerge until the age of fourteen. Although the reunification of S.E. with her grandmother was the articulated goal of both parties, S.E. was shuffled from foster home to foster home, and from group home to institution, as the courts tried to do what was in her “best interest.” During the following five years, over twenty evidentiary hearings were held in the Chester County courts, including regular administrative review hearings, as well as those held at the request of Ernst or CYS officials. In addition, Ernst unsuccessfully challenged the continuation of dependency in the Superior Court of Pennsylvania, and was twice denied certiorari by the Supreme Court of Pennsylvania.

At each hearing CYS questioned Ernst’s parenting skills, and each time CYS determined that Ernst’s aggressive behavior toward agency
workers was, itself, sufficient to preclude the reunification of the grand­mother and child.\textsuperscript{12} Several frustrating episodes, including periodic suspensions of Ernst's visitation rights at S.E.'s placements and her ejection from one evidentiary hearing,\textsuperscript{13} led Ernst to commence her federal court action in the Eastern District of Pennsylvania in mid-1991.\textsuperscript{14} While this action was pending, S.E.'s dependency case finally came before a newly assigned Chester County judge; on April 26, 1993, this judge issued an order returning S.E. to Ernst's physical custody, a full five years after S.E. had been placed into the system.\textsuperscript{15}

Sylvia Ernst was outraged over the system's delays and mistakes in her granddaughter's case. Ernst alleged numerous instances in which case workers had signed and approved reports without reading them, and in which juvenile court judges had mechanically approved extensions of S.E.'s foster placement without ever verifying whether her grandmother had complied with court-ordered parenting classes.\textsuperscript{16} Ernst's anger was fueled by her impression that the child welfare system was using court closure as a device to avoid public scrutiny, by keeping the public ignorant of activities within the system.\textsuperscript{17} Ernst believed that if the media had been permitted to witness what was transpiring in S.E.'s case, S.E. might have been returned to her custody sooner, thereby averting the "child welfare tragedy\textsuperscript{18}" that the case ultimately became.\textsuperscript{19} Ernst's decision to challenge the court closure provisions of Pennsylvania's Juvenile Act thus revived an old debate: do the privacy laws, which are intended to protect children, effectively serve to protect

\textsuperscript{12} \textit{Id.} That CYS may have been baiting Ernst, and provoking her to act in a way which would preclude reunification with her granddaughter, was noted by the court. \textit{See id.} at *94 n.32.

\textsuperscript{13} \textit{Id.} at *6.

\textsuperscript{14} \textit{Id.} at *7. Ernst initially brought this action pro se under 42 U.S.C.A. § 1983 for damages and injunctive relief, claiming a constitutional civil rights violation of her custodial rights to her granddaughter. She also challenged the constitutionality of 42 PA. CONS. STAT. ANN. § 6336(b), which governs the closing of juvenile courts. \textit{Id.}

\textsuperscript{15} \textit{Id.} The court's opinion included the statement:

\begin{quote}
The Court believes that not only is unification in this family desirable, but it is essential. We have come to the point where state intervention in [S.E.'s] life is now doing more harm than good. . . . Not only are [S.E.'s] best interests served by being with [her] grandmother, I find there is now no 'clear and convincing evidence' that [S.E.] at her present age and maturity, should be in the physical custody of the state rather than in the physical custody of her natural grandmother.
\end{quote}

\textit{Id.}

\textsuperscript{16} \textit{Id.} at *3.

\textsuperscript{17} \textit{See} Bauers, \textit{supra} note 2, at E2.

\textsuperscript{18} \textit{See id.} Thomas Curran, of the Defender Association of Philadelphia's Child Advocacy Unit, used these words to describe S.E.'s case and the agency's conduct when he was called as an expert witness for Ernst. \textit{Id.}

\textsuperscript{19} \textit{See Ernst}, 1993 WL 343375 at *1.
agencies from accountability to the public for their mistakes? Although juvenile courts have traditionally been closed to the public and the media, especially in protective and dependency proceedings,20 a growing number of critics assert that these hearings have the potential to become “little more than kangaroo courts, where judges rubber-stamp agency requests”21 without proper consideration. In cases such as S.E.’s, in which children are jostled through a system of ever-changing goals,22 personalities,23 and standards,24 supporters of open courts believe that media exposure might force officials to act more consistently and responsibly in individual cases.25 Increased public awareness of the child welfare system might also encourage heightened public scrutiny of the system, as well as an understanding of the system’s limited resources.26

This Note suggests that, as long as the public and media respect the privacy rights of children, a qualified form of public access to the juvenile court system would serve the best interests of children. Part II presents an overview of the constitutional right of public access to criminal trials27 and the criteria considered by courts when deciding the issue of access to other types of trials.28 Part II also addresses the dangers of prior restraint inherent in any sort of conditional access policy. Part III discusses the history and philosophy of the juvenile justice system and the rationale behind the traditional policy of closed hearings.29 Part IV examines the manner in which juvenile courts have

20 See infra Part III for a discussion of the background of confidentiality in the juvenile court system.

21 Bauers, supra note 2, at E2.

22 Chester County CYS repeatedly changed the goal in S.E.’s case from family reunification to long-term foster care; this kind of inconsistency makes quick resolution of cases like S.E.’s almost impossible. Ernst, 1993 WL 343375 at *3–4.

23 During the Ernst proceedings, one agency worker was removed from the case for inappropriate conduct and personal involvement in the matter. Id. at *94 n.32.

24 See Bauers, supra note 2, at E2. Ira Schwartz, dean of the School of Social Work at the University of Pennsylvania notes that in “the curious area of neglect,” different agencies use different thresholds to warrant removing children from their homes. See id. Schwartz asks, “Do we know the difference between poverty and neglect?” Id.

25 Bauers, supra note 2, at E2.


28 The Supreme Court has not yet ruled on the issue of public juvenile trials, or whether juveniles have a fundamental due process right to keep their hearings private and closed to the public.

29 Because the Supreme Court has not spoken, state courts differ in their treatment of the
addressed public access in delinquency cases, and suggests that similar qualified access to dependency hearings would benefit both children and the public. Part V concludes that a policy of qualified access to juvenile dependency hearings, if carefully monitored, would benefit both the children within the child welfare system, and the system itself.

II. THE CONSTITUTIONAL RIGHT OF ACCESS TO CRIMINAL TRIALS

A. A Brief History of Public Access to Criminal Trials

In 1980, the Supreme Court recognized that the public and press have a First Amendment right to attend criminal court proceedings. The Court reasoned that the purpose of the freedom of expression guaranteed by the First Amendment is to arouse open discussion of public affairs, and to encourage the participation of citizens in self-government. Since the "Freedom of the Press" clause of the First Amendment has been construed to grant the media a constitutional right of access to newsworthy information which is controlled by the government, any rules that infringe on press access are subject to strict scrutiny. In deciding Richmond Newspapers, Inc. v. Virginia in 1980, a plurality of the Court discussed this country's historical tradition of open and public trials, as well as the several public policy interests promoted by that tradition. Richmond Newspapers arose out of a murder trial in which the trial judge had granted the Commonwealth of issue of qualified or conditional access to juvenile proceedings. See, e.g., In re Katherine B., 596 N.Y.S.2d 847, 851 (App. Div. 1993) (holding that there is no presumptive right of access to child protective proceedings and that the determination is at the discretion of the court); 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), cert. denied, 498 U.S. 958 (1990); Edward A. Sherman Publishing Co. v. Goldberg, 443 A.2d 1252, 1258-59 (R.I. 1982) (holding that since the press has a qualified right of access to juvenile proceedings, Rhode Island statute restricting access is valid). But see In re Hughes County, 452 N.W.2d 128, 131 (S.D. 1990) (holding that the press has a qualified right of access to juvenile hearings, and thus the court can close juvenile proceedings only after balancing the state's interests against the rights of the press).

30 Most juvenile courts have jurisdiction over dependency, abuse, neglect, and adoption proceedings, as well as violent crimes committed by juvenile delinquents.

31 Richmond Newspapers, 448 U.S. at 580.

32 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.


34 See id. at 604. See infra notes 43-47 and accompanying text for further discussion on the Supreme Court's discussion of Globe Newspaper.

35 Globe Newspaper, 457 U.S. at 607.

36 448 U.S. at 570. The plurality traced the tradition of public trials back to the English legal system, which encouraged public participation and attendance at criminal trials. Id. at 565-66.
Virginia's motion to close the proceedings to the press and public.\textsuperscript{37} The trial court denied the newspaper company's motion to vacate the closure order, and on appeal, the Supreme Court of Virginia affirmed.\textsuperscript{38} The United States Supreme Court reversed, allowing the newspaper access to the highly controversial murder trial.\textsuperscript{39}

The Court emphasized that open trials not only ensure fairness, but also promote public support for both the judicial process and for its results.\textsuperscript{40} In addition, because it is unrealistic to expect large numbers of citizens to attend criminal proceedings, the Court acknowledged that the press often acts as the public's surrogate by attending trials and reporting to the public on the proceedings.\textsuperscript{41} Although the Court recognized this constitutional right of access to criminal trials, it also acknowledged that this right is not absolute.\textsuperscript{42} Courts may, within their discretion, exclude members of the press and public from a trial if "an overriding interest articulated in findings"\textsuperscript{43} outweighs the public's right of access.\textsuperscript{44}

The Court stated two years later in \textit{Globe Newspaper Co. v. Superior Court} that courts can justify closure only by a showing of "compelling governmental interest," and that the closure order must be "narrowly tailored to serve that interest."\textsuperscript{45} In \textit{Globe Newspaper}, the Commonwealth of Massachusetts argued that the Massachusetts mandatory closure statute, which closed the courtroom during the testimony of

\begin{footnotesize}
\begin{itemize}
\item According to the Court, "presumptive openness" is a necessary part of a trial because it promotes justice. \textit{Id.} at 567.
\item \textit{Id.} at 559-60.
\item \textit{Id.} at 560-62.
\item \textit{Id.} at 580. Although the murder trial had concluded by the time the First Amendment decision was issued, the Court stated that the question was not moot, and held that the right of access existed. \textit{Id.} at 563.
\item \textit{Id.} at 571-72. "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." \textit{Id.} at 572.
\item \textit{Id.} at 573. Although the plurality found that the rights of the press were coextensive with the public's right of access, Justice Brennan stated that the question of whether the press has greater access rights than the public remains unsettled. \textit{Id.} at 586 n.2 (Brennan, J., concurring).
\item \textit{Id.} at 581 n.18 (plurality opinion).
\item \textit{Id.} (plurality opinion).
\item Factors that might outweigh public access in the discretion of the court include the impairment of a fair trial, restrictions to ensure a quiet and orderly setting, and the protection of the defendant's constitutional rights. \textit{See, e.g.}, San Bernardino County Dept of Pub. Social Servs. v. Superior Court, 283 Cal. Rptr. 332, 338 (Ct. App. 1991) (stating that "the right of access does not extend automatically to every proceeding in court"); \textit{In re N.H.B.}, 769 P.2d 844, 847 (Utah App. 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 \textit{Globe Newspaper Co. v. Superior Court}, 457 U.S. 596, 606-07 (1982))).
\item 457 U.S. 596, 606-07 (1982).
\end{itemize}
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juvenile victims of sex crimes, was justified by the state interest in protecting these victims from further psychological damage. The Commonwealth also asserted that it had a compelling state interest in encouraging victims to report and testify in court about these crimes, and that it was necessary to deny public access to the trials during the testimony of these minors to satisfy these interests. Applying a strict scrutiny analysis, the Court struck down the Massachusetts statute, holding that the state's interests were not compelling enough to justify a blanket exclusionary rule. Because the trial court is expected to balance the state's interest in closure against the public's First Amendment right of access on a case-by-case basis, the Court found a mandatory courtroom closure statute to be overly broad.

In 1984, the Supreme Court extended the right of public access to the jury selection process of criminal trials in *Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I)*, holding that an open trial is essential for the appearance of a fair trial. The Court also ventured that the public has a legitimate interest in knowing the consequences of criminal acts, and especially in knowing what happens to persons accused of violent crimes. In 1986, the Court extended the First Amendment right of access to preliminary hearings in *Press-En-

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46 Id. at 607.
47 Id.
48 Id. at 608-10.
49 Id. at 608-09. The Court did suggest, however, that alternate means might prove effective in protecting the interests named by the state. An individualized approach that considers criteria such as the minor victim's age, maturity, wishes regarding privacy, and the nature of the crime might provide helpful information to courts in their balancing process. Id. This type of case-by-case determination would guarantee the First Amendment right of access to the press and public, unless the state's justification was, in the words of Justice Brennan's majority opinion, "a weighty one." Id.
50 464 U.S. 501 (1984). *Press-Enterprise I* involved a lower court decision that prohibited the press from viewing the voir dire for a rape and murder trial in which the victim was a teenage girl. The trial judge supported the closure on the grounds that the defendant might not receive a fair trial if the press inhibited the jurors. Id. at 503.
51 Id. at 508 (citing Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 569-71 (1980)). "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.
52 Id. at 508-09. The Court noted that "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.
terprise Co. v. Superior Court of California (Press-Enterprise II). The Court observed that the determination of presumptive openness should rest on whether the place and process have historically been open to the press and public, and whether public access plays a significant and positive role in the functioning of the process. The standard established by the Court in Press-Enterprise II, a test of "experience and logic," was essentially a compilation of its previous decisions in Richmond Newspapers, Globe Newspaper, and Press-Enterprise I. If a court proceeding passes this test of experience (this type of trial has been historically open to the public), and logic (public access would play a positive role), a qualified First Amendment right of public access attaches, and the proceeding is presumptively open to the press and public. This right of access is not absolute, but the presumption of openness may only be overcome by an overriding interest in a closure that is held to be "essential to preserve higher values and is narrowly tailored to serve that interest."

B. Conditional Access to Trials and the Problem of Prior Restraint

Because the Supreme Court has not yet found there to be a constitutional right of access to juvenile court, a court's discretionary ruling to employ closure of a juvenile courtroom is subject to a lesser standard of review. Whereas a few state statutes close all juvenile proceedings to the public, others grant access but prohibit the dis-
semination of details that might identify the minor or the minor's family. Although this kind of restriction on the freedom of the press may serve to protect a juvenile's anonymity, it may also create problems of prior restraint. Even though prior restraints are not unconstitutional per se, they carry a "heavy presumption" of unconstitutionality, and must be supported by the highest form of state interest. Although the Court has acknowledged a state's interest in protecting the anonymity of juvenile victims and defendants, it has struck down state legislation which was found to impose a prior restraint in order to accomplish that goal.

In Oklahoma Publishing Co. v. District Court, the Court held that because a juvenile court judge had permitted the media to attend a juvenile hearing, it was unconstitutional for the judge to restrain the publication of truthful information obtained there. Once information is "publicly revealed" or "in the public domain," a court cannot constitutionally restrain its publication or distribution.

In an effort to keep confidential the identities of litigants, some states have implemented criminal sanctions rather than prior restraints. These statutes, however, have been similarly scrutinized by the Court. Since 1975, the Supreme Court has found unconstitutional the placing

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60 See infra Part III for a discussion of the goals of the juvenile system regarding confidentiality.


62 Id.; see also Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 570 (1976) (finding unconstitutional a court order that restrained the press from publishing confessions or admissions made by the accused in a multiple murder trial). "Once a public hearing had been held, what transpired there could not be subject to prior restraint." Id. at 568.


64 Id. In this trial of an eleven year-old boy charged with delinquency by second-degree murder, the juvenile court granted the press and public access to the proceedings, even though such proceedings were traditionally closed to the public. Id. at 309. The Court invalidated the pre-trial order issued by the juvenile court, which had prohibited any further use of the boy's name or photograph, noting that there was "no evidence that [the media] acquired the information unlawfully or even without the State's implicit approval." Id. at 311–12.

65 Id. at 310.

66 E.g., Smith v. Daily Mail Publishing Co., 443 U.S. 97, 106 (1979) (finding invalid a West Virginia statute requiring the press to obtain approval from the juvenile court in order to publish the identity of a juvenile defendant); Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 838 (1978) (finding unconstitutional a Virginia statute that criminalized the publication of information regarding confidential proceedings before a state judicial review commission); Cox
of criminal sanctions on the truthful disclosure of information revealed at a public trial. 67 In Cox Broadcasting Corporation v. Cohn, the Court found a Georgia statute that criminalized the publication of a rape victim's identity to be unconstitutional. 68 Although the Court acknowledged that the statute was designed to protect the privacy rights of the victim and her family, the Court held that since the name of the victim had become known to the press and public through official court records, that information could not be constitutionally constrained. 69

Four years later, in Smith v. Daily Mail Publishing Co., the Court held that a West Virginia statute that prohibited the press from disseminating information about a juvenile delinquent without the permission of the juvenile court operated as an unconstitutional prior restraint on speech. 70 Daily Mail involved a fourteen year-old boy who fatally shot a classmate at his junior high school in a West Virginia town. 71 The media learned of the shooting by its routine monitoring of the police band radio frequency, and obtained the name of the alleged assailant simply by asking various eyewitnesses. 72 The Court held that each of these news-gathering techniques was lawful. 73 The Court also held that the magnitude of the state's interest in protecting the identities of juvenile defendants was not sufficient to justify the application of a criminal penalty against the media. 74 In addition, the Court found the statute to be unconstitutional because it was inadequate to accomplish its stated purpose of confidentiality. 75

The Court has broadly construed the constitutional right of public access to criminal trials, at least in part because these trials historically

Broadcasting Corp. v. Cohn, 420 U.S. 469, 491 (1975) (finding invalid a Georgia statute that made it a crime to publish the name of a rape victim).


68 Id. Justice White, speaking for 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 being served. . . . States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." Id. at 495.

69 See id. at 496-97; see also Landmark Communications, 435 U.S. at 838 (finding that the state's "interests advanced by the imposition of criminal sanctions are insufficient to justify the actual and potential encroachments on freedom of speech and of the press which follow therefrom").

70 443 U.S. at 106.

71 Id. at 99.

72 Id.

73 Id. at 104-05.

74 Id.

75 Id. The Court noted the failure of the statute to restrict any other media, other than newspapers, from printing the names of youths charged in juvenile proceedings. Id. at 105. In this case, three radio stations had announced the juvenile's name before the respondent Daily Mail had even published it. Id.
have been open to public attendance and media coverage. But what of proceedings that do not have a tradition of openness, or those that have a manifest tradition of confidentiality? The juvenile courts espouse such a policy and history of confidential proceedings, therefore providing an appropriate arena in which court closure provisions can be tested.

III. THE JUVENILE COURT SYSTEM

A. History and Philosophy of the Juvenile Court System

The American juvenile court system evolved in most states at approximately the turn of the century. An outgrowth of the English Chancery Courts, which were charged with the protection of “wayward” or “delinquent children,” America’s juvenile courts were an important part of a broad reform movement intended to improve the welfare of children. Initially, the juvenile courts did not have jurisdiction over children accused of committing serious criminal acts; rather, once these juvenile defendants had reached the age of criminal responsibility, they were tried as adults. Reformers were concerned that the criminal justice system neglected the needs of youthful offenders by wantonly mixing them with hardened adult criminals, and, moreover, that the system did not afford these youngsters any opportunity for rehabilitation. Juvenile court reformers believed that, instead of rehabilitating these children, the system reinforced a negative environment and encouraged them to become outlaws. Juvenile court reformers envisioned a system in which the emphasis would be on rehabilitation rather than punishment, on treatment rather than retribution. In the effort to produce a system that would be more “clinical” than puni-

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76 See Press-Enterprise Co. v. Superior Ct. of Cal. (Press-Enterprise II), 478 U.S. 1, 8–9 (1986).
78 Id. at 11–12. See Krisberg & Austin, supra note 8, at 17 (1993).
79 The common law considered children to have reached the age of criminal responsibility at age seven. Id; see also Charles E. Springer, U.S. Dep’t of Justice, Justice for Juveniles 18 (1986) (discussing different cultures’ determinations of the age of criminal capacity).
80 Criminal Justice Information Policy, supra note 77, at 11.
81 Id. at 11–12. See Krisberg & Austin, supra note 8, at 17 (1993).
82 Julian W. Mack, The Juvenile Court, 23 Harv. L. Rev. 104, 106–07 (1909). “[The system] criminalized them by the very methods that it used in dealing with them.” Id. at 107.
83 Kent v. United States, 383 U.S. 541, 554 (1966) (noting that the juvenile court system, unlike other jurisdictions, is rooted in social welfare philosophy rather than in the corpus juris); see also Criminal Justice Information Policy, supra note 77, at 12–13 (discussing rehabilitative goals of early juvenile justice system reformers).
tive, the juvenile court system emerged as an informal, non-adversarial system in which the State acted as parens patriae, rather than as prosecutor and judge. Court reformers ardently believed that society's duty to the child could not be addressed by the concepts of guilt or innocence alone, but that society must discuss how the child had become an offender, and what must be done, both in the interests of the child and of the state, in order to save the child from "a downward career." In this atmosphere of guidance and rehabilitation, progressive court reformers hoped that youthful offenders might emerge from the juvenile justice system reformed and ready to enter society free of the stigma of being former delinquents.

An essential component of this kinder, gentler juvenile justice system envisioned by reformers was an assurance of confidentiality within the system. The juvenile court system's efforts "to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past" seemed crucial to the successful rehabilitation of juvenile offenders. Publishing the names of juvenile offenders was

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84 In re Gault, 387 U.S. 1, 16 (1967).
85 The term parens patriae literally refers to the role of the country or sovereign as parent; it is commonly used interchangeably with the terms in loco parentis and surrogate parent. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). See KRISBERG & AUSTIN, supra note 8, at 18.
86 Kent, 383 U.S. at 555. In Kent, a sixteen year-old was charged with rape and several counts of robbery and housebreaking in the District of Columbia. Id. at 543. Because the juvenile court had waived its jurisdiction, the juvenile was tried in the district court, which found him not guilty by reason of insanity on the rape count, and guilty on the other counts. Id. at 546, 550. The Supreme Court held that the juvenile had been deprived of his constitutional rights to due process and the assistance of counsel, and that the waiver of jurisdiction was therefore invalid. Id. at 557-63. See generally Mack, supra note 82, at 107. Juvenile court reformers created a system in which the youthful offender would be "taken in hand by the state, not as an enemy but as a protector." Mack, supra note 82, at 107. The juvenile court judge would act "as a wise and merciful father handl[ing] his own child," and would decide each case according to the needs of the child and of the community. Id.
87 Mack, supra note 82, at 119-20. Under the reformers' theory of juvenile justice, the child was considered to be essentially good, and was made "to feel that he is the object of [the state's] care and solicitude," rather than under arrest or on trial. Id. at 120. Juvenile proceedings were considered to be civil rather than criminal, and many of the rigidities of substantive and procedural criminal law, such as due process, right to counsel, and trial by jury, were therefore discarded in the supposed best interest of the child. See id. at 120; see also Gault, 387 U.S. at 16; Kent, 383 U.S. at 554.
88 See Mack, supra note 82, at 109. Juvenile justice reform included the notion that the child should be protected from a "brand of criminality, the brand that sticks to [the child] for life; to take [the child] in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma." Id.
89 See, e.g., Kent, 383 U.S. at 556 (noting that state statutes have historically shielded juvenile defendants from publicity).
90 Gault, 387 U.S. at 24.
91 See, e.g., San Bernardino County Dep't of Pub. Social Servs. v. Superior Court, 283 Cal.
considered to "seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public."92 In recent years, however, this confidentiality policy, like juvenile justice policy generally, has become the target of harsh criticism, as opponents have increasingly challenged the viability of the juvenile justice system.93

B. Changes Within the Juvenile Court System

During the past twenty-five years, the philosophy of the juvenile justice system has changed dramatically with the recognition that the specialized, non-adversarial proceedings traditionally afforded to children have often served neither to rehabilitate them, nor to assure them of fundamental constitutional protections.94 As the juvenile court system has grown to resemble more closely its adult criminal counterpart, the Supreme Court has begun to grant juveniles more of the constitutional protections afforded to adult defendants facing similar charges.95 Not until 1966 in Kent v. United States did the Court hold that minors have a right to due process and the right to representation by counsel.96 The Court reaffirmed these determinations a year later in the case In re Gault, which also provided juveniles with a right to notice of charges against them, and a right to confront and cross-examine witnesses.97 In 1970, In re Winship held that juvenile courts must use the reasonable doubt standard to make a determination of guilt in criminal proceedings,98 and five years later, Breed v. Jones held that juvenile courts must adhere to the double jeopardy protections of the Fifth Amendment.99 In fact, one of the only constitutional protections not presently granted to juveniles is the unqualified right to a jury trial, which the Court expressly declined to grant in McKeiver v. Pennsylvania in 1971.100

93 See, e.g., McKeiver v. Pennsylvania, 403 U.S. 528, 534 (1971) ("There has been praise for the [juvenile justice] system and its purposes, and there has been alarm over its defects.").
94 See Kent v. United States, 383 U.S. 541, 556 (1966). [T]here 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." Id.
95 CRIMINAL JUSTICE INFORMATION POLICY, supra note 77, at 20.
96 383 U.S. at 561–63.
97 387 U.S. 1, 31 (1967).
100 403 U.S. 528, 545 (1971) (holding that there is no constitutional right to trial by jury in
stepping back from its earlier decisions, which increasingly had granted constitutional protections to juveniles, the Court acknowledged that many of the "fond and idealistic hopes of the juvenile court proponents . . . have not been realized." While conceding that the juvenile court "experiment" has proved to be a profound disappointment, the Court stated that the imposition of a jury trial would unduly impede the further evolution of the juvenile court system.

C. Confidentiality of Juvenile Court Proceedings

Even though the Court was reluctant to admit in McKeiver that the juvenile court system is not accomplishing its rehabilitative goals, the past decade's climbing juvenile arrest and recidivism rates are a testament to the system's failure. Some critics argue that if the juvenile justice system is neither rehabilitating juvenile offenders, nor deterring them from committing criminal acts, then perhaps the protection provided by juvenile confidentiality is no longer warranted. These critics suggest that juvenile offenders are criminally responsible for their misconduct, and that by their actions they thereby waive their rights to privacy and anonymity. Other juvenile court critics and First Amendment advocates suggest that public access to juvenile courts can only improve a system shrouded in secrecy and plagued by inconsistency, error, and limited resources. But what of abused or neglected children like S.E., who are "wholly innocent of wrongdoing?" How does

the juvenile court system). The Court noted, however, that it is the privilege of the states to install jury systems within their own juvenile court structures. Id. at 550. But see Joseph B. Sanborn, Jr., The Right to a Public Jury Trial: A Need for Today's Juvenile Court, 76 JUDICATURE 230, 233 (1993) (noting that only eleven states have instituted jury trials for juveniles, and advocating further use of the states' "privilege" to do so).

101 McKeiver, 403 U.S. at 543-44.
102 See id. at 544-46.
103 See Ira M. Schwartz et al., Center for the Study of Youth Policy, Univ. of Mich. Sch. of Soc. Work, Juvenile Arrest, Detention and Incarceration Trends: 1979-1989, at 3 (1991). The juvenile arrest rates for violent criminal acts increased 16% between 1985 and 1989. Id. The juvenile arrest rates for property and other delinquent offenses increased 11% between 1985 and 1989. Id. Juvenile justice experts also voice increasing concern over the disproportionate number of minority youth who are arrested and incarcerated for criminal acts. See Krisberg & Austin, supra note 8, at 112-41 (discussing the influence of gender and race on the juvenile justice system).
104 See, e.g., Criminal Justice Information Policy, supra note 77, at 109.
105 Id.
the law treat confidentiality in child protective proceedings, when the child is in no way responsible for the case being in court?\textsuperscript{107}

Because the Supreme Court has not addressed the issue of whether there is a First Amendment right of public access to juvenile courts, provisions vary from state to state. The vast majority of states have statutes within their juvenile codes that grant the juvenile court judge the discretion to admit or exclude the public from juvenile proceedings.\textsuperscript{108} These proceedings are typically closed unless a third party can show a "direct" or "proper" interest in the case.\textsuperscript{109} A crucial element in many states is whether opening the proceedings to the public is in the best interest of the child.\textsuperscript{110} In these states, if the court finds that publicity may have an adverse effect on the juvenile, the judge may grant a court closure order, although these orders are highly scrutinized.\textsuperscript{111} A few states determine access to juvenile proceedings based on the discretion to admit or exclude the public from juvenile proceedings; an abused, neglected, or dependent child is wholly innocent of wrongdoing.".}

\textsuperscript{107} See In re T.R., 556 N.E.2d 439, 449 (Ohio 1990) ("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.").

\textsuperscript{108} Thirty-nine states, as well as the District of Columbia and Puerto Rico, grant judges the discretion to exclude the public and the press from juvenile proceedings. See infra note 109 for an overview of state statutes regarding public access.


The juvenile judge typically grants press access on a case-by-case basis. This method, however, is inefficient and adds to the already backlogged juvenile court calendars. See infra Part IV for a discussion of this type of closure case.


\textsuperscript{111} See supra Part II for a discussion of public access to criminal trials, court closure, and the problem of prior restraint. See also San Bernardino Dep't of Pub. Social Servs. v. Superior Court, 283 Cal. Rptr. 332, 345 (Ct. App. 1991) (stating that the court must recognize the importance of confidentiality in the juvenile court, while maintaining the value of open court proceedings); In re Katherine B., 596 N.Y.S.2d 847, 851 (App. Div. 1993) (holding that there is no presumptive
on the seriousness of the charge, under the theory that a juvenile
charged with "adult crimes" such as murder and rape should be subject
to any adult treatment the press and public wish to render.\textsuperscript{112} In chal­
lenges to these statutes, some jurisdictions have held that there is a
legitimate public interest in the "proper disposition" of such violent
crimes, regardless of the age of the accused offender.\textsuperscript{113}

Child protective proceedings, as compared to juvenile delin­
quency hearings, have been historically, and rather zealously, closed to
the public and press by state courts.\textsuperscript{114} Although courts have reached
these closure determinations carefully, with an emphasis on the best
interests of children, this Note suggests that perhaps children are not
the only parties being protected by these closed and secretive proceed­

ings.

\section*{IV. A Proposal for Qualified Access to Child Protective
Proceedings}

The primary focus of the debate over public access to juvenile
delinquency trials has been on the similarity of these proceedings to
adult criminal trials.\textsuperscript{115} Several states have recognized that the public
has a legitimate interest in access to information about violent crimes
and their perpetrators, adult or juvenile.\textsuperscript{116} The policy arguments for

right of access to child protective proceedings and that the determination is at the discretion of
the court); \emph{In re T.R.}, 556 N.E.2d at 451 (noting that because juvenile court proceedings are
neither presumptively open nor presumptively closed, the court must weigh the competing
interests in favor of and against public access).

court shall exclude the general public from juvenile trials, except when a child is charged with
(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).

\textsuperscript{113} See, e.g., \textit{News Group Boston, Inc. v. Commonwealth}, 568 N.E.2d 600, 603 (Mass. 1991); \textit{see also} E. Susan Garsh & Jonathan M. Albano, \textit{In the Matter of John Doe Grand Jury, News Group
Boston, Inc. v. Commonwealth}, \textit{BOSTON B.J.}, May June 1992, at 5, 7 (noting that privacy interest
of juveniles charged with second degree murder was secondary to the public interest in moni­
toring what happens to such juveniles in the court system).

\textsuperscript{114} See, e.g., \emph{In re T.R.}, 556 N.E.2d at 451 (holding that a juvenile court may restrict public
access to abuse and neglect cases if, after hearing evidence and argument on the issue, it finds
that public access could reasonably harm the child or endanger the fairness of the proceeding,
and that the potential for harm outweighs the benefits of public access); Edward A. Sherman
Publishing Co. v. Goldberg, 443 A.2d 1252, 1258 (R.I. 1982) (stating that while the goal of an
open trial is the protection of a defendant from prosecutorial or judicial abuse, the interests of
the juvenile are most often best served by anonymity and confidentiality).

\textsuperscript{115} See supra Part III C, discussing contemporary challenges to confidentiality in juvenile
delinquency hearings.

\textsuperscript{116} See, e.g., \textit{News Group Boston}, 568 N.E.2d at 603; \textit{see also supra} note 109 for examples of
state statutes that permit open delinquency trials in cases of violent offenses or felonies.
and against public access to juvenile dependency proceedings are rather different.\textsuperscript{117}

\textbf{A. Dependency Proceedings: A Stricter Standard of Confidentiality}

When Sylvia Ernst decided to challenge the Court Closure provision of the Pennsylvania Juvenile Act, she began an uphill battle.\textsuperscript{118} Juvenile dependency proceedings have inherited a strong tradition of confidentiality, a tradition that state courts have upheld even more consistently than confidentiality in delinquency proceedings.\textsuperscript{119} Courts have concurred that in cases of child abuse or neglect, the interests of the public and the press rarely outweigh the privacy rights of the child and the family.\textsuperscript{120} Recently, in \textit{San Bernardino County Department of Public Social Services v. Superior Court}, a California appellate court examined a highly publicized case of child abuse and neglect.\textsuperscript{121} The court noted the history of closed dependency proceedings, and explained that judicial discretion must be directed at determining and enforcing that which is in the best interest of the minors involved.\textsuperscript{122} The court stated that further emotional trauma and stress for the child would result from a public trial, and that this might interfere with the goal of her rehabilitation.\textsuperscript{123}

The Supreme Court of Ohio made a similar determination in the 1990 case, \textit{In re T.R.}.\textsuperscript{124} The court held that because there is no pre-
umption of access to juvenile court, the judge must weigh the competing interests for and against public access on a case-by-case basis.\textsuperscript{125} Noting that the child in a dependency hearing is "wholly innocent," the court created a new standard: a juvenile court may restrict public access to its protective proceedings if, after hearing evidence and argument on the issue, it finds 1) that public access reasonably could be found to harm the child or endanger the fairness of the proceeding, and 2) that the potential for harm outweighs the benefits of public access.\textsuperscript{126} Regarding the fairness of the proceeding, the Ohio court was persuaded by the argument of the attorney for the child, who noted that the presence of the media would place the attorney in "an untenable position"\textsuperscript{127} when determining the evidence to present in her client's case. The court noted that counsel for the child would be forced to weigh the psychological harm to the child, T.R., posed by the disclosure of evidence, against the value of the evidence needed by the attorney to support her case.\textsuperscript{128} The Ohio Supreme Court stated that when an attorney must make strategic trial decisions based on the potential psychological harm to her client because of the presence of the public, then the fairness of the adjudication is endangered, and a court closure is justified.\textsuperscript{129}

Recently, the Appellate Division of the New York Supreme Court affirmed the notion that because there is no constitutional right to court access, the child's best interest should control the confidentiality of dependency proceedings.\textsuperscript{130} \textit{In re Katherine B.} involved the kidnapping of a ten year-old girl, a story which became the subject of a veritable media blitz in early 1993.\textsuperscript{131} The child, Katherine, was kidnapped by an adult neighbor and imprisoned for sixteen days in an underground dungeon beneath his home, where he allegedly sexually abused her.\textsuperscript{132} When the National Broadcasting Corporation (NBC) intervened in the application for court closure, asserting a constitutional presumption of openness to court proceedings, the Appellate

\textsuperscript{125} Id. at 451.
\textsuperscript{126} Id. at 449, 451.
\textsuperscript{127} Id. at 453.
\textsuperscript{128} Id. For example, psychological evaluations of each of the parties were to constitute an important part of the evidence presented at trial, but public disclosure of such intimate details had the potential to harm the child. \textit{Id.}
\textsuperscript{129} Id.
\textsuperscript{130} \textit{In re Katherine B.}, 596 N.Y.S.2d 847, 848 (App. Div. 1993) (granting the guardian ad litem's and District Attorney's joint application for court closure, over the objections of the National Broadcasting Corporation).
\textsuperscript{131} See \textit{id.}
\textsuperscript{132} \textit{Id.}
Division strongly disagreed. The court cited provisions of the Family Court Act of New York which grant full discretion to the presiding family court judge to determine court closures. The court also relied on an uncontested affidavit submitted by a psychologist who had examined the child and expressed concern that an open trial would subject her to "feelings of embarrassment and shame" and the prospect of "re-victimization." In addition, the Appellate Division considered the child's own affidavit, which seemed to serve as a poignant reminder of the interests at stake in child protective proceedings.

B. Dependency Hearings Should Be Open to the Public and the Press: Access in the Best Interest of the Child

The rationale for keeping juvenile dependency proceedings confidential is both commendable and well documented. Critics of these closed proceedings, however, note that the very confidentiality intended to protect children, in effect, serves to protect social service agencies and the courts themselves from accountability to the public. An historic dedication to the protection of juveniles' privacy rights has led to proceedings that seem secretive in nature, and which are rife with inconsistencies, improprieties, and judicial abuses. Arguments in favor of open dependency proceedings suggest that public access would achieve the following goals: to improve the system's fairness and effectiveness, to reduce judicial abuse and error, and to encourage improvement in the juvenile court system through greater public awareness and involvement.

1. Public Access and Fairness

Public access to juvenile dependency proceedings would preserve the dual goals of ensuring fairness and giving the appearance of fairness, both of which are essential to maintaining public respect for the
judicial process and its results.\textsuperscript{139} The juvenile court system has been widely criticized for its inconsistencies,\textsuperscript{140} and public proceedings would serve to promote consistent standards, open to public scrutiny.\textsuperscript{141}

Public awareness of dependency proceedings might also function to protect abused and neglected children. When the court questioned the adoptive mother in the 1990 case, \textit{In re T.R.}, about her motives for issuing a home-made press release regarding the litigation, she candidly responded that “lacking money, power, [and] position,” she considered media attention “her only trump card.”\textsuperscript{142} This mother, like Sylvia Ernst, was willing to waive the confidentiality afforded juveniles and their families, hoping that the resulting media exposure would actually protect her child.\textsuperscript{143} In this sense, Sylvia Ernst suggested that a healthy dose of media attention might have raised some public concern about the plight of her granddaughter during the five-year period in which S.E. was shuffled around the bureaucracy of the child welfare system.\textsuperscript{144} Ernst and other critics believe that public access to dependency proceedings could promote a higher degree of fairness and effectiveness to the children involved in these cases.\textsuperscript{145} As T.R.’s mother noted, regarding the effects of publicity on her daughter, “She is never going to be harmed or have a hair on her head affected if millions of people are looking out for her best interest, as is her mother.”\textsuperscript{146}

\textsuperscript{139} Cf. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 570–71, 580 (1980) (holding that there is a constitutional right to public access to criminal trials); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 610–11 (1982) (holding that the state’s interest in protecting minor victims was not compelling enough to justify a blanket closure provision).

\textsuperscript{140} See, e.g., Tom Charlier, \textit{Justice Abused}, COM. APPEAL (Memphis, Tenn.), Jan. 1988, at A15 (discussing abuses and failures within the child welfare system). Douglas Besharov, the former director of the National Center for the Prevention of Child Abuse and Neglect, admits that there is a failure within the system to adequately screen reports, and that “the system often becomes overburdened and breaks down.” \textit{Id.}


\textsuperscript{142} 556 N.E.2d at 454 (discussing the attempts of the “psychological mother”—that is, the mother who had adopted the baby and raised it—to “try the case in the media”).


\textsuperscript{144} \textit{In re T.R.}, 556 N.E.2d at 454. The Ohio Supreme Court noted that although they criticized the appropriateness of this party’s media campaign, it did not question the sincerity of her motives, nor her fitness as a parent for T.R. \textit{Id.} at 455 n.12.
2. The Watch-Dog Role: The Reduction of Judicial Abuse and Error

The non-adversarial and informal nature of juvenile court proceedings has led to wide criticism of these courts’ methods and results. These critics note the high rate of judicial error in juvenile courts and a prevailing attitude of “casualness toward the law.”\(^{147}\) Supporters of open courts remark on the carelessness and cavalier attitudes they have observed among juvenile judges and court personnel.\(^{148}\) Without public scrutiny of the juvenile court system, the players within the system often become “petty tyrants,” as one ACLU attorney and open court proponent notes.\(^{149}\) Opening juvenile proceedings to public scrutiny might serve to “keep the judge under control,”\(^{150}\) and to deter inappropriate actions on the part of all participants.\(^{151}\) As the Ohio Supreme Court noted in *In re T.R.*, most judges are elected officials, and all are compensated through public funding; therefore, “the public has a right to observe and evaluate [their] performance in office.”\(^{152}\) Public access to the workings of the juvenile court would not only promote fairer and more professional proceedings, but would enhance public confidence in the judiciary.\(^{153}\)

In addition to a concern for juvenile proceedings deteriorating into the realm of “kangaroo courts” for lack of public attention,\(^{154}\) concerns for efficiency and safety demand a policy of public access to juvenile hearings. The lack of information about juveniles whose cases and records have been sealed may impair the ability of social service agencies to function effectively.\(^{155}\) Juvenile justice and children’s wel-

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147 Criminal Justice Information Policy, supra note 77, at 113 (citing R.L.R. v. State, 487 P.2d 27, 28 (Sup. Ct. Alaska 1971)).
148 See Sanborn, supra note 100, at 236.
149 See Bauers, supra note 2, at E2 (quoting Stefan Presser, legal director of the ACLU of Philadelphia). Presser notes that in a closed system, the “players . . . know that there’s not going to be any public scrutiny. So you often get a system which in the end, the ACLU thinks, works as much to the disadvantage to the young people as it works to their benefit.” Id.
150 Sanborn, supra note 100, at 236.
151 See In re N.H.B., 769 P.2d 844, 849 (Utah App. 1989); see also Bauers, supra note 2, at E2. The Hon. James E. Lacey, a juvenile court judge in Detroit, notes that since Michigan enacted legislation requiring open juvenile courts, there has been a noticeable increase in professionalism among judges, lawyers, and case workers. Id. Judge Lacey muses, “In closed hearings, where the MSWs of the world—the masters of social work—are righting the wrongs, a lot of things happen that shouldn’t happen.” Id.
154 See In re Gault, 387 U.S. 1, 28 (1967) (noting that “under our Constitution, the condition of being a [child] does not justify a kangaroo court”).
155 Criminal Justice Information Policy, supra note 77, at 113.
fare agencies generally advocate confidential proceedings, and yet their own efforts to coordinate their activities may be hampered by their lack of information.\textsuperscript{156} Although child welfare personnel are typically exempt from court policies of confidentiality, most juvenile judges have full discretion to exclude from the courtroom all parties without a “direct” or “proper” interest in the case.\textsuperscript{157} Consequently, a judge’s determination of these admitted parties may not encompass all of the social workers and agency personnel that actually work with the child, thus contributing to misinformation and delay.

In addition, the secrecy within the juvenile court system, at its worst, can create a dangerous situation both for law enforcement and for the public.\textsuperscript{158} According to a Family Court Division official from Manhattan, “there is no way of telling how many times a kid carrying a loaded weapon has been picked up before on the same charge. And the kids all know it.”\textsuperscript{159} State statutes prohibiting law enforcement from ordering photographs or fingerprints for most juvenile offenders also contribute to the problems created by confidentiality in the juvenile courts.\textsuperscript{160} These policies exacerbate the dangers created by court closure, and together they constrain the exchange of information between juvenile and adult law enforcement authorities, thus handicapping the authorities and endangering the community.\textsuperscript{161} Additionally,

\textsuperscript{156}Id.
\textsuperscript{157}Id; see also supra note 109 for examples of state statutes regulating discretionary court closure based on these criteria.
\textsuperscript{159}Rita Kramer, The Assault on Juvenile Crime, Wall St. J., Nov. 8, 1993, at 28 (quoting Peter Reinharz, head of the Family Court Division of New York City’s Law Department). The state of New York continues to be one of the last holdouts against changing its juvenile code, which mandates the sealing of the names and records of all Family Court parties under age sixteen. Id.
\textsuperscript{160}Bob Herbert, In America: 15 and Armed, N.Y. Times, Jan. 29, 1994, at E17. Because of a reluctance to stigmatize young offenders, New York authorities may photograph and fingerprint only juveniles accused of the most serious crimes—Class A, B, and C felonies, such as murder, forcible rape, and first-degree assault. Id. Ellen Schall, a former New York City Commissioner of Juvenile Justice, decries the cynicism of those who insist on fingerprinting young offenders, equating the opening of juveniles’ records to admitting that “we’ve given up on them.” Hoffman, supra note 158, at A27.
\textsuperscript{161}Herbert, supra note 160, at E17. In 1993, these confidentiality policies resulted in the release of fifteen year-old Shaul Linyear to his mother, after police apprehended him in the act of holding a loaded revolver to a man’s head. Id. The juvenile was charged with illegal possession of a loaded weapon, a Class D felony, and menacing, a misdemeanor; the police were therefore not permitted to fingerprint or photograph him. Id. Two months later, this juvenile robbed and shot to death a delivery man in broad daylight and was charged as an adult. Id. The Brooklyn District Attorney discovered the prior arrest only because a Family Court employee who remembered the juvenile court case happened to read about the murder in a newspaper and proceeded to call the District Attorney’s office. Id.
in the "peculiar system" of juvenile law, it is quite common for a child to have concurrent cases pending that involve both dependency and delinquency issues. A system of public hearings would ensure that all interested parties had access to information on the full extent of the minor's situation.

3. Public Awareness and Involvement in the Juvenile Court System

Lastly, opening the juvenile court to the public and press would encourage public awareness and support for the juvenile system, which would ultimately serve the best interests of children. Although First Amendment challenges to court closure orders have generally been unsuccessful, the spirit of the First Amendment certainly demands consideration in any discussion of public and press access to trials. The purpose of the First Amendment, after all, is to ensure open discussion of public affairs and to encourage the participation of citizens in their system of government. Courts have widely recognized that the public has a legitimate interest in learning about and becoming involved in the juvenile court system. The Supreme Court has also noted that even though the media has no greater right of access than do public citizens, citizens rely on the press to report on court proceedings; for this reason, media access to trials carries a heightened importance.

In the context of juvenile dependency proceedings involving allegations of child abuse or neglect, there is a cognizable risk that the child victim may be "victimized again by the systems." These systems, including child welfare, law enforcement, and the justice system, are notoriously understaffed and underfunded. Poor training and low

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162 In re Gault, 387 U.S. 1, 17 (1967).
163 For example, it is common for a juvenile to be living in a foster placement due to abuse or neglect in his home, and also to be brought in on unrelated delinquency charges for assault, larceny, or narcotics.
164 Criminal Justice Information Policy, supra note 77, at 114. "From the schoolroom to the police precinct, from the courtroom to the juvenile jail, secrecy so pervades the system that even officials who ought to be informed about a child's criminal conduct are kept in the dark." Id.
168 See, e.g., Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 558 (1980) (noting that the press often act as the public's "surrogate" in gathering information on court proceedings).
169 San Bernardino County, 283 Cal. Rptr. at 341 (citing report by the Commission on the Enforcement of Child Abuse Law (April 1985)).
170 See, e.g., Laura Shapiro et al., Rush to Judgment, Newsweek, Apr. 19, 1993, at 57. Elizabeth
salaries have resulted in both a high turnover rate and a slow decline in the caliber of case workers. Agencies compound the problem by scrambling to fill their depleted ranks with workers who are only negligibly qualified. These systemic problems may explain agency mistakes and misconduct, but should not excuse them. If the public was informed about how the juvenile system functions—and more importantly, does not function—this might prompt an "understandable community reaction of outrage and public protest" over the way children are suffering within the juvenile system. Stories abound of cases like S.E.'s, in which children are committed to the foster care system, only to emerge years later, after numerous agency errors and oversights have prevented them from timely reunification with their natural families. There are also far too many grisly stories of agency mistakes resulting in misguided family preservation plans—that is, the return of children to unsafe or abusive homes—without proper agency supervision or services. If the public had access to information about

Vorenberg, president of the National Coalition for Child Abuse Reform, remarks, "This is a system that overreaches and gets jammed up." Id. "Children get placed in foster care when it may not be necessary, [and] cases of real abuse go undetected . . . the system fails everybody." Id.

171 See Charlier, supra note 140, at A13, A15.

172 See id. at A13. In a 1987 survey by the National Child Welfare Resources Center, 75% of abuse cases were handled by workers without college degrees in social work. Id. Of those cases handled by college graduates, only 33% went to MSWs. Id. According to Douglas Besharov, the former director of the National Center for the Prevention of Child Abuse and Neglect, case workers do not receive adequate training on the job, either. Id. "Workshops and seminars . . . are inadequate to teach workers how to interview children and assess allegations."


174 In Chicago, Patrick Murphy, the Cook County Public Guardian laments, "[these children] are getting screwed. And if you stick them with D.C.F.S. [the Department of Children and Family Services], it gets even worse. Will the kid go through twelve foster homes? Get beat up and maybe raped?" Susan Chira, A Defender of Chicago's Children Refuses to Be Polite About Abuse, N.Y. TIMES, Jan. 30, 1994, at E7. In New York, the state pays agencies an average of $18 for each day a child is in foster care. Celia W. Dugger, New York Develops Incentive to Reduce Time in Foster Care, N.Y. TIMES, Jul. 31, 1994, at A1. As in many states, the system sets no time limit for foster care; thus, there is actually a financial disincentive for agencies to move children out of foster care and into permanent homes. See id. Recent figures indicate that half of the 60,000 children in New York state foster care have been in the system for more than three years. Id. at A37.

In addition, a recent audit of New York City's Child Welfare Administration (CWA) revealed that the agency's tracking system is so disorganized that more than one in five foster children are listed in agency files at inaccurate addresses. Jonathan P. Hicks, Comptroller Audit Faults City Foster-Care Program: One Child in Five Listed at the Wrong Address, N.Y. TIMES, Jul. 4, 1994, at A23. In fact, more than 2500 foster children are currently listed as residing at 80 Lafayette Street in Manhattan, which is actually the office building in which the CWA does business. Id.

175 See Chira, supra note 174, at E7. Public Guardian Murphy recalls the story of one mother who did not vaccinate her child for measles; the child lost three fingers and his eyesight before she sought medical attention, and the mother never visited him in the hospital. Id. Another three year-old child was returned to the home of his abusive mother, pursuant to the state agency's
the backlog in child welfare cases and the toll that this takes on children, citizens might be motivated to make positive changes to the system.\textsuperscript{176}

In addition, the public has a legitimate interest in knowing the dispositions of horrific cases like the kidnapping case of Katherine B.,\textsuperscript{177} or of the San Bernardino County case, where a young girl was locked in a closet for years by her parents.\textsuperscript{178} Public access to these types of proceedings would serve “an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.”\textsuperscript{179} Lastly, public support is vital to the functioning of the judicial system in general, and to the juvenile court system in particular.\textsuperscript{180} As one juvenile court judge has stated, if juvenile hearings remain confidential, “juvenile courts will be considered suspect and ultimately die—together with their specialized programs—for want of public support.”\textsuperscript{181}

**V. Conclusion**

Ultimately, Sylvia Ernst’s challenge to the Pennsylvania court closure provision was defeated. Although she won nominal damages on some of her other procedural claims, her constitutional challenge to the statute failed for lack of proper standing.\textsuperscript{182} Her challenge to the juvenile court system, however, will not be disposed of so easily. Critics

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recommendation; she later hanged the child. \textit{Id.} New York statistics show that twenty percent of foster children who are sent home are ultimately put back into foster care, due to additional abuse or neglect at the hands of their natural parents. Dugger, supra note 174, at A37. Clearly, so-called family preservation and family reunification policies are imperfect at best.

\textsuperscript{176} See San Bernardino County, 283 Cal. Rptr. at 342.


\textsuperscript{178} See San Bernardino County, 283 Cal. Rptr. at 335.

\textsuperscript{179} \textit{Id.} at 342 (citing Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 571 (1980)).

\textsuperscript{180} See CRIMINAL JUSTICE INFORMATION POLICY, supra note 77, at 113.

\textsuperscript{181} Hon. Gordon A. Martin, Jr., \textit{The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?} 25 CONN. L. REV. 57, 89 (1992). At a recent conference on juvenile justice, Judge Martin stated that it is “unrealistic” to admit the media on a limited basis. Judge Gordon A. Martin, Jr., Panelist at New England School of Law Juvenile Justice Conference (Oct. 20, 1994). However, Judge Martin noted that even if publicity would cause some damage to individual juveniles, “for the system to survive, we should show [the public] the good work we are doing.” \textit{Id.}

\textsuperscript{182} Ernst v. Children & Youth Servs., No. CIV.A.91-3735, 1993 WL 343375 at *73–75 (E.D. Penn. Sept. 3, 1993). The court stated that third party standing may be allowed, depending on the relationship between the litigant and the third party, the ability of the third party to advance its own interests, and the compatibility of the litigant’s and third party’s interests. \textit{Id.} at *74. Because Ernst had “no special relationship with the press or public,” had not formed a class of the interested public, and because it was not clear that her interests were compatible with either the press or the public, the court held that Ernst lacked standing to raise the First Amendment challenge. \textit{Id.} at *75. The court noted, however, that there is no obstacle preventing the press, itself, from challenging the same court closure provision in the future. \textit{Id.}
of the child welfare system are becoming ever more vocal about its flaws and mismanagement, and the juvenile court system is realizing that it must clean its own house or risk going down with the system.

Until the Supreme Court recognizes a constitutional right for the public and the media to attend juvenile trials, the First Amendment may not be the most practical means for attacking court closure policies. The spirit of the First Amendment, however, dictates that the more information the public has about its own court systems, the more likely it is that they will effectuate positive changes to those systems. A qualified form of public and press access to juvenile trials—which might include the privilege to watch and report, with the condition that no names be disclosed at the proceeding—would be a courageous step toward improving the system. Such qualified access to the courts would serve to maintain public awareness, to protect the freedom of the press to report on these proceedings, to protect children from further abuse by the judicial system, and to foster positive change within the juvenile system.

It is acknowledged that this position may not be popular among children’s advocates. The criticism of a sacred cow like juvenile confidentiality is not likely to win many friends within the children’s rights community. With a proper commitment from the media to operate according to the journalistic ethics of their own profession, however, qualified access to juvenile proceedings would ultimately serve the best interests of both the system and the children within it.