



Privacy or Publicity: Media Coverage and Juvenile Proceedings in the United States

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Abstract

This investigation presents arguments which support and oppose the media coverage of juvenile proceedings. Various aspects such as confidentiality and public safety are identified as viable explanations. In an attempt to remedy this debate, a proposal is offered which suggest a combined approach.

Key Words: juvenile court, media coverage, confidentiality, public perception

Introduction

Since the mid-1990s, states have established more punitive measures in terms of dealing with young offenders, sometimes punishing them as adults even while the cases remain in juvenile court. Juvenile justice systems have increasingly introduced and perpetuated adult concepts of accountability, retribution and public safety, and placed less importance on helping youth in trouble with the law (Gibeaut, 1999). According to research conducted by Marsha Levick, a lawyer with the Juvenile Law Center in Philadelphia, studies indicate that by 1997, juvenile proceedings were beginning to look a lot more like the adult system. Juvenile offenders were getting tougher, more adult-style punishments were imposed and the old privacy protections were eroding. In keeping with the trend of increasing punitiveness, juvenile proceedings were open to the public and sometimes to the news media in 30 states. More than 40 states allowed the public *release* of the juvenile's name, address and photograph. Nearly every state disclosed the juvenile court records to other public agencies, such as schools, and allowed courts to consider prior juvenile records for adult sentencing. Thirty-nine states required juveniles to register as sex offenders (Gibeaut, 1999).

In terms of disclosure and juveniles, what does our present 'punitive' trend indicate? Could it be that the privacy protections which were initially established to protect the juveniles from the publicity are under attack in the name of public interest? What are the arguments which support and oppose the use of media coverage in juvenile proceedings? This investigation will to discuss the complexities and positions associated with the media coverage of juveniles in the United States. In terms of selection criteria, the following

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information that was selected and examined will cover the past twenty years of legal, sociological, and criminal justice literature. In particular, this investigation will examine various explanations that support and oppose the media coverage of juvenile proceedings. In addition, we will also identify various measures which include the conditional uses of the media in relation to juvenile proceedings.

Arguments against Media Coverage

The history of the juvenile courts and confidentiality

From a historical standpoint the juvenile justice system was created to protect the best interests of juveniles (Ainsworth, 1991). The goal of the juvenile court, under this philosophy, was guidance and rehabilitation rather than determination of guilt or innocence and imposition of punishment. This philosophy was reflected in a 1923 policy statement by the children's bureau of the federal government, which declared that there should be no publicity within in a juvenile court proceeding. The hearings should be private, with no people present other than those directly concerned in the case at hand (Hughes, 1997). Since the early days of the juvenile courts, anonymity had been one of the hallmarks of the juvenile justice process. The juvenile court system's efforts to protect 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 (Bauers, 1993; San Bernardino County Department of Public Social Services v. Superior Court, 1991). Early architects of juvenile court feared that without confidentiality, the public would brand a child as a criminal and reject him for his behavior, making a healthy readjustment to society difficult (*Smith v. Daily Mail Publishing Company*, 1979). To the contrary, as we examine the current research literature regarding confidentiality within the juvenile justice system, we see a prevailing trend which desires to diminish such an important and viable attribute within the system.

Minimal punishment and conventional opportunities

Many of the arguments in favor of confidentiality are predicated upon a theory of minimal punishment and rehabilitation. From a philosophical perspective, the juvenile justice system is based, in part, on the notion that punishment should be minimized (Hughes, 1997). To this end, the act of publishing an offender's name was criticized because its effect, some claimed, was to punish the juvenile (Kfoury, 1991). In fact, the primary notion which established the juvenile justice system was based on protection and treatment of the youth, not retribution and punishment as with the adult system.

In addition, adverse publicity might create future disabilities for youth by limiting employment and educational opportunities (Hughes, 1997). Studies suggest that media coverage of juvenile hearings would disrupt the youngster's chance at rehabilitation, would damage the youth's self-esteem, disrupt the youth's family and affect the youth's relationship with peers, teachers, and even with the community (Davis, 2000; Henning, 2004; Mcclatchey, 1999).

Studies reveal that public records may impede a child's prospects for future employment (Funk, 1996). When choosing among applicants, employers are less likely to select those with a criminal or juvenile record. Even employers who do not automatically exclude applicants with a record are unlikely to place ex-offenders in positions of power, trust, and authority, thereby limiting the delinquent child's prospects for career advancement and economic stability (Nelson, 1998). Without confidentiality protections, ex-offenders carry

the deviant label through each phase of their lives, lack meaningful opportunities for rehabilitation, and never earn full reentry and status in the community (Doe v. Webster, 1979). Where crimes are especially serious and public outrage is particularly great, the risk of long-enduring stigma may be even greater (United States v. Three Juveniles, 1995). Advocates who worry about the impact of stigma thus argue that juvenile records should remain confidential so that children will have a second chance at job opportunities and community standing (Doe v. Webster, 1979).

Disruption of relationships among family members.

Advocates of confidentiality also worry that publicity will embarrass family members and cause or exacerbate tension and resentment within the family (Kfoury, 1991b). The stigma of a child's conduct marks the parent and other significant caretakers as well as the child. Some family members may be embarrassed simply by the child's involvement in the system; others may have their own privacy interests at stake.

Due to the fact that a child's family is so integrally involved in the rehabilitation of delinquent juveniles, many juvenile court records include confidential psychiatric and psychological information about the child's parents or siblings (In re Sheldon, 1990). Thus some family members will have an independent interest in maintaining the confidentiality of juvenile records.

Studies indicate that when records are public and parents are embarrassed, tensions in the home may emerge, breaking down support systems necessary for effective rehabilitation or depriving the child of adequate support and supervision (Gilbert et al., 2001). Family disputes even may cause parents to force a child out of the home. Children without a stable home structure or strong family ties have limited prospects for rehabilitation and are likely to re-offend (Nelson, 1998). Publicity, or the threat of it, has played a decisive role in a number of recent high-profile cases here in New York and elsewhere, and the fallout from it has inflicted long-term damage on many clients. From the outset of such cases, even those that ultimately are tried behind closed doors, reporters and camera people invade the lives of the accused children, their families and the crime victims.

To begin with, young people who have been arrested in a publicity case are often forced to participate in what is commonly referred to as a perp walk in which law enforcement officials parade them into the courthouse for arraignment after notifying the press of their intention to do so. The resultant bevy of cameras and reporters is unnerving; as one juvenile defender recently stated, "*What I dislike is the camera people always needing another head shot of Philip every time he's led away in chains . . . and the reporters calling out: 'Did you do it, Philip? Do you have anything to say, Philip?'*" That was the damage that hurt Phil, having the probing cameras in his face (Woodruff, 1998, A2).

Public humiliation and labelling

Publicity of juvenile court hearings may also result in the child facing public ridicule and thereby lose standing and reputation in the community (Thompson v. Barnes, 1972). Recent news reports, lawsuits, and anecdotal information from across the country provide evidence of children who feel perpetually stigmatized by their juvenile record. In one Connecticut case, the police notified a school, as required by state law, that one of its students had been arrested for possession of marijuana, resulting in the student's expulsion (Packer v. Board. of Education of Thomaston, 1998). The State Supreme Court

subsequently ruled that the expulsion was improper, as possession of marijuana off campus did not "markedly interrupt or severely impede the day-to-day operation of a school" (Pell, 2000, p.879). A year after the court's decision, the child's family reported to the media that they still felt "branded" and were making plans to move from the town where they had lived for nearly thirty years (Seymour, 1999, p1). Students stigmatized in this way are likely to experience long-term emotional and social consequences (Joiner, 2004).

Proponents of confidentiality argue that publicity undermines rehabilitation and results in labeling the youth which is paramount to their self-esteem. Studies reveal that media scrutiny undermines the process of repentance and rehabilitation, which remains a central purpose of the juvenile system (Kintzinger, 1980; Cohen, 1999). In 1977, a team of clinical psychologists determined that publicity had a number of detrimental effects on juvenile offenders. It "placed additional stress on the juvenile during a difficult period of adjustment in the community, and it interfered with his adjustment at various points when he or she was otherwise proceeding adequately", as well as threatening his long term prospects for employment and a crime-free adulthood (Cohen, 1999, p.50).

The effects of media coverage, especially in regards to pre-trial publicity, are also felt in the detention center for many juveniles. When a group of state officials toured the secure juvenile detention center in New York recently, a buzz went up among them when they spotted the familiar face of a fifteen-year-old girl. She had been charged with murder in a high-profile case nearly one year earlier, had been widely photographed, and so was instantly recognizable. One member of the group later described acutely the girl's obvious discomfort at having her identity so obvious to these strangers, and the clear distance she put between herself and the other detainees (Cohen, 1999).

A vast amount of information has been written about how "labeling" affects youngsters and why confidentiality had been an important part of the rehabilitation process. In fact, societal reactions to juveniles who have been labeled may be negative and may in turn cause a person to be isolated and that, in turn, could lead to even more deviant behavior (Mahoney, 1974). Labeling theory, as a whole, centers on the premise that, another person's perceptions of you, can control your behavior. Under that theory, someone adjudicated a delinquent who has not been made public would be less likely to resort to negative behavior than a juvenile whose status as a delinquent has been publicized (Louis, 1984; Laubenstein, 1995). Proponents of juvenile offender anonymity argue that electronic media coverage of a juvenile court trial would permanently stigmatize the juvenile offender, hinder the development of socially acceptable behavior, and perhaps even confer celebrity status upon the juvenile, spurring him or her to engage in future delinquent behavior (Kfoury, 1991). Regardless of the outcome of the case, the youth will be stigmatized as a criminal in her neighborhood, school or community center, and so far less likely to turn to these support systems for guidance. For young people who were considered "at risk" before their arrest, this can be devastating and itself lead to future delinquent activity (Cohen, 1999, p.51).

Fears about the harmful impact of stigma on children have persisted well after the inception of juvenile courts. Confidentiality advocates continue to fear that authority figures and even peers who learn about a child's delinquent conduct forever will view the child as deviant and consciously or subconsciously treat the child differently, expecting the worst (Kelly, 1977). Children who experience the shame and humiliation of labeling, advocates of confidentiality argue, also may develop a poor self-image (Kfoury, 1991b). In addition they may be socialized into a life of delinquency by responding and acting

according to external perceptions and expectations (Zober, 1981). Rejection by adults also may breed resentment and cause the child to develop negative attitudes toward authority figures. In the long run, stigma may damage the child's positive relationships with classmates, teachers, and other school personnel (Kelly, 1977). In addition this experience may prevent him from adequately re-assimilating into society, encouraging further delinquent behavior (Nelson, 1998).

Celebrity status and the adversarial nature

Research indicates that supporters of confidentiality claim that the juvenile offender might be pleased with the negative media attention he or she receives, thus becoming a repeat offender (Louis, 1984; Laubenstein, 1995). By the same token, that attention might have an impact on the other juveniles who also commit crimes in the hopes they, too, would receive similar kind of publicity or approval of their peers (Laubenstein, 1995). Due to the fact that sentencing in the juvenile court (and to some extent, the sentencing of juveniles tried as adults) continues to be based in part on treatment and rehabilitation concerns, pre-sentence reports contain highly sensitive and private information about young people and their families. Intimate facts about child abuse, sexual orientation, substance abuse, HIV status, domestic violence, parent-child conflict, mental illness, learning disabilities, and criminal histories are routinely discussed in sentencing hearings. When these facts are revealed, the damage often cannot be undone (Cohen, 1999).

Most states have focused on the potentially harmful effects of publicity on a juvenile offender and have enacted closure policies for their juvenile courts. In fact, one court refused a juvenile's request for an open hearing, not only because of the possible deleterious effects on the juvenile's rehabilitation, but also because opening the proceeding might convey to the "immature respondent an impression of celebrity rather than solemnity" (In re Robert M., 1981, p.986). In a similar vein, others warned that media should not identify juveniles because that only perpetuates the public's already "flawed perception" of today's youth (Laubenstein, 1995, p.1904).

Finally, advocates of confidentiality claim that open juvenile proceedings interfere with informal relationships between judges and juveniles. They believe that open courts would turn the hearing into adversarial proceedings, thus reducing the paternalistic role of the state in juvenile care (Hughes, 1997). Numerous studies indicate that pre-trial publicity usually leads to more conservative decision making on the part of probation officers, prosecutors, and judges. The entire system is sensitive to the enormous political impact of media coverage, leading to a "better safe than sorry" attitude (Cohen, 1999, p.50).

Arguments for Media Coverage

Public education and accountability

Confidentiality laws for juvenile records were created to protect the identities of juvenile offenders, but the effect of these laws far exceeds this intended scope. Those who oppose confidentiality argue that such laws inhibit full and accurate reporting on the juvenile justice system (Greenebaum, 1993). Increased access to juvenile records would produce two benefits: (1) the public would become more educated about the juvenile justice system, and (2) the system would become more accountable (Oddo, 1998).

As the juvenile justice system changed from within, so did the public's perception of juvenile offenders. Instead of believing that courts should take juveniles by the hand and

guide them toward rehabilitation, many in modern society view juvenile crime as a growing problem that calls for “get tough” measures (Aron and Hurley, 1998, p.11). In addition, modern society is less inclined to protect the confidentiality of juvenile offenders at the expense of the public’s right to be informed about juvenile crime and the manner in which the system handles wrongdoers (Oddo, 1998). A 1998 California poll showed that the voting public believed that the courts should not keep records of juveniles who commit serious crimes confidential. The survey concluded that the public feels that courts make too many decisions regarding juvenile crime behind closed doors (The Quill, 1998). Despite the public’s call for greater access to information about juvenile cases, most states do not allow media access to juvenile records except in certain circumstances (Smith et al, 1980). For example, most states only allow access to juvenile records involving violent and repeat offenders (Mclatchey, 1999).

Perception, public interest and the media

Due to the perception that violent juvenile crime is on the rise, the public is demanding harsher treatment of juvenile offenders. Public perceptions of juvenile crime are based almost exclusively on media coverage of juvenile incidents. The media usually focuses only on the most violent juvenile offenders – those who commit murder, rape, and robbery and are subsequently transferred to adult court. The media’s focus on violent crime is driven by the sensational nature of violent offenses and the availability of access to information once the juvenile is transferred to the adult court (Cohen, 1999).

Public interest is also considered a valid argument for the support of media coverage of juvenile proceedings. Due to the increased amount of juvenile crime, public interest and awareness has intensified resulting in a demand for more exposure. In addition, the recent trend in which juveniles are being tried as adults also supports the need for such coverage. It has also been suggested that the slow pace of reform in the juvenile courts is the result of insufficient publicity (Hughes, 1997).

Due to the media’s focus on violent crime, public perception of the juvenile justice system primarily reflects the idea that juveniles who commit crimes are no different than adults who commit crimes (Aron and Hurley, 1998). The public is not truly aware of the complexity involved in the processing of juvenile offenders within the juvenile justice system. The public is unable to call for changes other than harsher treatment of juvenile offenders because it is not fully aware of other aspects of the juvenile system that deserve attention (Martin, 1997). If the media were allowed greater access to information about the juvenile justice system, the public would be better informed and could better assess the system and its shortcomings (Mclatchey, 1999).

Victim’s rights movement and the inconsistency of the labelling theory

The rise of the victims' rights movement also has had an effect on the public's tolerance of and response to juvenile crime. In an effort to secure victims greater access to and influence in the criminal and juvenile justice systems, victims' rights advocates have fought for the right to attend and participate in delinquency proceedings (Mason, 2000). Subsequently, a number of states have amended their state constitutions to recognize the rights of victims of adult and juvenile crime (Henning, 2004). A number of states have amended state constitutions to recognize the rights of victims of adult and juvenile crime. Other states have adopted statutory amendments that explicitly grant victims the right to attend and participate in various stages of juvenile delinquency proceedings. Victims' rights

advocates hope that granting victims greater access to and participation in the proceedings will help the system better accommodate the needs and concerns of those harmed by crime (Beck et al., 2003).

Despite the abundance of literature associated with the negative “labeling” effects related to the media-coverage of juveniles, research examining labeling has produced inconsistent results. In addition, scholars have not actually measured how someone who has officially been adjudicated as a delinquent might be affected by the resulting publicity. Part of the problem stems from the difficulty measuring self-esteem, which makes it difficult to determine if a juvenile has been harmed by having his name released.

According to *Oklahoma Publishing Company v. District Court* (1977), the Supreme Court ruled that once the media has been admitted into a juvenile proceeding, they could not be prevented from revealing information about the case. Therefore, those who argue for media coverage of juvenile proceedings maintain that confidentiality does not really exist. They argue that the identities of the juveniles will ultimately be released. In fact, some of those same advocates would argue, the fear of embarrassing oneself or one’s family would actually serve as a deterrent. With openness in the juvenile justice process, a community can also see that the process is working, and can perhaps force the process to become more effective. Research indicates that the public has a safety interest in guarding against juvenile delinquents in addition to judicial abuse and systemic malfunction associated with closed proceedings (Davis, 2000; Cohen, 1999; Oestreicher, 2001).

Constitutional Measures

Oestreicher (2001) argues that both the Fourteenth Amendment and the Sixth Amendment support the use of media coverage in juvenile proceedings. The implication of such reveals that the due process clause incorporates that the press First Amendment claim and the juvenile’s Sixth Amendment claim against the state-enacted presumptive closure statutes are, structurally, Fourteenth Amendment claims. For example, free speech carries with it some freedom to listen. Therefore, the First Amendment prohibits the government from summarily closing courtroom doors which had long been open to the public at the time that the First Amendment was adopted. In addition, the Supreme Court has emphatically and repeatedly affirmed that juvenile “commitment is a deprivation of liberty. It is incarceration against one’s will, whether it is called ‘criminal’ or ‘civil.’” The question presented, therefore, is whether those states presumptively closing delinquency proceedings from the public and press have deprived youth’s liberty without due process—that is without “fundamental fairness” (Oestreicher, 2001, p.228).

Due Process and First Amendment Challenges

Despite continued support among many child advocates, the presumption of confidentiality has undergone at least two significant waves of attack since its inception. The first came in conjunction with what some have called the due process movement in juvenile court (Scott & Grisso, 1997). In the 1960s, a new set of reformers began to challenge the absence of due process in juvenile proceedings (Butts & Mears, 2001). They argued that public access to the courtroom and public scrutiny of the juvenile process may improve the integrity of the courts by providing a check on corrupt practices such as racism or ineffective assistance of counsel (Martin, 1995).

The Supreme Court began responding to these complaints in *In re Gault*, the first in a series of cases that conferred specific due process rights on children in juvenile

proceedings. (*Breed v. Jones*, 1975). In *Gault*, the Court decided that, although the guarantees of due process assured juveniles the right to counsel, the right to timely notice of charges, the opportunity to confront witnesses, and the right against self-incrimination, due process did not prohibit states from conducting confidential juvenile proceedings. (*Packer v. Board of Education of Thomaston*, 1998). While expressing great concern about the failure of juvenile courts to observe fundamental requirements of due process, the Court explicitly noted that many aspects of the juvenile court process still were valued and should remain unencumbered by constitutional restraints (Kelly, 1977).

Among those valued aspects were efforts to save juveniles from the stigma associated with the "criminal" label, decisions not to disqualify juvenile offenders from civil service, and policies that "hide" or protect juvenile records from the public eye (Nelson, 1998, p.1101). In addition, although there was early evidence of evolving skepticism about the viability of rehabilitation and increasing support for juvenile accountability (Blum, 1996). The belief in rehabilitation was not rejected in the due process era, and youth still were viewed as less mature and less deserving of punishment than adults (Slobogin, 1999). Even when the Court expressed fear that children were getting "the worst of both worlds" because they received neither the promised rehabilitation from juvenile court nor the procedural rights of adult defendants, the Court ultimately concluded that principles of due process do not prevent states from providing and improving upon provisions for the confidentiality of court and law enforcement records that relate to juveniles (*Kent v. United States*, 1966, p.556; *Packard v. Board of Education of Thomaston*, 1998).

In 1971 the Court again commented briefly on the issue of juvenile confidentiality in *McKeiver v. Pennsylvania*, when it decided whether due process guarantees juveniles a right to trial by jury (*McKeiver v. Pennsylvania*, 1971). In concluding that a jury trial is not constitutionally required for juveniles, the Court expressed concerns that jury trials might adversely affect the juvenile justice system with publicity, unnecessary delay, formality, and adversarial proceedings. Thus, in both *Gault* and *McKeiver*, the Court recognized the value of confidentiality to juvenile court and initially left the states to decide whether and to what extent confidentiality would be preserved.

The Court, however, was forced to revisit the issue in a second series of cases involving asserted limitations on state efforts to preserve confidentiality. This time, the Court determined that, although states have a legitimate interest in preserving a juvenile offender's anonymity, this interest in confidentiality will be outweighed when it interferes with another's fundamental rights, such as a criminal defendant's Sixth Amendment right to confront witnesses at trial or the media's right to access or publish lawfully obtained information. First, in *Davis v. Alaska*, the Court reversed a trial court's order precluding a criminal defendant from cross-examining the key government witness, a juvenile offender. The defendant had intended to show bias arising from the witness's probationary status after a juvenile adjudication. The Court found that the defendant's rights outweighed the state's interest in preserving the offender's anonymity (*Davis v. Alaska*, 1974).

A series of three First Amendment cases decided between 1977 and 1982 placed more significant restrictions on the states' interest in maintaining juvenile confidentiality. In those cases the Court made clear that the media cannot be prohibited from publishing information, even about sensitive juvenile matters, when media representatives obtained that information while lawfully present at a juvenile proceeding (*Globe Newspaper Co. v. Superior Court*, 1982). However, because the Court did not rule on the constitutional validity of any state statute that denied the media access to juvenile court proceedings or

records in the first place, none of these cases undercut the fundamental baseline of confidentiality for juvenile offenders that existed in most of the states.

Public Safety and the Perceived Failure of Juvenile Rehabilitation

The second major attack on the presumption of confidentiality in juvenile court began in the late 1980s and early 1990s, when concerns about deteriorating public safety and the need for accountability became rampant (Melli, 1996). Preserving confidentiality has become less popular, as it appears to frustrate society's increasing desire to hold delinquents accountable for their actions (Rossum, 1995). As long as the public perceives that crime is increasing, citizens will demand greater accountability and responsibility from offenders. Public access to the justice system may satisfy "prophylactic" needs of the public, especially in serious cases, by tempering community outrage and providing "an outlet for community concern, hostility, and emotion" (Reporters Comm. for Freedom of the Press, 1999). By granting public access, government leaders can respond to public fear by showing how, in their assessment, the system effectively responds to juvenile crime (Martin, 1995).

Proponents of eroding confidentiality also argue that juvenile records should be available to law enforcement officials who can anticipate crime and protect the community from those most likely to commit crimes in the future (Funk, 1996). Some advocates go further and argue that citizens, neighbors, and teachers have a right to "fair warning" about children or adolescents who pose a danger to others (Blum, 1996, p.349). Similarly, some argue that employers are entitled to information contained in juvenile records when selecting employees, as they seek to avoid personal loss from theft or violence and escape liability that might arise under an employer's common law duty to provide a safe work environment (Funk, 1996). Employers can try to avoid these losses by declining applicants with juvenile and criminal records.

In response to concerns about the impact of stigma, advocates of public records argue that any stigma associated with disclosing juvenile records is beneficial because it serves as an additional deterrent to the undesirable delinquent conduct (Blum, 1996). Under this theory, a child will abstain from criminal conduct in order to avoid embarrassment to himself and his family and to keep from jeopardizing future opportunities (Blum, 1996). Furthermore, where publicity has not been an effective deterrent and juveniles subsequently re-offend as adults, advocates maintain that judges in criminal court need delinquency records so that sentencing adequately will respond to the danger a defendant poses to safety in the community. This argument also reflects the retributive theory that an adult with a juvenile record deserves more punishment than an adult with no juvenile record (Funk, 1996).

National perceptions of high and rising crime have generated a great deal of public pressure for state legislatures to get tough on juvenile crime (Scott & Grisso, 1997). Responding to this perceived increase in serious crime by children, policymakers have begun to question early assumptions about the differences between children and adults (Butts and Mears, 2001). Many have rejected the notion that children are less culpable and less blameworthy than adults and have argued instead that young offenders of today are actually quite savvy and sophisticated. A much less idealized view of adolescence now accompanies increasing skepticism about the likelihood of rehabilitation. Given current views that children are indistinguishable from adult criminals, policymakers now often argue that children who engage in adult-like criminal behavior should be punished like

adults (Scott and Grisso, 1997). Some constituents are ready to abandon the rehabilitative philosophy altogether and have called upon policymakers either to do away with juvenile court in its entirety or to strip the court of its rehabilitative features, such as individualized "sentencing" and confidentiality (Blum, 1996, p.349). These proponents argue that juveniles are not and cannot be rehabilitated, either because previous attempts have failed or because some juveniles are fundamentally hard-wired for criminal conduct (Lipsey, 1999).

Legislatures have responded to these public demands by introducing accountability and punishment into juvenile court and have begun to treat rehabilitation as a secondary objective (Sheffer, 1995). Some states even revised juvenile court purpose clauses in the 1980s to reflect a shift away from rehabilitation and toward public safety, punishment, and individual accountability (Feld, 1988). States now may be willing to provide therapeutic and rehabilitative services to children only to the extent that such services appear compatible with the safety of the community. Other manifestations of the public safety attack are the use of mandatory minimum sentences in juvenile court, the imposition of penalties that mirror those used in adult court, and the increased transfer of juveniles to adult criminal court (Lipsey, 1999).

Confidentiality has been especially hard hit by the public safety and accountability movement. As the rehabilitative philosophy of juvenile court falls away, confidentiality loses its place. While almost every state still has some statutory provision for the confidentiality of juvenile hearings and records, the majority of states now grant multiple exceptions to the general rule. In many states, these exceptions eviscerate the rule. Beginning in the 1990s, a number of states abandoned presumptive closure statutes entirely and opened juvenile proceedings to the public (Oestreicher, 2001).

Confidentiality also has been eroded in more indirect ways. In a number of states, sex offender registration laws now include juveniles on state registries; law enforcement databases include DNA profiles of juvenile offenders; juvenile drug courts and other specialty courts regularly share information with other public and private agencies; interagency collaboratives facilitate the exchange of juvenile records among law enforcement officials, schools, and public housing authorities; and some states now permit or even require law enforcement personnel to notify schools when students have been arrested (Haller, 2001).

At the beginning of the twenty-first century, the public safety agenda continues to drive the debate on confidentiality and rehabilitation. Therefore, current discussions generally reflect both a utilitarian desire to improve public safety through threatened publicity and severe public consequences, and a retributive desire to punish young offenders with sanctions that approximate those for adults in criminal courts (Scott and Grisso, 1997). Public safety advocates expect that eroding juvenile confidentiality will deter crime, reduce recidivism, and empower the public to protect itself from known offenders. It is not at all clear, however, that publicity and punishment will generate these desired improvements in public safety, nor does it appear that rehabilitation has forever failed as a viable response to juvenile crime.

Conclusion

Studies reveal the existence of measures which advocate a conditional or qualified form of public and press access to juvenile proceedings as a means to serve the needs of the children by focusing public attention on abuses and deficiencies within the juvenile justice

system. Many of the measures incorporate the policy of allowing the press access to juvenile hearings, which might include the privilege to watch and report, with the condition, that no names be disclosed at the proceeding. Various studies argue that public access should be extended not only to juvenile delinquency hearings, in which are accused of being perpetrators of crimes, but also to juvenile dependency hearings, in which children are thought to be victims of abuse or neglect (Hughes, 1997).

In terms of juvenile records, Mclatchey (1999) argues that allowing media access to confidential juvenile records on the condition that the media not reveal identifying information represents the best solution to the media access problem. Conditional access would allow a reporter to investigate many aspects of the juvenile justice system without interfering with the state's efforts to rehabilitate juvenile offenders. To this end, conditional access to juvenile records strikes a balance between rehabilitation of the juvenile and public awareness. Conditional access to juvenile records does not threaten the confidentiality of a juvenile offender because the condition restricts the media from disclosing the juvenile's identity. Access to juvenile records is a privilege, and reporters who abuse the privilege of conditional access could face contempt charges or other sanctions (Mclatchey, 1999). To this end, similar measures are being considered that deal with the conditional (qualified) notion of media-coverage of juvenile proceedings.

The current law in this country governing the right of access to juvenile proceedings primarily makes the decision of whether to grant media access to a particular proceeding one for the presiding judge to resolve at his discretion. However, the purposes and goals driving the enactments of right-of-access statutes evidence the legislature's intent to limit this discretion. To further the goals of these statutes, a presiding judge should grant access only in cases where it is absolutely clear either that no harm will result to the juvenile from the media's presence and subsequent coverage of the proceedings, or that publicity is necessary to prevent a greater harm to the general public. Publicity is detrimental both to the juvenile's prospects for rehabilitation, and to society's chances of reforming young people before they become adult offenders. In contrast, media access serves no benefit which cannot be supplied by other means. Accordingly, the presiding judge in a juvenile courtroom should always use this statutorily-conferred discretion to bar the media from entering the courtroom unless it is absolutely necessary to serve a compelling state interest (Laubenstein, 1995).

If it is possible for one to predict in what direction the juvenile justice system is traveling in terms of allowing media-coverage of juvenile proceedings, one could argue either position with a myriad of supporting explanations. When considering the current overall trend in the juvenile justice system which embraces a "conservative approach within a rehabilitative context", it appears that whatever the decision will be – rest assured, it will be televised.

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