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# Publicity in the Juvenile Court

## PUBLICITY IN THE JUVENILE COURT

With few exceptions,[1] a public trial is granted, under the sixth amendment, to adults accused of crimes.[2] Correspondingly, what takes place in the courtroom is generally held to be public property available for dissemination by the press.[3] In juvenile proceedings, however, privacy has "typically been among the few unchallenged keynotes." [4] Characteristic of the juvenile court system have been procedures aimed at maintaining the anonymity of juvenile offenders.[5]

In a recent case, a newspaper has chosen to assail the heretofore undisputed sanctity of privacy in the juvenile court. In *In re Ithaca Journal News, Inc.*,[6] a reporter from defendant newspaper, present at a hearing involving two youths apprehended for theft, was ordered by the City Judge to withhold from publication the names of the boys.[7] The boys were nevertheless identified by the newspaper and contempt proceedings followed. The court, in balancing the freedom of the press against "the right of an infant to be spared from the life long devastating effects of publicity," [8] found the newspaper guilty of contempt.

The *Ithaca* decision upholds the constitutionality of statutes designed

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[1] *See* note 21 *infra.*

[2] U.S. CONST. amend. VI; Geis, *Publicity and Juvenile Court Proceedings*, 30 ROCKY MT. L. REV. 101, 102 (1958). *See, e.g.*, Note, *Criminal Law—Public Trial—Waiver*, 36 ORE. L. REV. 345 (1957).

[3] Craig v. Harney, 331 U.S. 367, 374 (1947). The press, however, cannot interfere with the right of the accused to a fair trial. *See generally* Sheppard v. Maxwell, 384 U.S. 333 (1966); Estes v. Texas, 381 U.S. 532 (1965); Bridges v. California, 314 U.S. 252 (1941).

[4] Geis, *supra* note 2, at 102. *See generally* Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 560 (1957); Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 285 (1967); Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 794 (1966).

[5] *See* notes 16-19 *infra.*

[6] 292 N.Y.S.2d 920 (Ithaca City Ct. 1968).

[7] The court was acting under state statute, N.Y. CODE OF CR. PROC. § 913-f (McKinney 1958), which reads, in part:

> The court on its own motion may, but only as to the public, order the indictment or information sealed in the case of a youth charged with a crime.

On appeal, the city court's decision was held to be outside the scope of the New York statute, since the newspaper's identification of the boys was based on information obtained prior to the sealing off of the information by the court. 294 N.Y.S.2d 558 (N.Y. Sup. Ct. 1968).

[8] 292 N.Y.S.2d at 925.

to protect juvenile offenders from newspaper notoriety. Such statutes are not uncommon. In 1961, it was reported that thirty of the states, in lieu of directly forbidding publication of juvenile court proceedings, left it to the discretion of the court to forbid such publication.[9] Thirteen of the states had no law by which such publication could be prohibited,[10] five states directly forbade publication,[11] while Georgia and Montana took a unique position.[12] The Standard Juvenile Court Act also denies publication of the juvenile's name or picture except with the authorization of the juvenile court.[13] Unquestionably, the state legislatures are aware of the need to protect the juvenile from this type of publicity.

The publicity question of *Ithaca* emphasizes merely one area in which juveniles accused of crimes are afforded special treatment by the law.[14] With an eye toward effecting its primary goal of rehabilitation,[15] numerous special procedures, all designed to eliminate stigma by maintaining the anonymity of the youthful offender in his contact with the police and the courts, have been incorporated into the juvenile court system.

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[9] Geis, *Publication of the Names of Juvenile Felons*, 23 MONT. L. REV. 141, 145 (1962). Virginia's statute is in the majority. VA. CODE ANN. § 16.1-162 (1960). It provides in part:

> The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. [T]he records of all such cases . . . shall be withheld from public inspection . . . .

A 1958 amendment to the statute added:

> [I]n cases involving criminal offenses by juveniles, the judge may make public the name of the offender . . . if he deems it to be in the public interest.

[10] Geis, *supra* note 9, at 145.

[11] *Id.*

[12] The Georgia statute makes mandatory the release of the names of second offenders. GA. CODE ANN. § 24-2452 (1968). The Montana statute allows for publication where the juvenile is charged with a felony. REV. CODE MONT. § 10-633 (1967). The passing of the Montana statute provoked Geis's article in which the California sociologist condemns such laws. Geis, *supra* note 9.

[13] STANDARD JUVENILE COURT ACT § 33d, comment (1959), quoted in Geis, *supra* note 9, at 148.

[14] A separate court system for juveniles was first developed in the United States in 1899. Founded on the philosophy that the "welfare of the child is of paramount concern," (1959 Report of the Comm. to the Gov. of Va., Problems of the Juvenile Offender, House Doc. No. 4, at 16), it invoked the doctrine of *parens patriae* which was "to accord the judge the greatest possible opportunity to exercise a quasi-parental influence over the child." Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 Colum. L. Rev. 281 (1967).

[15] *See, e.g.*, Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967). *See also* WHEELER & COTTRELL, JUVENILE DELINQUENCY—ITS PREVENTION AND CONTROL, (Russell Sage Foundation, 1965).

Included are (1) the elimination of arrest by warrant and the use of indictment as well as other such forms of criminal procedure,[16] (2) the use of a special courtroom with informal proceedings,[17] (3) the keeping of separate records with the possibility of their later expungement,[18] and (4) restrictions on the direct reporting of events during the proceedings.[19]

There was little difficulty in gaining court approval of the constitutionality of juvenile court procedure, but the early cases establishing the constitutionality of juvenile courts were not concerned with the publicity issue.[20] Specific conditions in criminal cases had already warranted the courts' approval of private hearings[21] and it was unlikely that an attack on the juvenile courts on such grounds would be successful.[22] Later cases, dealing with the non-public character of the juvenile courts, have sustained their comparative secrecy.[23] Although the *Gault* decision[24] modernized the constitutionality of the juvenile courts, it should nevertheless have a negligible effect on the publicity issue.[25]

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16 Geis, *supra* note 2, at 105.

17 *See, e.g., id.*

18 *See, e.g.*, Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 WASH. U. L. Q. 147; Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 784, 799-801 (1966). This note represents an excellent and concise analysis of the expungement problem. The purpose of alleviating stigma is acknowledged and especially pointed out is the inadequacy of those statutes, too few in number, which now deal with the problem. *See. e.g.*, note 25 *infra.*

19 *See* Geis, *supra* note 2; Geis, *supra* note 9.

20 *See* Pugh v. Bowden, 54 Fla. 302, 45 So. 499 (1907); *In re* Sharp, 15 Idaho 120, 96 P. 563 (1908); *Ex parte* Loving, 178 Mo. 194, 77 S.W. 508 (1903); Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905); Mill v. Brown, 31 Utah 473, 88 P. 609 (1907). "Innumerable cases have come before the court subsequent to these, but they represent little more than restatements of the original situation and, with infrequent exceptions, the higher courts, relying upon these initial cases for support, have reached the same conclusions." Geis, *supra* note 2, at 107.

21 "Grand jury hearings are traditionally private. and the press is regularly excluded in some jurisdictions from attending or reporting upon trials dealing with treasonable or particularly obscene material." Geis, *supra* note 9, at 144.

22 Geis, *supra* note 2, at 110.

23 *See, e.g.*, State v. Guerrero, 120 Ariz. 421, 120 P. 2d 798, 802 (1942); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 274 (1944).

24 *In re Gault*, 387 U.S. 1 (1967).

25 Not only does *Gault* not denigrate privacy in the juvenile court, it is clear from the majority opinion that the Court, in fact, would favor more encompassing and more effective controls on publicity with respect to juvenile contact with the police and the courts. The Court states:

The constitutional guarantee of freedom of the press, while not absolute, should not be haphazardly infringed upon. There is a basic presumption of an "unfettered press" and any abridgement of this right must be supported by "contravening and overriding principles." [26] Accepting (1) the constitutionality of the juvenile court system, (2) that rehabilitation is the primary objective of that system, and (3) that the "goals of protecting a young person from the misconduct of his youth and of informing the community of how its courts operate in every case, cannot be pursued simultaneously," [27] the principal question becomes one of determining the extent to which privacy is a positive factor in furthering the rehabilitation of the child. Is the extent great enough to constitute an "overriding principle?"

Recognition of the harmful effects of publicity is indeed well documented.[28] A child marked as a delinquent is precluded from achieving in his community the stature he deserves as a rehabilitated individual. Before having reached the age of complete discretion,[29] he has acquired a police "record" which will jeopardize his career opportunities. The problems which resultingly beset him when he begins to seek a job severely hamper his rehabilitation.[30] The feeling of self-respect, neces-

> [T]he commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion. 387 U.S. at 22.

Recognition is given by the Court in *Gault* to the need to curtail publicity in the juvenile court. The opinion points out that "the claim of secrecy however is more rhetoric than reality." 387 U.S. at 22. It points out that the courts, and the police departments, which do not come within the language of most statutes, routinely provide information to the F.B.I., military, government agencies and even private employers. The Court then concludes, on the issue of publicity:

> [T]here is no reason why . . . a state cannot continue, if it deems it appropriate, to provide and to improve provisions for the confidentiality of records of police contacts and court action relating to juveniles. 387 U.S. at 24.

26 Geis, *supra* note 2, at 107.

27 Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 560 (1957).

28 *See In re* Gault, 387 U.S. 1, 22-24 (1967); STANDARD JUVENILE COURT ACT § 33d, comment (1959); WHEELER & COTTRELL, JUVENILE DELINQUENCY—ITS PREVENTION AND CONTROL, (Russell Sage Foundation, 1965); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT, JUVENILE DELINQUENCY AND YOUTH CRIME, 38, 92 (1967); Geis, *Publication of the Names of Juvenile Felons*, 23 MONT. L. REV. 141 (1962); Geis, *Publicity and Juvenile Court Proceedings*, 30 ROCKY MT. L. REV. 101 (1958); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 560 (1957); Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967); Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 784 (1966).

29 Geis, *supra* note 2, at 102.

30 Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 784 (1966).

sary in effecting rehabilitation, is impaired by notoriety which humiliates and demoralizes, leaving the juvenile "heavily charged with feelings of guilt, anxiety, and recrimination." [31]

It has been suggested that publicity acts often as a deterrent,[32] however the better view seems to be that not only does it fail to deter, but it is often a causative factor in reoccurrences as well as original instances of delinquency.[33] Evidence has shown that some juveniles are proud of the public attention their acts attract and publicity thus becomes the end which they seek.[34] Aside from the "deterrent" argument, the primary argument of the newspapers is that the public has a right to know what is happening.[35] It does not seem that the goals of anonymity and of keeping the public informed of the incidence of crime among juveniles are necessarily incompatible. The fact that an event took place can be announced without identification of the participants in the event.[36]

Most newspapers agree that the goal of anonymity is a worthy one,[37] but they feel that the best method of controlling publication is news-

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31 STANDARD JUVENILE COURT ACT § 33d, comment (1959), quoted in Geis, *supra* note 9, at 148.

32 AM. NEWSPAPER PUBLISHERS ASSOC., SPECIAL COMM. ON FREE PRESS AND FAIR TRIAL, FREE PRESS AND FAIR TRIAL 5 (1967); Interview with D. Tennant Bryan, Publisher, Richmond Times-Dispatch and Richmond News Leader, in Richmond, Oct. 24, 1968; Interview with John Leard, Executive Editor, Richmond Times-Dispatch, and Richmond News Leader, in Richmond, Oct. 24, 1968.

33 TASK FORCE REPORT, *supra* note 28, at 38, quoting SALISBURY, SHOOK-UP GENERATION 164 (1958).

34 *See, e.g.*, Geis, *supra* note 2, at 124; Interview with Judge Max O. Laster, Richmond, Oct. 22, 1968; Interview with Judge Kermit V. Rooke, Richmond, Oct. 22, 1968. Indeed, it is pointed out that "in the most intractable cases (when presumably publicity would be used) publicity feeds the drives that move these youths and may influence others toward emulation." TASK FORCE REPORT, *supra* note 28.

35 *See, e.g.*, AM. NEWSPAPER PUBLISHERS ASSOC., *supra* note 32, at 1; Interview with D. Tennant Bryan, *supra* note 32. *But see* J. Edgar Hoover's statement that "citizens have a right to know the identities of the potential threats to public order within their communities," in answer to which the statement is made that "[i]t is fatuous . . . to suggest that a typical youth before the juvenile court poses a threat to community order." Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 Colum. L. Rev. 281, 286 (1967).

36 When asked about this approach to the reporting of juvenile court proceedings, a newspaper official commented to the effect that nobody would want to read anything so dull. Such an attitude on the part of the newspapers reenforces the conclusion, *infra* p. 353, that the press, driven by a profit motive, should not be allowed to exercise self-restraint in the reporting of juvenile court proceedings.

37 *See, e.g.*, AM. NEWSPAPER PUBLISHERS ASSOC., *supra* note 30, Appendix "C", which sets out the policies of various state newspaper associations.

paper self-restraint.[38] The feeling has been expressed that newspapers possess the qualifications, and are entitled, to determine what subject matter should be printed with regard to juvenile offenders.[39] In some states, even where statutes vest this discretion in the court, the effect in practice is often one of the press ultimately deciding for themselves anyhow.[40] Indeed, this situation may exist where, even though restrictions from the court are forthcoming, access to police files and information leaks at the police station, where the presence of reporters is commonplace, often lead to newspaper obtainment of desired information.[41]

In summary, it can briefly be said that the theory behind the *Ithaca* decision leads to a proper and desirable result in dealing with the question of publicity in the juvenile court. The following conclusions may be made:

(1) Any infringement upon freedom of the press will likely be met with protest from the news media regardless of the beneficial effects of such encroachment. Arguments mustered by the newspapers must give way to the greater social value derived from juvenile rehabilitation.

(2) Discretion in deciding what to print should rest with the judge whose first interest is in rehabilitating the juvenile and whose experience and access to expert information enable him to better exercise that discretion. Newspapers, in spite of an attitude of fairness, are driven by a profit motive and should not be relied upon to exercise proper self-restraint in every situation.

(3) Present laws designed to protect the juvenile from publicity and assist his rehabilitation are rendered ineffective if newspapers are able to gain information from sources outside the court. Where now only informal understanding may exist between the court per se and the police station as to what information should be released, strict guidelines should be established to insure more effective protection of the juvenile offender.

(4) Proper sanctions should be available to the court to enable it to uphold its limitations on disclosure.

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[38] Interview with D. Tennant Bryan, *supra* note 32. *See generally* AM. NEWSPAPER PUBLISHERS ASSOC., *supra* note 32.

[39] Interview with D. Tennant Bryan, *supra* note 32.

[40] *See* TASK FORCE REPORT, *supra* note 28; Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281, 286, *citing* Geis, *supra* note 9, at 145.

[41] Interview with John Leard, *supra* note 32.