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Publication of the Names of Juvenile Felons

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Publication of the Names of Juvenile Felons

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In 1961, the Montana legislature approved a statute allowing newspaper publication of the name of any youth proceeded against as, or found to be, a delinquent child where a hearing or proceeding is had in the juvenile court on a written petition charging him with the commission of any felony.[1] This statute, directly altering the previous approach in the state,[2] varies in degree and kind from the laws of most juvenile courts both in the United States and throughout the world. It also stands in sharp contrast to the procedures recommended by standard-setting committees composed of judges and other individuals concerned with the most effective approach to the problem of juvenile delinquency. Neither its uniqueness nor its opposition to prevailing standards necessarily means that the Montana statute is ill-conceived, of course, but they do suggest that it deserves rather close scrutiny. It is the purpose of the present paper to provide such scrutiny, and to attempt to marshall relevant material which might suggest the assets and demerits of a law such as that now in force in Montana.

It can be misleading to interpret the new Montana statute without reference to another unique aspect of the state's procedure in dealing with delinquents. The Montana juvenile court code provides that all offenders beyond the age of sixteen who commit one of a rather large number of enumerated offenses automatically come within the exclusive jurisdiction of the adult criminal court.[3] This provision, enacted after a rough legislative journey,[4] varies sharply from the law in other jurisdictions and from the standards of the Advisory Council of Judges of the National Council on Crime and Delinquency. The Council only recently re-emphasized its strong commitment to the view that "the jurisdiction of the juvenile court properly extends to *all* children under the age of eighteen."[5] Transfer of juvenile court jurisdiction to adult criminal courts, the Council of Judges insists, should be undertaken only for acts which would be felonies if com-

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[1]Laws of Mont. 1961, ch. 132, § 2.

[2]Prior to the 1961 amendment, the statute provided: "No publicity shall be given to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children." REVISED CODES OF MONTANA, 1947, § 10-633. (Hereinafter, REVISED CODES OF MONTANA will be cited R.C.M.)

[3]". . . a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed." R.C.M. 1947, § 10-602(b). See State *ex rel.* Bresnahan v. District Court, 127 Mont. 310, 263 P.2d 968 (1953); State *ex rel.* Ostoj v. McClernan, 129 Mont. 160, 284 P.2d 252 (1955); State *ex rel.* Dahl v. District Court, 134 Mont. 395, 333 P.2d 495 (1958); State *ex rel.* Keast v. District Court, 136 Mont. 367, 348 P.2d 135 (1959).

[4]State *ex rel.* Keast v. District Court, 136 Mont. 367, 373-74, 348 P.2d 136, 138 (1959).

[5]Advisory Council of Judges, *Transfer of Cases Between Juvenile and Criminal Courts—A Policy Statement*, 8 CRIME & DELIN. 3 (1962). (Italics supplied.)

mitted by adults, and only after a full investigation, a hearing, and a clear finding that "the advantage in resources for treatment and public safety lies with the criminal court rather than the juvenile court."[6] The Judges reject seriousness of the offense as a valid criterion for categoric transfer, and it is apparent that they feel that transfers should be made rarely and then only for strongly compelling reasons.

In terms of the mandatory provision in Montana for district court jurisdiction over the more serious offenses committed by juveniles beyond the age of sixteen, the new statute concerning the publication of the names of juvenile court participants can be seen to apply specifically to persons below sixteen who commit felonies and to those between sixteen and eighteen who commit felonies which do not fall within the purview of the adult court. So viewed, the content and intent of the new law and its deviation from generally accepted juvenile court procedures and standards stands out more starkly.

LEGAL AND SOCIAL STANDARDS

The Law: Juvenile Courts and Juvenile Publicity

Whether or not the names of persons appearing before the juvenile court shall be published in newspapers is clearly a matter of legislative prerogative. The 1899 Illinois law which initially gave endorsement to the principles which underlie all of our juvenile court statutes was aimed at separating juveniles from adults, and giving to the former a benevolent form of adjudication and disposition.[7] This procedure was to be so enlightened and so benign that there would exist no conflict between the best interests of the juvenile and the actions of the juvenile court in determining these interests. There would therefore be no reason for the juvenile to require protection against arbitrary and ill-considered action: the rule-of-thumb about places of perdition and good intentions was presumed inapplicable in regard to the new juvenile courts.

It must be remembered, though, that while it is often re-iterated that juveniles are not entitled to constitutional protections,[8] his situation operates only within a limited context. All rules of fair process and reasonable procedure cannot be discarded. Actions taken against the juvenile which are patently opposed to his best interests and the best interests of the society (*e.g.,* vicious forms of punishment) would undoubtedly draw the censure of the appellate courts. There must also be at least some semblance of procedural regularity and formality. A juvenile could hardly be legally institutionalized on the basis of an anonymous letter sent to a judge, without the juvenile's appearance in court, without a petition, a probation report, and similar proceedings.

What seems true of the juvenile court, then, in relation to constitutional provisions, is that the rote citation of these rights will not carry weight with an appellate court unless it can be soundly demonstrated on

[6] *Id.* at 5.
[7] Laws of Illinois, 1899, p. 131-37.
[8] See, *e.g. In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954); State *ex rel.* Palagi v. Freeman, 81 Mont. 132, 140, 262 Pac. 168, 170-171 (1927).

corollary grounds that the elimination of any particular right offends a sense of justice and works to the detriment of the juvenile.[9] Juveniles rarely will be able to claim such things as the right to a jury trial, or to a grand jury indictment, or to many of the other standard procedures of the adult criminal court with much hope of success unless these guarantees are spelled out by statute. Since the constitutionality of the juvenile court has never been passed upon by the Supreme Court of the United States, it is possible to speculate, as Professor Francis Allen has, that juvenile court procedures "may one day present a series of difficult and arresting issues for the Court's consideration."[10] But the recent decision in *Pee v. United States* seems to indicate that the juvenile court approach is acceptable in its broad outlines to the upper echelons of the federal judicial hierarchy and very likely to the highest court.[11]

The constitutional guarantee of a public trial, appearing in the Sixth Amendment, is therefore not of direct relevance for the operation of the juvenile court except as a vague and hazy signpost around which a detour may be taken if a better road can be found. Only a few court decisions have been concerned with the matter of publicity in juvenile court hearings, and these have held that laws which insist upon private court sessions are adequate forms of legislation. In *Dendy v. Wilson*,[12] for instance, the provision in the Texas Juvenile Delinquency Act allowing for the exclusion of the public from juvenile court hearings was sustained with the following logic:

> . . . This saves the minor from embarrassment, and also permits the court to avoid publicity that often surrounds the trial of a case. Since the proceedings under this Act must be governed largely by rules governing civil actions, the trial court did not err in excluding the general public from the trial.[13]

Further support for private juvenile court hearings derives from a

[9]Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959).

"The constitutional safeguards vouchsafed a juvenile in [juvenile court] proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." 274 F.2d at 559. In an appendix to the case, the court lists state and federal authorities sustaining this proposition. 274 F.2d at 563.

On the proposition that juvenile court proceedings "are not criminal cases" (274 F.2d at 559), the court finds support in decisions from 42 states and statutes in the other eight. 274 F.2d at 559, n. 12. These authorities are collected in an appendix to the case. 274 F.2d at 561.

[10]Allen, *The Supreme Court, Federalism, and State Systems of Criminal Justice*, 8 DE PAUL L. REV. 213, 233 (1959). In one side allusion both to the juvenile court and to the question under discussion here, Justice Black referred to the fact that ". . . Whatever may be the classification of juvenile court proceedings, they are often conducted without admitting the public." *In re* Oliver, 333 U.S. 257, 266 n.12 (1948).

[11]Pee v. United States, 274 F.2d 556, 558-60 (D.C. Cir. 1959).

[12]Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944).

[13]*Id.*, 179 S.W.2d at 274. *Cf.* White v. Reid, 125 F. Supp. 647 (D.C. Cir. 1954); Cinque v. Boyd, 99 Conn 70, 121 Atl. 678 (1923); *In re* Sharp, 15 Idaho 120, 96 Pac. 563 (1908); State v. Cronin, 220 La. 233, 56 So. 2d 242 (1951); *In re* Mont., 175 Pa. Super. 150, 103 A.2d 460 (1954); *In re* Lewis, 51 Wash. 2d 193, 316 P.2d 907 (1957); Land v. State, 101 Ga. App. 448, 114 S.E.2d 165 (1960). *Cf.* the comment that "It is quite apparent that the legislative intent was that juvenile matters are to be treated [in Montana] as civil and not as criminal proceedings." State *ex rel.* Ostoj v. McClernan, 129 Mont. 160, 164, 284 P.2d 252, 254 (1955).

wide range of situations in which justice is conducted beyond the eyes and ears of the mass media of communication. Grand jury hearings are traditionally private,[14] and the press is regularly excluded in some jurisdictions from attending or reporting upon trials dealing with treasonable or particularly obscene material.[15] Montana is one of six states which insists that the public, including the press, be forbidden admittance to preliminary hearings if the defendant demands this exclusion.[16] Many states enforce Canon 35 of the Canons of Judicial Ethics and forbid the intrusion of photographic equipment and television cameras into the courtroom situation,[17] and, in a cognate vein, several states refuse to allow the publication of the names of victims of sexual offenses on the ground that such publication serves no useful social purpose and might further injure the victim.[18]

The right to a public trial and to the publication of one's name and, presumably, to the publication of the details of the state's allegation and the defendant's rebuttal is well established for almost all phases of adult criminal proceedings, and is considered a virtually impregnable ingredient of the adult's arsenal of constitutional protections. As we have seen, denial of both elements of this right to a juvenile will be sustained, with support based on the presumed compact by which the state provides protective social procedures for the juvenile in return for the elimination of criminal due process. Judge Orman W. Ketcham has argued with considerable vigor that "if the state has failed to keep its legislative promises[19] — the circumvention of constitutional protections and the assertion of state control in the name of *parens patriae* are neither legally nor morally justified."[20] This viewpoint is not directly applicable to the Montana situation concerning publicity, however, for here we have a statute corresponding to the adult situation which may in fact be detrimental to the expressed aim of the juvenile court code. No juvenile has yet claimed that a mandatory public trial and the publication of the details of his behavior in the mass media violates the spirit of the juvenile court bill of rights. It would be an interesting and provocative viewpoint, however unlikely it might be to succeed on appeal.

Juvenile Court Publicity in the United States

There is no common legislative agreement in this country concerning the most efficacious method of dealing with the question of public trials for juveniles and the publication of the names of persons involved in such

[14]R.C.M. 1947, §§ 94-6324, -6325.
[15]*Contra*, State v. Keeler, 52 Mont. 205, 156 Pac. 1080 (1916), but note dissent by Sanner, J., at 219, 156 Pac. at 1084.
[16]R.C.M. 1947, § 94-6110. *Cf.* People v. Elliot, 54 Cal. 2d 498, 354 P.2d 225 (1960) (right that all unauthorized persons be excluded from the courtroom is mandatory). Geis, *Preliminary Hearings and the Press*, 8 U.C.L.A.L. REV. 397 (1961).
[17]*E.g.*, State v. Sharpe, 122 S.E. 2d 622 (S.C. 1961); Geis, *Canon 35 in the Light of Recent Events*, 43 A.B.A.J. 419 (1957).
[18]WIS. STAT. § 942.02 (1958); State v. Evjue, 253 Wis. 146, 33 N.W.2d 305 (1948) (statute is constitutional); FLA. STAT. § 794.03 (1959). See also Brumfield v. State, 108 So. 2d 33, 36 (Fla. 1959) (court order prohibiting photographing indicted rapist on way to arraignment is valid).
[19]See R.C.M. 1947, § 10-601 for the construction and purpose of the Montana juvenile court act.
[20]Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 CRIME & DELINQ. 97, 101 (1961).

proceedings. This lack of consensus may be traced either to disagreements on the end being sought by the legislative enactment or uncertainty as to the relationship between stipulated ends and the methods most effectively related to their achievement. Even granting, however, that agreement could be reached concerning both the desired ends and the relevant means to achieve these ends, it is obvious that some choice would have to be made among the ends and some hierachy established regarding their importance.

A majority of the states in the United States — 30 in all — have no law directly prohibiting the publication either of juvenile court proceedings or the names of delinquents, but leave the matter to the discretion of the court. Thirteen states have no laws by which the publication of material concerning juvenile court cases could be prohibited, while five states directly forbid the publication of the names of youths before the court.[21] Georgia, like Montana, takes a unique stand. By the terms of a 1957 statute, it makes mandatory the release by the juvenile court of the names of second or subsequent offenders appearing before the court.[22]

The situation in those states which provide discretionary rules concerning publication varies widely, ranging from a total absence of the use of juvenile court material to a rather liberal circulation of such data. In discretionary states, a great number of judges, probably a large majority, abdicate responsibility on this point and leave to the judgment of the newspapers the question of whether or not they will print material from the juvenile court and the form in which they will use such material. A few quotations from newspapermen will serve to show how they vary in their interpretations on this matter. The editor of a newspaper with a 20,000 circulation writes:

> Generally, we believe youngsters should be given every opportunity to go straight, and that publicity on early errors might make the road very difficult.[23]

Another newspaper editor operates under the following rule-of-thumb procedure:

> Our editorial policy extends consideration to juveniles, not on a hard and fast rule but subject to the circumstances. As general practice we withhold juvenile names in the interest of their rehabilitation on first offenses. Major crimes or chronic offenses (three) call for publication of names.[24]

Finally, a third newspaper editor notes:

> When six boys — all 16 — stole 72 cars, we used all their names, but when four boys — 12 to 13 — broke into an abandoned television station in their first offense, we printed no names. Generally, if they are over 14 and are prosecuted, they are going to get their names in the paper.[25]

[21] Am. Newspaper Publishers Ass'n, *General Management Bulletin* 30-31 (Feb. 19, 1958).
[22] GA. CODE ANN. § 24-2432 (1959).
[23] Am. Newspaper Publishers Ass'n, *op. cit. supra* note 21 at 29.
[24] *Ibid.*
[25] U.P.I. Reporter, July 31, 1958, p. 2.

The preceding quotations illustrate the use by the editors of their own social conscience before they arrive at decisions on whether or not to publish the names of juveniles. As a matter of public policy, it seems questionable that the best procedure is to assign to a private, profit-seeking enterprise, such as the press, the final decision on a matter which concerns the well-being of the juvenile, whom the legislature has chosen to protect by special procedural rules, and the well-being of the entire society. Aside from the fact that newspapers might well be swayed by matters of circulation[26] as well as by delicate relationships within the community, their personnel are not ideally trained for this exercise of discretion. In addition, the public has little recourse against decisions with which it might not be in agreement, particularly as the press moves toward a position of monopoly in most American communities.[27]

Foreign Approaches to Juvenile Publicity

The spread of American-style juvenile delinquency into foreign countries raises some very basic questions concerning the functional utility of juvenile behavior, and discussions concerning publicity must be turned back onto the problem of the role that such publicity might play in terms of the dynamics originally evoking delinquency. Despite the fulminations of a large number of European adults against what they consider to be the debasement of their cultural standards by American values, these values have made a deep imprint upon foreign youth. Even in a culture so controlled as that of the Soviet Union, the "hooligans" or *stalyagi* represent a prominent and disturbing segment of the youth population, notorious in their rejection of the dominant motifs of the ruling and respectable classes. Querulously, one Soviet authority has been quoted as raising what is perhaps the most basic question surrounding the worldwide proliferation of delinquent behavior and the forsaking of traditional values. "What kind of ideals were they," he asks, "that they were so easy to lose?"[28]

If delinquency itself, at least in its outward and superficial manifestations if not in its causal roots, represents an American export, so too does the juvenile court movement constitute an American product. Following the Illinois lead near the turn of the century, Great Britain adopted a juvenile court law in 1908; France, Australia, and Belgium in 1912; Hungary in 1913; Spain in 1918; and Germany in 1923.[29] In virtually all of these countries, juvenile court proceedings are surrounded by a cloak of anonymity.[30]

The English situation is rather typical and is indicative of the rationale behind the policy of non-publication of identifying data concerning juvenile

[26]One law professor has observed cynically that "juvenile delinquency has become a major factor in the American economy. Without it, many newspapers might have to go into receivership." Mueller, *Criminal Law and Administration*, 34 N.Y.U.L. REV. 83, 113 (1959).

[27]See LIEBLING, PRESS (1961).

[28]Salisbury, "*Lost Generation*" *Baffles Soviet; Nihilistic Youths Shun Ideology*, N.Y. Times, Feb. 9, 1962, pp. 1, 4, col. 5.

[29]Tappan & Nicolle, *Juvenile Delinquents and their Treatment*, 339 ANNALS 157, 160 (1962).

[30]See Smith, *Juvenile Court Laws in Foreign Countries*, CHILD. BUR. PUB. NO. 328 (1951). See *e.g.*, *Millo, Juvenile Delinquency in Israel*, in CHILD & YOUTH WELFARE IN ISRAEL 245, 252 (Smilansky *et. al.* ed. 1960).

offenders. In Britain, the juvenile court adheres more closely than in the United States to the legalistic procedures of adult criminal adjudication. The original 1908 English law granted admittance to the juvenile courts to bona fide representatives of the press, while barring the general public, and attempted to negotiate informally with the newspapers to keep the names of juveniles from their columns.[81] Reviewing this situation, a 1927 committee recommended that the informal approach be replaced by mandatory non-disclosure legislation,[82] and this recommendation was included in the 1933 juvenile court law.[83] At present, the English permit newspaper representatives in the juvenile courts but forbid them to reveal the identity of the accused delinquent unless either the court or the Secretary of State (Home Department) believes that such a move would be in the interests of justice.

This last provision is almost never invoked and on the few occasions that it is used it may become subject to pointed inquiry and criticism. When, for instance, the *Evening Standard* was permitted in 1960 to print the name of a 13-year-old girl who had been absent from home for seven weeks until discovered in London because, according to the court, "we think it will be a lesson to girls who may be tempted to behave in a similar way," one English legal periodical noted critically that the judge's statement was among "the strangest reasons given for revelation."[84]

The recent report of the Ingleby committee, in evaluating the British approach to the publication of the names of juveniles found it satisfactory and recommended its continuation. The Committee also indicated a desire to see that appellate hearings involving juveniles protect their identity. On the other hand, the Committee concluded that anonymity should not be extended to juveniles tried in adult courts. These persons, the Committee maintained, are "for the most part those charged with the more serious offences and the arguments for protecting children from publicity apply less strongly to them."[85] Despite this exception, it is clear that the English law keeps private the identity of a very large number of juvenile offenders —possibly 90 to 95 percent of such offenders—who would not be so treated under Montana law.

Standards Relating to Juvenile Publicity

No policy-setting group favors a procedure of mandatory disclosure of the names of juveniles such as that followed by the Montana statute. There is general agreement that the press, as in England, should be admitted to the juvenile court hearing and that the public, except as it has a most direct

[81]Children's Act, 1908, 8 Edw. 7, c. 67, § 111(4).
[82]Departmental Committee on the Treatment of Young Offenders, CMD. 2831 (1927), p. 237.
[83]Children and Young Person's Act, 1933, Stat. 23 Geo. 5, c. 12, § 49.
[84]*Juveniles and Publicity*, 124 JUST. P. 585 (1960). The same periodical notes three types of occasions on which juvenile court publicity might be warranted: 1) in order to get witnesses to come forward; 2) in cases of indecent assault; and 3) to show how the juvenile court operates. *Juveniles and Publicity*, 122 JUST. P. 628 (1958).
[85]Report of the Committee on Children and Young Persons, CMD. 1191, (1960), pp. 80-82. See also, Geis, *Juvenile Justice: Great Britain and California*, 7 CRIME & DELINQ. 111 (1961).

interest in the case, should be denied access to juvenile court hearings. Some variations exists, however, on how much freedom the newspapers should be afforded to make use of material relating to the identity of juveniles taking part in the hearings.

The 1959 revision of the Standard Juvenile Court Act, prepared by the National Council on Crime and Delinquency and endorsed by the United States Children's Bureau, gives discretion to the juvenile court judge in this matter, noting: "The name or picture of any child subject to the jurisdiction of the court shall not be made public by any medium of public information except as authorized by order of the court."[36] Support for privacy appears in a comment stressing that the purpose of the provision "is to prevent the humiliation and demoralizing effect of publicity or unnecessary disclosure of private affairs heavily charged with feelings of anxiety, guilt, and recrimination. Disclosure would make it more difficult for the court to utilize a child's feeling of self-respect in effecting rehabilitation."[37] The comment on the Act also notes that "the attention gained by publicity may propel the sophisticated, aggressive and 'hardened' delinquent into further delinquent acts out of a desire for more recognition."[38]

Though not included within the Standard Act, there has been some argument for a provision making mandatory a public trial in the juvenile court in the event that the juvenile makes such a demand.[39] Presumably the public trial would also include publication of details concerning it. The apparent contradiction between such a position and a stand inveighing against publicity as generally detrimental to the juvenile raises some questions, though none of them seem to undermine severely the desirability of such an approach. Few juveniles would likely insist on public trials, and those who did would not likely do so for reasons of personal aggrandizement, but rather to call to the attention of the public some element of their position which they thought was inequitable. The possible harm inherent in the right to a public trial on demand seems more than compensated for in the corrective potential of such a provision on the activities of a juvenile court otherwise unequivocally screened from public view.[40]

The National Council of Juvenile Court Judges has disagreed with the Standard Act's program concerning the publication of the names of juvenile court participants, preferring to leave such publication to the discretion

[36] *Standard Juvenile Court Act*, § 33(d) (1959). Reprinted, 5 NPPA JNL. 323, 386 (1959).

[37] *Ibid.*

[38] *Id.* at 387. Essentially the same approach is advocated in *Standards for Specialized Courts Dealing with Children*, CHILD. BUR. PUB. No. 346 (1954), p. 98. A resolution favoring such a procedure was adopted by the 1957 Nat'l Inst. on Crime & Delinquency with the assertion that "such one-shot answers as publishing names, punishing of parents and 'getting tough' have failed." N.Y. Times, July 17, 1957.

[39] Geis, *Publicity and Juvenile Court Proceedings*, 30 ROCKY MT. L. REV. 101, 126 (1958); Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387, 398-399 (1961).

[40] Such a procedure would somewhat overcome Paulsen's stricture. "An open trial would operate as a check on arbitrary action by the court," he writes, "but the advantage would be purchased at the expense of punishing the juvenile by publicity. The goals of protecting a young person from the misconduct of his youth, and of informing the community how its courts operate in every case, cannot be pursued simultaneously." Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 560 (1957).

of the newspapers themselves on the basis of "voluntary cooperative understandings with the courts" and in line with the traditional policy of the [Council] that the names of children and other material which would serve to identify children and families involved be withheld from publication, as such information is damaging to the child and his family, and contravenes the humane philosophy of juvenile court laws, without contributing to the prevention or correction of juvenile delinquency.'"[41]

The gap between the rationale for non-publication and the mild means taken to achieve this end by the National Council of Juvenile Court Judges may be interpreted either as a deep feeling that interference with the press's right to self-determination is undesirable or as a belief that the press, as a powerful element in the community, and in the judge's work in that community, should not be alienated by any procedure which might serve to stir its enmity, or perhaps as a combination of these two items. The likelihood of the rapprochement interpretation being at least partly correct is shown by recent California events. There, the Governor's Commission on Juvenile Justice, after a field survey of the juvenile court practices in the state's 58 counties, strongly criticized the free-wheeling dispensation to the press of juvenile court information, but in its recommendations left it to the goodwill and discretion of the press whether or not the identity of juvenile court participants would be disclosed.[42] The explanation for this apparent default on the part of the Commission in implementing more directly its findings and its ethos, informal conversations indicate, was a reluctance to incur the enmity of the newspapers and thus possibly to jeopardize the entire range of proposals in order to gain what was considered to be a somewhat peripheral concession. Thus, the power of the press, exerted so uniformly and on occasion so raucously against juvenile delinquency, may itself be one of the factors serving to abet the very phenomenon it so deplores.

PUBLIC OPINION

Public Opinion Concerning Publicity

Public reactions to juvenile delinquency clearly take the form of demands for sterner treatment of offenders. Few days pass without some voice calling for an end to the mollycoddling and indulgent treatment allegedly accorded delinquents. It is presumed, in the face of historic evidence to the contrary, that the woodshed approach to juvenile misbehavior would effectively control such misbehavior. Laments are also put forward concerning the presumed deterioration of the family and the decline of such cultural forces as religion, trends which are said to be related to the reported increase in delinquency.[43] Few critics of the present cultural scene seriously attempt to indicate how the putative gaps in standards are to be filled; how, for instance, divorces are to avoided, mothers made to stop working, and religious ethics to be deeply implanted in youth. And, even

[41] *Standard Juvenile Court Act* § 33(d) (1959). Reprinted, 5 NPPA JNL. 323, 387 (1959).

[42] Governor's Special Study Comm'n on Juvenile Justice, pt. 1, p. 24, (1960).

[43] Notable in this respect is the peculiar explanatory silence concerning the relative drop of 3 percent in juvenile delinquency during 1959, and the absence of theoretical and common-sense views to account for this decline.

granting the remote possibility of such basic alterations, even fewer critics have been able to demonstrate to the satisfaction of serious students of delinquency that such changes in the social fabric would deter juvenile misbehavior.

The absence of mature, empirical insight and the tendency to depend upon the exorcism of single items as the answer to a problem as complex as delinquency seems to pervade much of public opinion. Despite widespread public agreement concerning many alleged contributing factors to delinquency (*e.g.*, the family), there is an apparent lack of consensus concerning the role that newspaper publication of the names of delinquents should play in programs to control their behavior. Thus, while a national survey of young people in 1957 found that 90 percent of a sample of 5,000 persons thought that the penalties imposed on delinquents were not harsh enough, the panel divided 48 percent to 41 percent, with 11 percent not replying, on the question of publicizing the names of delinquents, leading the poller to note that "the division on the printing of names was closer than on any similar study we have made."[44]

Adults, in contrast to youngsters, appear to lean more heavily toward printing the names of delinquents, according to the mail responses of a national weekly that conducted a write-in poll on the matter. Two out of three persons responding to the question, "Should newspapers print the names of all youngsters under 18 who run afoul of the law?" believed that they should. More intriguing than these results, perhaps, was the finding that five out of six respondents believed that juvenile court judges should not be given the power to decide which names should be published, though, as we have seen, this practice prevails in the United States. The reasons most often advanced by the respondents against judicial discretion were that "judges were inclined to be lenient, that they were subject to pressures allowing for favoritism, and that favoritism violated democratic principles."[45] The major difficulty with the survey, however, is that it tapped the opinions only of those persons interested in responding to an open newspaper query, thereby providing considerable reason to suspect that persons answering fall a long way from resembling the "average" person in the society. That the survey respondents may represent the more articulate segments, however, merits some consideration, since this is the segment which often is most effective in molding its predilections into statutory form.

Some light on the state of a limited, stratified range of public opinion in Montana concerning juvenile court publicity was provided by a survey undertaken by students of journalism at Montana State University in Missoula. The responses showed a wide range of reactions, closely tied in most instances to the individual's profession or vocation. Newspaper editors and policemen were overwhelmingly in favor of publication of juveniles' names; judges, clergymen, and high school students were about evenly divided; while county attorneys strongly favored the law, now repealed, which prohibited publicity.[46]

[44]Norman (Okla.) Transcript, April 25, 1957.
[45]Richardson, *Does Publicity Curb Delinquency?*, Family Weekly, July 27, 1958, pp. 5-7; Oct. 19, 1958, pp. 4, 13.
[46]Zahler, Gilluly, James, Katsuta, & Guenin, *Juvenile Names in Crime News*, JOURNALISM REV. 27-32 (Spring 1960).

The Hoover Crusade

The views of J. Edgar Hoover, chief of the Federal Bureau of Investigation, carry with them a strong aura of legitimacy, emerging as they do from his almost 38 years of identification with the highly-regarded law enforcement agency. It must be realized, however, that Hoover and his Bureau deal with the juvenile problem primarily in terms of auto thefts and of reports arriving at their headquarters from local police departments. Hoover has called the problem of delinquency a "monster of frightening proportions" involving "youthful punks who defy the law." Parents who inflict vicious offspring on their fellow men "deserve to feel the sting of public indignation." To deal with the problem, Hoover notes that "a valuable ally in the fight against crime, the news media of the nation can afford further public service in focusing the spotlight of public opinion on those members of the judiciary who, in the face of the present crisis, persist in endangering the public by unleashing young terrorists apprehended at great risk by law enforcement officers." The campaign against delinquents "must include publishing their names and crimes for public information."[47]

Judge Prettyman, author of the *Pee* decision,[48] both summarizes and takes mild issue with this position in the observation that "Hoover whom I so greatly admire, becomes positively emotional, even lyrical, when he discusses this group of young brigands. . . . [But not] every teenager who violates a law is a hoodlum. Most of these transgressing youngsters are not hoodlums or criminals at all."[49]

Some hesitation should always be present in accepting categorically any viewpoint as impassioned as that constantly propounded by Hoover. It shows particular shortcomings, it seems, in its failure to look beyond the allegedly vicious propensities of the offender into any configuration of causative items, and its rather simplistic faith that tough treatment will deter crime, a faith that should have been rudely shaken by incessant lessons from the history of criminal law.[50] Criminals are labelled by Hoover as "scum from the boiling pot of the underworld" and "vermin in human form . . . spewed out of prison cells to continue their slaughter." Advocates of current trends in the field of corrections are often grouped among those "sentimental yammerheads" and "moronic adults" who show "asinine behavior" and "maudlin sentiment" and "inherent criminal worship." These persons, are supported by the "moo-cow sentimentalities" of "hoity-toity professors."[51] The intensity of the Hoover polemic, while not necessarily undermining its accuracy, seems to provide strong grounds for wary evaluation of its merits rather than for uncritical acceptance. The views must also be recognized as characteristic police reactions to law violators, and it should be stressed that there are many persons who are not yet ready to concede that the police possess any monopoly on deep, thoroughgoing, and sophisticated understanding of the dynamics of criminal behavior, and who believe that the police may, in fact, by virtue of their

[47]Quoted in Los Angeles Times, Sept. 27, 1959.
[48]Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959).
[49]Prettyman, *Three Modern Problems in Criminal Law*, 18 WASH. & LEE L. REV. 187, 193-4 (1961).
[50]See, *e.g.*, SCOTT, HISTORY OF CAPITAL PUNISHMENT *passim*. (1950).
[51]Editorial, 28 J. CRIM. L., C., & P.S. 627 (1938).

vested interests be misled into something other than a dispassionate and balanced appraisal of such behavior.

SOCIAL IMPLICATIONS

The foregoing pages have attempted to establish the legal status of the question concerning the publication of the names of delinquents. Additional information has been presented bearing upon the practices here and abroad and the attitudes of various organizations, individuals, and the general public toward such procedures. In the final analysis, it is evident that the policy pursued by the legislature lies within its discretion and its comprehension of and sympathy toward alternative courses of action. At the heart of the matter lie two issues. One is empirical: It seeks to determine what occurs when various approaches are employed? The second question involves a value judgment: In terms of the consequences of alternative policies, which set of conditions does the society desire to produce? These final pages will be addressed to the foregoing questions.

Publicity and Social Protection

A major reason advanced for the publication of the names of offending delinquents is that such publication puts the community on guard against further depredations by the youths. A family may come to know the boy in its neighborhood involved in a rape offense and thus warn a daughter against having anything to do with this individual. It was in terms such as these that the newspaper industry expressed its concern with the proposed Youth Court Act passed in New York in 1956, and managed to secure postponement of its inauguration for five years and eventually to bring about its repeal. The president of the New York State Society of Newspaper Editors, for instance, warned that "you and I have a right to know the marauders in our neighborhood" and stressed that "you may never know if you live next door to a criminal."[52]

It is notable that this argument offers no hope of protection to the community at large, but only to those elements within it which see and act upon the information imparted by the press. It is not alleged that the delinquent will not commit a subsequent offense, but only that some members of the community may prevent that offense being committed in terms of persons or things important to them. This hardly seems to be an appealing policy, but rather represents a social lottery. The delinquent behavior is not deterred, but merely channeled elsewhere.

The social protection allegedly forthcoming through this approach seems both short-sighted and illusory. Few persons today believe that narcotic addicts, for instance, can be kept from using heroin by the aversion and scorn of their immediate neighbors. It is quite conceivable that such scorn might well aggravate the individual to further acts directed against those whom he sees as judging and rejecting him. While this pattern will assuredly not always ensue, it seems reasonable to believe that it will eventuate often enough to make the protection the community desires a mere chimera. Most important, actually, is the fact that the best

[52]N.Y. Times, Jan. 12, 1957.

protection to the community is not the immediate identification of the juvenile malefactor so that he can be shunned, but the reform of the offender so that he can be trusted. Constant vigilance may be the price of eternal security, but it is a high price, and in the area of delinquency at least, probably an unrealistic one which should not be paid unless other procedures are inadequate.

The complaint of some youths that they themselves are indiscriminately labeled delinquents because of the anonymity afforded their violating brethren seems to be rather specious. Sailors will continue to be scorned because some of their shipmates behaved less well than a community desired, and Negroes will suffer discrimination even though a comparatively small number may fit the stereotype that the majority group has seized upon to justify its bigotry. It would not help if deviating sailors or offending Negroes were identified for public consumption but only if basic attitudes toward these groups were altered. Teen-agers will continue to reap the general attitudes and opinions in the society about them whether or not particular delinquents are singled out for newspaper identification. In fact, it might well be hypothesized that the more that individual delinquents are identified, the more the public attitude toward all teen-agers as real or potential delinquents will be reinforced.

Publicity and Individual Deterrence

Basically, the aim of any social policy attempting to deal with delinquency is to deter further behavior of this type. Plato's age-old injunction has contemporary relevance. "He who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone; he has regard to the future, and is desirous that the man who is punished, and he who sees him punished, may be deterred from doing wrong again. He punishes for the sake of prevention."[58] Deterrence may be accomplished in a wide range of ways, but many of the methods (for example, widespread and indiscriminate capital punishment for delinquents) are offensive to more basic values within our society.

It needs continually to be stressed in dealing with delinquency that it is but one of a large number of problems within a highly complex society such as ours, and that social policies aimed at controlling or eliminating it must always take into account the total implications involved in their operation. For instance, it has been stressed that Italy has a comparatively low delinquency rate, and at least one writer suggests that the reason for this situation is that in Italy the father dominates the family in a traditional patriarchal manner. Granting the fact, however, that such a familial system might in some manner control the illegal behavior of juveniles, it would also seem reasonable to suspect that the same family constellation might also lead to a society in which totalitarian (*i.e.*, father-like) governments would find more hospitable soil, and in which a wide range of similar social ills might eventuate. Certainly, in a balance of values, susceptibility to totalitarian domination is a more unacceptable social prospect than delinquency, presuming that both might be related to the same social phenomena. The moral is clear: Our aim is not only to inhibit delinquent behavior but

[58] PLATO, PROTAGORAS 324 (Jowett trans. 1926).

also to do so within the bounds of policies which do not, while they are suppressing delinquency, produce social ailments or problems of a different but more serious order. No one would likely maintain, for instance, that it is desirable to torment a child to the point of psychosis in order to train him to behave and to inhibit his delinquent tendencies. It is a balance of some form that we wish to achieve, and balances among varying values are almost always difficult, uncertain, and precarious. Easy answers in this field tend to be shallow and superficial answers.

In terms of the publication of the names of delinquents, the deterrent effect on those not yet delinquent would appear to take the form of an apprehension on their part that similar anti-social behavior would result in their unveiling before those upon whom they rely for emotional satisfaction and support. The prospect of the withdrawal of such support constitutes the deterrent. Such a vista will obviously not be effective with juveniles who will be acclaimed for their publicized feats. Under such conditions, we would submit the thesis that juveniles who will behave only because of the prospect of scorn in the event of misbehavior, will almost always behave just as well without such a prospect before them. In such instances, effective deterrence against delinquency has been built into their very being.

If correct, this view would insist that a policy of publication of the names of juvenile felons will further deter those who would not have been delinquent in any event. On the other hand, such a program will likely have no effect, unless such effect be in the direction of stimulating delinquency, on those moving toward delinquent behavior.

In terms of individual deterrence—that is, the control of delinquency committed by the person who offends and finds himself written up in the papers—the evidence all points in a single direction, and that direction is contrary to the underlying principle in the Montana statute. The view that the publication of their names and information concerning them plays directly into the hands of a large number of delinquents receives confirmation from many sources. If a considerable segment of delinquency is conceived theoretically as a lower-class attempt to achieve benefits offered ubiquitously to all segments of the society,[54] then publicity, ironic as it might appear, may be viewed as a form of social recognition, a recognition somewhat hostile and grudging on the part of the upper echelons of the society, but replete with outright admiration when accorded by the delinquent's peers. In support of this thesis, evidence can be brought together from reports by, in the order in which they appear below, the police, a newspaper reporter commenting on gangs, a delinquent, a psychiatrist, a law professor, and an adult convict:

> 1. Seven teen-agers arrested here [Paris, France] for staging a street fight explained that they didn't mean to cause any trouble. They just wanted to get their pictures in the papers, police reported today.[55]
>
> 2. When the crimes of their peers are reported in gory detail some, inevitably, desire to imitate these deeds. More than once a

[54]See CLOWARD & OHLIN, DELINQUENCY AND OPPORTUNITY (1960). For a review of current theories of delinquency, see BLOCH & GEIS, MAN, CRIME, AND SOCIETY, ch. 14 (1962).
[55]United Press Internat'l, July 7, 1959.

gang has launched a rumble or created a disturbance in the schools "to make the headlines." Some New York newspapers publish daily play-by-play reports of street warfare. Some radio stations broadcast every line of teen-age violence they can lay their hands on. These reports are avidly absorbed by street youngsters. Publicity has become part of the "rep" of the gang."[56]

3. Later, after I had been in the Detention Home many times, the kids would flock around me and wanted to be my friends. I had a reputation because I had been in there so many times, had escaped from the place, and my escapades had been written up in the newspapers. Naturally, my reputation was made as a big guy as far as the kids were concerned. I had a bad influence upon the younger kids, just the way the older kids had been when I was in the Home the first time. I talked to them, gave them advice on delinquency, and of course, they listened to me because of my reputation.[57]

4. Everyone likes to see his name in print and exhibitionist types, from whom many delinquents are drawn, do so in particular; and it would be a most interesting experiment to ban all dramatic descriptions of crime from the newspapers, confining reports to brief and unsensational accounts.[58]

5. A factor of tremendous importance, too, is the publicity given in our newspapers to an accused person. It is no answer to say that to a normal person it would be unpleasant publicity. To the accused it may be highly gratifying and eagerly sought for and highly valued.[59]

6. Many of us [convicts] are like Pete, demanding attention, doing nearly anything to get it. Often from broken homes, we are . . . able to thrive gloriously for weeks on even the slightest word of praise or any kind of notice. Most of us have scrapbooks containing clippings in which we are mentioned.[60]

To those juveniles who do not take enthusiastically to the publicity, ensuing shame and humiliation also seems unlikely to produce conforming behavior. In addition, several other undesirable results might be effectuated. The "punishment" involved in publication could conceivably provide a relief from guilt so that the cycle of delinquent behavior could be resumed. Work opportunities, considered important in inhibiting delinquency, could be dried up as the juvenile became notorious in the community. If juvenile delinquency is a hostile reaction and a response to fear, then publication would increase that fear. Finally, if shame is related to delinquency in any fashion, and this seems a likely hypothesis, statutes such

[56]SALISBURY, SHOOK-UP GENERATION 164 (1958).
[57]SHAW, BROTHERS IN CRIME 334 (1938).
[58]NEUSTATTER, PSYCHOLOGICAL DISORDER AND CRIME 221 (1953).
[59]PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 16 (1953).
[60]NEESE, PRISON EXPOSURES 73 (1959). Note also the actions of a would-be-murderer, a juvenile, who wrote the Louisville Times: "I want full and complete coverage in your newspaper." Bindner, *I'll Kill You, in* ETCHED IN MURDER 63-64 (Jones ed. 1959), and see further COHEN, CHILDREN IN TROUBLE 73 (1953), for report of a juvenile in detention who wanted three different newspapers each day so as to be able to follow stories of his exploits, as well as 21 FED. PROB. 76 (Dec. 1957), for a statement by King's County Judge Samuel S. Liebowitz that publicity "makes heroes" of delinquents.

as that found in Montana would likely accentuate the original shame.[61] Delinquents do not in most cases appear to steal because they are impoverished, but because they have come to define their state as undesirable and, perhaps, shameful. Taylor provides historical support for the thesis that humiliation may be more devastating than seemingly harsher punishment with the observation that infanticide increased notably in Scotland when adulterers and fornicators were punished by having to appear in church each week for six months or a year to be harangued by the minister. "Women who had illegitimately become pregnant preferred to risk the capital penalty for infanticide rather than admit the facts and suffer such extreme public humiliation," he notes.[62] Even were publication to deter a number of juveniles through the operation of a process of humiliation, any decision on the employment of such an approach must comprehend its total impact. As the director of the National Council on Crime and Delinquency has noted in response to demands for harsher treatment of all juvenile offenders: "We treat our wild life better than that. You are not allowed to kill all the fish in a river to get a few carp, or to poison a whole feeding area to destroy a few hawks."[63] These possible detrimental effects deriving from a publication statute must be taken into account in evaluating such a statute.

CONCLUSION

The legal question concerning the publication of the names of juvenile felons is closely tied to the stipulations of the Sixth Amendment and its guarantee of the right to a public trial. Increasingly, this right is being recognized as that of the defendant, though it would seem essential that some elements of the right be preserved so that judicial proceedings do not retreat totally beyond public gaze and the potential corrective of public opinion. It seems highly desirable, for instance, that juvenile courts always remain open to at least some representatives of the public at large, and newspapers appear to fill this position admirably. Public trial, however, should not be confused with the right of the press to name those involved in all forms of judicial business. Numerous laws protect the privacy of individuals either as an abstract value or on the ground that such privacy furthers ends conceived to be in the public interest.

The question of the publication of the names of juvenile felons most basically comes down to a question of the interaction among social, political, and legal values. The blending of these diverse considerations in judicial affairs is neither unusual nor unwarranted. Justice Brennan of the Supreme Court has urged lawyers to "turn their minds to the knowledge and experience in particular of those disciplines that investigate and report on the functioning and the nature of our society,"[64] while Justice Brandeis quoted with approval the observation that "a lawyer who has not studied economics and sociology is very apt to become a public enemy."[65]

[61]Appreciation is due Michael Silverman, Los Angeles State College student, for a brief survey of the literature on delinquency to determine how various theoretical positions were related to the question of publicity.
[62]TAYLOR, SEX IN HISTORY 166 (1954).
[63]Rector, *An Age of Reason for the Juvenile Court*, 8 CRIME & DELINQ. 2 (1962).
[64]N.Y. Times, Nov. 26, 1958.
[65]Brandeis, *The Living Law*, in THE CURSE OF BIGNESS 325 (1935). See also Geis, *Sociology, Criminology, and Criminal Law*, 7 SOCIAL PROBLEMS 40 (1959).

The material presented above indicates the paucity of clearcut, unimpeachable data upon which to base a definitive judgment concerning the relationship between the publication of the names of juvenile felons and the impact of this policy upon their behavior.[66] What material is available does seem to indicate, however, that a policy of unfettered publication of the names of juvenile felons may very likely cause more social and individual harm than it eliminates. Certainly, in terms of the general spirit of the juvenile court movement, and in terms of the implications of correctional policies current today, publication as an instrument of deterrence seems to lack many redeeming features. In the absence of convincing evidence of the utility of such a policy, it would seem that the Montana statute might well be re-examined closely and that, on the basis of such re-examination, a more desirable program might perhaps be substituted in its place. In this respect, it does not seem inappropriate to repeat the observations of Winston Churchill, addressing the House of Commons in 1910 when he was Home Secretary.

> The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused, . . . a constant heart searching by all charged with the duty of punishment—a desire and eagerness to rehabilitate in the world of industry those who have paid their due; tireless efforts toward the discovery of curative and regenerative processes; unfailing faith that there is a treasure if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminal, mark and measure the stored up strength of a nation, and are sign and proof of the living virtue in it.[67]

[66]The difficulty of research on delinquency, and the absence of the most basic facts should not be overlooked. Note, for instance, that "reporting on juvenile delinquency court cases from Montana has been very erratic and incomplete. We have received no data that would be of help to you in determining delinquency rates in Montana in general. . . ." Letter from the Chief, Juvenile Delinquency Studies Branch, Dept. of Health, Education, & Welfare, Feb. 16, 1962.

[67]Quoted in SIZE, PRISONS I HAVE KNOWN 62-63 (1957).