LET'S END THE SECRECY IN JUVENILE COURT *Judge Leonard Edwards (Ret.)*

A foster child dies while in care. The media contact the children's service's agency and ask what happened. The agency responds that it cannot reveal any of the facts because the law requires that the matter remain confidential. The media next contact the juvenile court judge who responds that there will have to be a hearing before the release (if any) of information relating to the death. The media is outraged. The public wonders about the secrecy surrounding the child's death and whether the agency and the court are trying to hide something.

California's juvenile courts are closed to the public. For a number of reasons this policy has not served juvenile courts or the public well. It is time to open the juvenile court to public scrutiny. Here is my proposal.

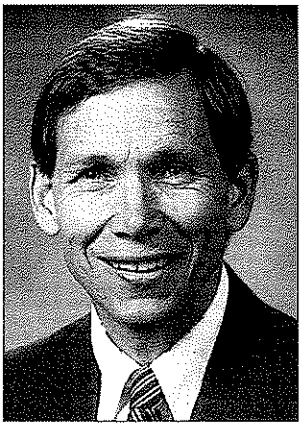
Welfare and Institutions Code sections 346 and 676 describe the access the public has to juvenile court proceedings. Both restrict access to the general public, but permit the judge to permit those persons who the court finds "have a direct and legitimate interest in the particular case or the work of the court." Section 676 goes further and opens juvenile delinquency proceedings to the public "on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions..." alleging certain serious crimes as described in that section.

In practice most juvenile courts in California remain closed to the public even though judges have the discretion to permit some members of the public to attend. Judges are understandably reluctant to admit into the courtroom anyone other than those persons directly involved in the individual case being heard, although some judges including the author have permitted law school students, CASA volunteers, social workers in training, grand jury members, and other members of the community to appear in juvenile matters, reminding them that the proceedings are confidential and that they must not talk about individual cases, but certainly were welcome to discuss the way that the court is being administered.

I suggest that the legal presumption should be for open court hearings with the judge having the right to restrict access on a case-by-case basis. The language in the two statutes might read "The public shall be admitted to all juvenile court hearings except when the judge for good cause restricts access."

Several good reasons support this proposal. First, many in the public, including the media, regard court proceedings as public affairs. They argue that the public has a legitimate and compelling interest in the work of the juvenile courts.

Second, some argue that openness will encourage all participants in the juvenile court process to comply with the law and produce fair, timely, and effective justice. If the judge, the attorneys, and the parties know that the public is watching, they will improve their performance.



Third, many believe that openness is necessary to hold parties accountable for their actions. Public access fosters the appearance of fairness, thereby heightening public respect for the judicial process and for the law. Accountability is particularly important when public entities and agencies carrying out their mandated duties are parties to court proceedings as they are in juvenile court.

Fourth, representatives from the media argue that courts should be open because they are publicly funded and decide issues of public interest. The juvenile courts and the agencies serving them expend large amounts of public monies to provide legal due process, social services, and other interventions on behalf of the children and families before the court. This substantial enterprise, it is argued, should be open to the community to ensure that public monies are wisely spent.

Fifth, many believe that opening proceedings will bring more public attention to these cases and to the critical problems faced by juvenile courts. Openness may also encourage community support for programs and resources needed to address the problems faced by children and families appearing in the juvenile court.

Sixth, some commentators have stated that protection of our most vulnerable citizens, our children, is of great public concern and should not be hidden from public scrutiny. Of equal public concern are the responses to children's delinquent behavior.

Seventh, some claim that openness will educate the public on how the juvenile court system deals with its cases involving delinquent behavior, abuse and neglect. If members of the public see how well juvenile courts work, they will be less likely to credit the critics of the court. Openness will also result in more balanced and accurate stories in the media - stories that will be less sensational and will not contain charges of courts hiding the truth from the public.

Eighth, and finally, many who have studied the issue point out that openness will not involve a significant loss of privacy to the parties since few spectators actually come to the court even if courtrooms are open. The experience in several states with open juvenile courts seems to confirm that conclusion. As one commentator put it:

> ...the real problem facing the juvenile court judges in this country, is not how to keep the reporters out of the courts, but the fact that there is a lack of

> interest in the juvenile court by the press and, because the press does not have that interest, by the public.[1]

Of course, in smaller communities confidentiality is less of an issue since most of the public knows what is happening in court proceedings through ordinary gossip.

Many oppose opening juvenile court proceedings. Some support confidentiality arguing that public disclosure might harm the individuals in the case. They argue that children who are the subject of abuse or neglect allegations are not blameworthy and their identities should not be disclosed to the public. Others suggest that the parties to these hearings have a right of privacy. They also argue that the juvenile court's original purpose was to maintain confidentiality so that no stigma would attach to the children and parents so that rehabilitation could be more readily achieved. They believe that closed hearings foster a special atmosphere ideal for problem solving. Some argue that open hearings will dissuade parents from admitting any abuse or neglect since their statements could be used in criminal proceedings. Some point out that the motions to exclude the public will take up inordinate amounts of court time and will result in court resources being spent on retraining staff for public hearings.

There are competing interests regarding confidentiality and the juvenile court, but the arguments for openness appear to me to be stronger. The public has a legitimate interest in the workings of the court system. They have a right to know that the court system is efficient, fair, and expends public monies appropriately. Public confidence in and support for the legal system are at stake. Public understanding of the court system may lead to support for court efforts to improve outcomes for some of the community's most needy children and families and will diminish suspicion about juvenile courts that has been created because of the secrecy surrounding their operation.

Increasing public understanding of the juvenile court is a legitimate goal. The California Standards of Judicial Administration encourage judges to

> [e]ducate the community and its institutions, through every available means, including the media, concerning the role of the juvenile court in meeting the role of the juvenile court in meeting the complex needs of at-risk children and their families.[2]

What better way to educate than to permit the public to attend juvenile court hearings?

By opening our juvenile courts while protecting privacy rights through judicial control of access, California will be taking an important step towards increasing public confidence in the court system and increasing accountability for court and agency actions. As former Minnesota Chief Justice Kathleen Blatz stated "[s]ince 1997 17 states have opened their juvenile courts...." "Arguments to keep the system closed fail miserably when contrasted with what is really going on."[3] The experience in other states led the National Council of Juvenile and Family Court Judges' membership in 2005 to resolve that our nation's juvenile and family courts be open to the public except when the juvenile or family court judge determines that the hearing should be closed in order to serve the best interests of the child and/or family members.[4]

My conclusion is that now is the time to open our juvenile courts and end the secrecy surrounding them.

Endnotes:

1. Judge Byron B. Conway, "Publicizing the Juvenile Court," JUVENILE COURT JUDGE'S JOURNAL (1964), Vol. 16-1, at 21-22.

2. California Standard of Judicial Administration 5.40(e)(7)

3. Lynne Tuohy and Colin Poitras, "Making Juvenile Court Public," THE HARTFORD COURANT, Nov. 18, 2004, Kidjacked.com/judges/juvenile_court.asp

4. NCJFCJ 68th Annual Conference, July 17-20, 2005, Pittsburgh, PA.