

# Opening juvenile proceedings to the public and the media: An international social work perspective

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Across the globe countries differ on the preferred standard for access to juvenile proceedings for the public and media. Should there be a presumption that juvenile court proceedings are open? If so, should all juvenile proceedings be open or just some? Should there be a distinction between criminal and civil matters? How do we balance the public's desire for openness with a juvenile defendant's right to a fair trial and desire for confidentiality? As social workers, should the profession take a stand on this issue?

## Proponents

Proponents of openness argue that:

- Historically, the sinister use of closed legal proceedings such as the French *lettre de cachet* beginning in the 13th century, the Spanish Inquisition in the 15th and 16th centuries, and the English Court of Star Chamber in the 17th century all led to grave injustice. In general, we prefer more openness in all government proceedings. When a government begins limiting access to legal forums, it selectively controls information which rightfully belongs to the people.
- In the long term, society suffers when it does not have accurate information.

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- Justice can best be ensured by allowing people to participate in it; conversely, the chance for injustice and incompetence are reduced when proceedings are more transparent.
- The justice system will be inherently more accountable. Openness acts as a check against abuses of the judicial process. Secrecy benefits bureaucrats, not children.
- Only by seeing what is happening can the public educate itself and have input into any changes it thinks are necessary. Confidential hearings and settlements mislead the public over the magnitude of growing trends and concerns.
- The public's right to access is superior to the juvenile's confidentiality rights and therefore the juvenile should have the burden to demonstrate that the public's access is outweighed by the juvenile's right to a fair trial.

## Opponents

Opponents of openness argue that:

- A presumption of confidentiality exists; the public should have to demonstrate a legitimate interest in attending juvenile proceedings and inspecting juvenile records.
- If the public were allowed access, confidentiality statutes would, for all practical purposes, have no effect.
- Free access might adversely affect a juvenile's prospects for rehabilitation and treatment.
- Once the public and media are admitted to juvenile proceedings the chances for a fair trial are minimized because of the increased likelihood of the trial becoming sensationalized.
- The public is rarely harmed when juvenile matters are handled in a confidential setting.

## A sampling of laws in various countries

The United Kingdom has a long history of presumptive openness which has been described as 'one of the essential qualities of a court of justice' (*Daubney v. Cooper*, 1829: 240). Currently, in England and Wales,

most judicial proceedings in respect of people under the age of 18 are brought in specially constituted magistrates' courts known as Youth Courts. The procedure in Youth Courts, which is adversarial in nature, is simpler and less formal than

in adult magistrates' courts. Members of the public are generally not admitted to sittings of Youth Courts, but the press may attend and report on the proceedings. Such reports must not identify any young people involved unless the court itself sanctions the lifting of reporting restrictions (Graham and Moore, 2006: 70–71).

In the USA, as a check on the judicial branch, adult civil and criminal trials have historically been open to the public. In some states juvenile proceedings are presumptively open and a judge may close the proceedings only if good cause is shown. Considerations might include the nature of the allegations, the age and maturity of the juvenile, the benefit to the juvenile of maintaining confidentiality, the benefit to the public of having an open hearing and the extent to which the juvenile's case would be compromised (North Carolina General Statutes § 7B-2402, 2008; Tex. Fam. Code Ann. § 54.08, 2008). In contrast, other states affirmatively exclude or allow juvenile courts the discretion to exclude the general public from juvenile court proceedings unless the court itself finds that the party seeking admittance has a direct interest in the case (Cal. Welf. & Inst. Code 676a, 2008; Kentucky Revised Statutes § 610.070, 2008). To further an overriding interest in protecting children from stigma and publicity the US Supreme Court has not ruled the exclusion practice unconstitutional (*Natural Parents of J.B. v. Fla. Dep't of Children and Family Servs.*, 2001; *United States v. Three Juveniles*, 1996). On the contrary, juvenile records and proceedings have traditionally been closed to the public: 'It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity' (*Smith v. Daily Mail Pub. Co.*, 1979, p. 107).

During the late 1960s the US Supreme Court greatly expanded juveniles' rights. It recognized their right to due process (*Kent v. United States*, 1966), access to counsel (*In re Gault*, 1967), and the right to confront witnesses (*In re Gault*, 1967). It also ruled, however, that juveniles did not have a right to a jury trial (*McKeiver v. Pennsylvania*, 1971).

In Germany, juvenile 'court hearings are not open to the public (see § 48 Juvenile Justice Act) in order to protect the juvenile's privacy and to avoid stigmatisation' (Dünkel, 2006: 230).

In Austria, 'so as not to negatively impact the future career of the minor and not to endanger or destroy any future chances in the workplace, the releasing of information on juvenile penal cases is strictly restricted. During legal proceedings, all television and radio recording and transmission, filming and photographing, as a general rule, are prohibited' (Bruckmüller, 2006: 283).

Singapore law holds that if the judge

is satisfied that it is necessary for the proper administration of justice, the Judge may order that the hearing be held 'in camera'. In other words, the Judge may order that people be excluded from the courtroom during the whole or part of the trial or other proceedings ... In addition, the media may, by operation of law, be prohibited from reporting certain matters. For example, whilst the Juvenile Court is open to members of the public, it is an offence to report or disclose any information that may lead to the identification of any child or young person concerned in proceedings in the Juvenile Court' (Subordinate Courts of Singapore, 2008).

### **Should social workers take a position on this issue?**

For youth offenders around the world, any contact with their country's juvenile justice system is serious business. There is a worldwide trend to get tough on crime. This has resulted in a stern approach to meting out justice for many children. A document entitled 'Ethics in Social Work, Statement of Principles' was approved at the General Meetings of the International Federation of Social Workers (IFSW) and the International Association of Schools of Social Work (IASSW) in Adelaide, Australia, October 2004. In Section 4.1, 'Human Rights and Human Dignity', it states:

Social work is based on respect for the inherent worth and dignity of all people, and the rights that follow from this. Social workers should uphold and defend each person's physical, psychological, emotional and spiritual integrity and well-being. This means:

1. Respecting the right to self-determination – Social workers should respect and promote people's right to make their own choices and decisions, irrespective of their values and life choices, provided this does not threaten the rights and legitimate interests of others.
2. Promoting the right to participation – Social workers should promote the full involvement and participation of people using their services in ways that enable them to be empowered in all aspects of decisions and actions affecting their lives.
3. Treating each person as a whole – Social workers should be concerned with the whole person, within the family, community, societal and natural environments, and should seek to recognise all aspects of a person's life.

4. Identifying and developing strengths – Social workers should focus on the strengths of all individuals, groups and communities and thus promote their empowerment.

Depending upon one's viewpoint section 4.1 can be read as supportive of either open or closed juvenile court proceedings. The IFSW, in its 'International Statement on Youth' states that 'it is important for governments and agencies to systematically review the position of young people, as of other groups, at periodic intervals in order to identify problems, evaluate the results of previous policies and activities, and select logical points on which to concentrate'. But neither the Statement nor any international social work document directly addresses the issue at hand. While acknowledging that the 'loyalty of social workers is often in the middle of conflicting interests' (IFSW, 'Ethics in Social Work, Statement of Principles', 2004) perhaps we should at least seriously consider debating this issue in a formal way. Although there is sure to be marked diversity in the policies, practices and laws among countries and jurisdictions, and research alone cannot yield justice, it can provide us with information to make informed decisions and policies. We have a great deal of homework ahead of us if we are going to take an active role in promoting both juvenile justice and public safety. Our homework assignment should include a careful review of our own policy statements, individual country laws, as well as international treaties such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (1990).

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