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OPINION	:	No. 81-1007
of	:	AUGUST 18, 1982
GEORGE DEUKMEJIAN Attorney General	:	
John T. Murphy Deputy Attorney General	:	

THE HONORABLE JOHN K. VAN de KAMP, DISTRICT ATTORNEY, COUNTY OF LOS ANGELES, has requested an opinion on the following question:

May a district attorney disclose to the news media information about a juvenile case acquired by his office independently of the documents identified in Welfare and Institutions Code section 827?

CONCLUSION

The disclosure by a district attorney to the news media of juvenile case information acquired by his office independently of the documents deemed confidential under provisions of Welfare and Institutions Code section 827 would be unlawful absent a juvenile court order permitting such disclosure. However, where the juvenile proceedings are open to the public generally, the district attorney may furnish the news media with

whatever information is available to the public at those proceedings in which he participates unless the juvenile court has placed restrictions on such dissemination.

ANALYSIS

Generally, petitions, reports and documents in juvenile court cases are confidential and may be inspected only by certain persons or by other persons having the court's permission. Welfare and Institutions Code[1] section 827 provides as follows:

> "Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, *may be inspected only* by court personnel, the minor who is the subject of the proceeding, his parents or guardian, the attorneys for such parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor." (Emphasis added.)

The exception concerns "information" gathered by law enforcement agencies and distributed to other law enforcement agencies or to persons and agencies with an official "need to know." Section 828 in part states:

> "Except as provided in Sections 389 and 781 of this code or 1203.45 of the Penal Code, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it must be included with any information disclosed."

Examining sections 389 and 781 and Penal Code section 1203.45, the statutes referred to in the above section, we find provisions for the sealing and destruction of certain juvenile records by law enforcement agencies and others, thereby precluding further use of such records. (See 40 Ops.Cal.Atty.Gen. 50 (1962).)

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[1] Unless otherwise indicated, all further statutory references will be to the Welfare and Institutions Code.

Additional exceptions to the confidentiality of juvenile records may be found elsewhere. Section 742 gives the crime victim the right to information about the final disposition of the juvenile criminal case:

> "Upon the request of an alleged victim of a crime, the probation officer shall, within 60 days of the final disposition of a case within which a petition has been filed pursuant to Section 602, inform that person by letter of the final disposition of the case. 'Final disposition' means dismissal, acquittal, or findings made pursuant to this article. If the court orders that restitution shall be made to the victim of a crime, the amount, terms, and conditions thereof shall be included in the information provided pursuant to this section."

In individual situations the confidentiality of juvenile records must yield when a criminal defendant's constitutional rights are at stake. (*Davis* v. *Alaska* (1974) 415 U.S. 308, 319-320.) For example, in *Foster* v. *Superior Court* (1980) 107 Cal.App.3d 218, the defendant was charged with indecently exposing himself to two minor girls housed in juvenile hall. For the asserted purpose of cross-examination, he sought a trial court order allowing him to inspect the files and records of the complaining witnesses. On review of the denial of such an order, the Court of Appeal, at pages 229-230, described the trial court's discretion in disposing of such requests:

> "It follows that the principle of confidentiality, where it conflicts with a defendant's constitutional rights of confrontation and cross-examination, must give way. But it does not follow that the trial court erred in refusing to grant petitioner's discovery motion . . . It is petitioner's interest in obtaining information *in aid of effective cross-examination* that furnishes the appropriate standard by which limitations on the principle of confidentiality are to be measured. By that standard, the trial court was justified in denying petitioner's overbroad request. An accused is 'not entitled to inspect material as a matter of right without regard to the adverse effects of disclosure and without a prior showing of good cause' (*Hill* v. *Superior Court*, *supra*, 10 Cal.3d 817), and 'the court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest . . . [and] to deny discovery in the absence of a showing which specifies the material sought and furnishes a "plausible justification" for inspection.' (*Joe Z.* v. *Superior Court* (1970) 3 Cal.3d 797, 804 [91 Cal.Rptr. 594, 478 P.2d 26].) Here, as in *People* v. *Gaulden* (1974) 36 Cal.App.3d 942, 961 [111 Cal.Rptr. 803], 'there is a legitimate public interest in protecting against wholesale disclosure of the matters here asked for.'"

No statute specifically addresses the role of the district attorney vis-a-vis juvenile records. *T.N.G.* v. *Superior Court* (1971) 4 Cal.3d 767, 778, however, states that the juvenile court has exclusive authority over the release of juvenile records to persons other than those specified in section 827:

> "These factors [fairness, stigma of criminality and rehabilitation] justify the conclusion that the Juvenile Court Law and particularly Welfare and Institutions Code sections 625, 676, 781, and 827 establish the confidentiality of juvenile proceedings and vest the juvenile court with *exclusive authority* to determine the extent to which juvenile records may be released to third parties." (Emphasis added.)

The expansiveness of this authority was described at page 780:

> "Welfare and Institutions Code section 827 reposes in the juvenile court control of juvenile records and requires permission of the court before *any information* about juveniles is disclosed to third parties by any *law enforcement official*." (Emphasis added.)

The *T.N.G*. court explained at page 781:

> "Since the entire Juvenile Court Law places the responsibility of providing care and protective guidance for youths upon the juvenile court, section 827 provides the means for assuring to the juvenile court the authority to fulfill that responsibility without interference by third parties. In determining what information should be released, the juvenile court is in a position to determine whether disclosure would be in the best interests of the youth. The presumption of innocence, the legislative policy of confidentiality encompassing juvenile proceedings, and the hazard that the information will be misused by third parties fully justify the juvenile court's refusal to disclose information about juvenile detentions."

More recently, in *Wescott* v. *Yuba County* (1980) 104 Cal.App.3d 103, the stamp of confidentiality was applied to a police record of an incident involving juveniles although no juvenile proceeding had been initiated. In *Wescott* a parent of a temporarily detained juvenile was attempting to obtain the record of a sheriff's investigation of the incident which involved her child and other youths. The Court of Appeal broadly construed section 827 to include such record, quoting from *T.N.G.* at page 107 that "'[p]olice records in this regard become the equivalent to court records and remain within the control of the juvenile court.'"

We are asked whether or not a district attorney may disclose to the news media information about a juvenile case where such information has been acquired by him independently of the documents listed in section 827. The information is that which comes directly to the district attorney's office from sources other than the juvenile probation officer's file or the juvenile court's file, for example, information gathered during the district attorney's independent investigation of the case. In some instances, however, this information may duplicate that found in the files of the probation officer and of the court.

We conclude that such independently obtained information cannot be disclosed to the news media without court order. Section 827 encompasses information in petitions, probation officers' reports, documents filed in the case and documents made available to the probation officer. It has been interpreted by *T.N.G.*, *supra*, to give juvenile courts exclusive authority over the dissemination "to third parties" of juvenile records and the information contained therein. The persons allowed to inspect such records (except by court order) do not include representatives of the news media. Section 828 allows law enforcement agencies to exchange among themselves information they gather relating to the taking of a minor into custody. The only others given access to this information by this statute are persons or agencies which have a "legitimate need for the information for purposes of official disposition of a case." There is no statute allowing the news media access to information covered by sections 827 and 828. Consequently, the district attorney, absent court order, may not provide information deemed confidential by sections 827 and 828 to the news media by reason of his receiving it from a source other than a document identified in section 827.

When discussing *T.N.G.* v. *Superior Court*, *supra*, 4 Cal.3d 767, in 55 Ops.Cal.Atty.Gen. 89, 92 (1972), we observed:

> "The Legislature has set forth well defined and limited areas of dissemination [of juvenile records]. They do not include the general public."[2]

The news media has no right of special access to information not available to the public generally. (*Pell* v. *Procunier* (1974) 417 U.S. 817, 833.) The juvenile court, in its discretion, may allow the news media access to juvenile proceedings providing measures are taken to lessen the impact of publicity such as exercising "control over disclosure of the juvenile's identity." (*Brian W.* v. *Superior Court* (1978) 20 Cal.3d 618, 625; see also *San Jose Mercury-News* v. *Municipal Court* (1982) 30 Cal.3d 498, 513.)

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[2] In *Wescott* v. *County of Yuba*, *supra*, 104 Cal.App.3d 103, 106 the court held that juvenile records were not subject to the Public Records Act. (See Gov. Code, § 6250 et seq.)

While the confidentiality of juvenile records does not reach the status of a constitutional right, the United States Supreme Court in *In re Gault* (1966) 387 U.S. 1, 25 considered such confidentiality a valid part of the juvenile justice system: "In any event, there is no reason why, consistently with due process, a State cannot continue, if it deems it appropriate, to provide for the confidentiality of records of police contacts and court action relating to juveniles." California, by its statutes and judicial decisions, has adopted a policy of confidentiality. As stated in *T.N.G.* v. *Superior Court*, *supra*, 4 Cal.3d 767, 776, the statutes "explicitly reflect a legislative judgment that rehabilitation through the process of the juvenile court is best served by the preservation of a confidential atmosphere in all its activities." We conclude that the district attorney must treat information obtained by his office independently of section 827 as confidential.

Although the law relating to the confidentiality of juvenile records has remained substantially intact in recent years, the law concerning public access to juvenile hearings has changed dramatically. Prior to 1980, the public was excluded from juvenile hearings except when requested to be present by the minor and his parent or guardian, or when the judge or referee admitted such persons deemed to have a direct and legitimate interest in the particular case or the work of the court.[3] Section 676, as amended in 1980 and as recently reenacted (Stats. 1982, ch. 283, § 1; Assembly Bill No. 2333, approved and filed June 21, 1982), provides:

> "(a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:
>
> (1) Murder.
>
> (2) Arson of an inhabited building.
>
> (3) Robbery while armed with a dangerous or deadly weapon.

[3] See former section 676 (Stats. 1961, ch. 1616, § 2, p. 3480); see also section 346 (Stats. 1976, ch. 1068, § 9, p. 4769) concerning access to hearings in dependent child cases brought under section 300.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping for purpose of robbery.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 of the Penal Code committed by a minor 16 years of age or older.

(17) Any felony offense in which a minor 16 years of age or older personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age."

Consequently, the public or a part thereof has physical access to juvenile hearings where the juvenile and his parent or guardian request its presence, or where the court admits persons with a direct or legitimate interest, or the juvenile is charged pursuant to section 602 with certain serious crimes. In cases of violent sex crimes brought under section 602, the district attorney must move to exclude the public if the victim so requests, or the public must be excluded during the victim's testimony if the victim is under sixteen years of age.

Appearances by the district attorney in juvenile proceedings are controlled by other statutes. Under section 351 (dependent child proceedings), where the minor is represented by counsel, the district attorney shall, with the consent or at the request of the juvenile court judge, appear and participate in the juvenile court hearing. Also, under the same provision, the district attorney shall appear at a hearing to represent the minor in the interest of the state where a parent or guardian is not providing the minor with proper care or control or with a suitable home. (See § 300(a), (b) and (d); see also § 681(b).) In a case in which it is alleged in the petition that the minor is a person within the description of section 602 (minor charged with crime)[4] the district attorney shall appear on behalf of the People. (§ 681(a).) Where it is alleged that the minor is a person within the description of section 601 (wayward child), and the minor is represented by counsel, the district attorney may appear with the consent or at the request of the judge, or at the request of the probation officer with the consent of the judge. (§ 681(b).)

Compelling or allowing public juvenile proceedings in certain situations reflects a state policy to open the workings of the juvenile justice system to greater public scrutiny. The news media has an interest in reporting such hearings. This interest was discussed in *Brian W.* v. *Superior Court*, *supra*, 20 Cal.3d 618, 625-626:

"However, the United States Supreme Court has repeatedly recognized the salutary function served by the press in encouraging the

[4] Petitions under section 602 are filed with the court by the district attorney. (§ 650(b); § 653.) If the minor is declared not a fit and proper subject to be dealt with under the juvenile court law, the district attorney may file an accusatory pleading against the minor in a court of criminal jurisdiction. (§ 707.1.) The district attorney may also review a probation officer's decision not to file a petition or not to otherwise commence proceedings. (§ 655.)

fairness of trials and subjecting the administration of justice to the beneficial effects of public scrutiny. (*Nebraska Press Assn.* v. *Stuart* (1976) *supra*, 427 U.S. 539, 559-560 [49 L.Ed.2d 683, 697-698]; *Cox Broadcasting Corp.* v. *Cohn* (1975) *supra*, 420 U.S. 469, 491-492 [43 L.Ed.2d 328, 347-348]; *Sheppard* v. *Maxwell* (1966) *supra*, 384 U.S. 333, 350 [16 L.Ed.2d 600, 613].) It has held these measures to be favored over direct restraints on the press. (*Nebraska Press Assn.* v. *Stuart*, *supra*, at pp. 563-565 [49 L.Ed.2d at pp. 700-701].) Given the important role of the press in monitoring the administration of justice on behalf of the public, it cannot be said that the court here erred in refusing to exclude media representatives from the fitness hearing on petitioner's speculation that as a result he may find it desirable subsequently to seek a postponement of change of venue."

The interest of the news media in juvenile proceedings has been examined in several other cases. In *Oklahoma Publishing Co.* v. *District Court* (1977) 430 U.S. 308, a juvenile court enjoined the news media from publishing the name or photograph of a youth who was the subject of juvenile proceedings. The press had attended the detention hearing with the full knowledge of the court and counsel. The Supreme Court found that the injunction abridged the freedom of the press in violation of the First and Fourteenth Amendments. In *Smith* v. *Daily Mail Publishing Co.* (1979) 443 U.S. 97, the news media learned the name of a juvenile by monitoring police radio and talking to witnesses and, without court approval, published his name. This publication violated state law and a criminal prosecution was brought. The Supreme Court found that the state could not, consistent with the First and Fourteenth Amendments, impose criminal sanctions on the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper. The court stated, at page 104:

"The sole interest advanced by the State to justify its criminal statute is to protect the anonymity of the juvenile offender. It is asserted that confidentiality will further his rehabilitation because publication of the name may encourage further antisocial conduct and also may cause the juvenile to lose future employment or suffer other consequences for this single offense. In *Davis* v. *Alaska*, 415 U.S. 308 (1974), similar arguments were advanced by the State to justify not permitting a criminal defendant to impeach a prosecution witness on the basis of his juvenile record. We said there that '[w]e do not and need not challenge the State's interest as a matter of its own policy in the administration of criminal justice to seek to preserve the anonymity of a juvenile offender.' *Id.*, at 319. However, we concluded that the State's policy must be subordinated to the defendant's Sixth Amendment right of confrontation. *Ibid.* The important rights created by the First Amendment must be considered along with the rights of defendants

guaranteed by the Sixth Amendment. See *Nebraska Press Assn.* v. *Stuart*, 427 U.S., at 561. Therefore, the reasoning of *Davis* that the constitutional right must prevail over the state's interest in protecting juveniles applies with equal force here.[5]

We conclude that where public juvenile proceedings are compelled or permitted, the district attorney may report to news media whatever information was available to the public in the course of those proceedings in which he participated.

A judge, however, has broad discretion in controlling proceedings in his court so as to maintain the appropriate atmosphere for adjudication of a juvenile case. (§§ 350 and 680; Cal. Rules of Court, Juvenile Rules, Rule 1313.) The release of information in a juvenile case is subject to court control and the court's authority extends to both closed and public proceedings. Consequently, with regard to both closed and public proceedings, the district attorney and the news media would be subject to any court orders concerning publicity. (*Brian W.* v. *Superior Court*, *supra*, 20 Cal.3d 618, 625-626.)

We were asked similar questions in 55 Ops.Cal.Atty.Gen. 175 (1972). Specifically, we were asked (1) if law enforcement officials were prohibited from disseminating juvenile detention information to the press or the public, (2) if section 827 prohibited such dissemination prior to the filing of a juvenile court petition and (3) if section 827 prohibited such dissemination after the filing of a juvenile court petition. We concluded that section 827 did not of itself prohibit the dissemination of detention information prior to the initiation of proceedings or after the initiation of such proceedings "where the detention record has not been retained by the probation officer, judge, referee, or other hearing officer." (55 Ops.Cal.Atty.Gen. at 175-176.) This opinion, of course, predated *Wescott*. v. *County of Yuba*, *supra*, 104 Cal.App.3d 103 which, as we have seen, expanded the scope of section 827 to include a police report of a juvenile detention even though there were no pending or foreseen juvenile court proceedings. Consequently, the fact that detention information has not been incorporated into the probation officer's or the court's files is now immaterial. Our opinion, however, correctly concluded that transmission of detention information was permissible when authorized by statute. Accordingly, we said that such information could be released to the Attorney General (Pen. Code § 13020) and to the Department of Motor Vehicles (Veh. Code, § 20012). While we also determined that detention information was not open to the public generally, we stated that inasmuch as press representatives "would continue to respect their voluntary adopted code of ethics whereby the names of juveniles are not identified to the public" the press "may have access to detention information within this context." (55 Ops.Cal.Atty.Gen. at

[5] See also *Globe Newspaper Co.* v. *Superior Court for County of Norfolk* (1982) ___ U.S. ___, 50 U.S.L.W. 4759.

177.) On reexamination, particularly in view of the *Wescott* decision, we now believe that the press has access to records of juvenile detentions only through court orders.

For the reasons set out above, we conclude that the disclosure by a district attorney to the news media of juvenile case information acquired by his office independently of the documents deemed confidential under provisions of Welfare and Institution Code section 827 would be unlawful absent a court order permitting such disclosure. However, where the juvenile proceedings are open to the public generally, the district attorney may furnish the news media with whatever information is available to the public at those proceedings in which he participates unless the court has placed restrictions on such dissemination.

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