

Sixth Circuit Dismisses Challenge to Closure of Juvenile Court

Press Challenge Not Ripe

By Jon Fleischaker

The Sixth Circuit this month dismissed as unripe a First Amendment challenge to Kentucky's closure of juvenile court hearings and records. *Ky. Press Ass'n v. Kentucky*, No. 05-5224, 2006 WL 1867118 (6th Cir. July 7, 2006) (Batchelder, Norris, Rice, JJ.)

Background

In 2004, the Kentucky Press Association ("KPA") filed a First Amendment facial challenge to several provisions of Kentucky's Unified Juvenile Code. The challenged statutes automatically seal various kinds of juvenile court hearings and records. The kinds of juvenile court cases covered by Kentucky's closure laws include juvenile delinquency cases involving both misdemeanors and felonies, dependency and abuse cases, adoptions, and status offenses such as truancy.

The U.S. District Court for the Eastern District of Kentucky in Frankfort dismissed the case for failure to state a claim under the First Amendment. *See* 355 F.Supp.2d 853 (E.D.Ky. Feb 01, 2005). On appeal, the Sixth Circuit declined to address the merits of the case and dismissed it on the ground that the full application and interpretation of the challenged statutes has not been litigated in Kentucky's courts. According to the Sixth Circuit, it remains to be seen whether the challenged statutes actually do close juvenile courts to the press.

Kentucky's Unified Juvenile Code

The lawsuit involved four provisions of Kentucky's Unified Juvenile Code: KRS 610.070; KRS 610.320; KRS 610.330; and KRS 610.340. Among other things, those statutes provide that "[t]he general public shall be excluded" from juvenile court hearings (KRS 610.070), and that "court records regarding [juveniles] shall not be opened to scrutiny by the public," (KRS 610.320). As such, the very existence of any given Kentucky juvenile court case is hidden from the public.

The statutes purport to permit courts to open hearings and records to limited classes of individuals, such as those

with a direct interest in the work of the court. However, the laws do not permit courts ever to open juvenile proceedings to the public at large, which is a feature of the First Amendment right of access.

Further, KPA argued that the statutes' exceptions are illusory because all juvenile court proceedings and records, including dockets, are kept secret. Without pre-existing access to know about the existence of particular juvenile cases, it is impossible for anyone to assert an exception to closure because the public cannot ascertain what, if any, juvenile cases exist, much less the circumstances of such cases.

KPA's First Amendment Claim

KPA's challenge was based entirely on the First Amendment right of access to court proceedings first recognized in the landmark Supreme Court decision of *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). The test established by *Richmond Newspapers* and its progeny to determine whether the First Amendment right of access applies to a particular proceeding is the two-part "experience and logic" test. The "experience" part of the test asks whether the kind of proceeding has a history of openness. In answering this question, the Sixth Circuit has often examined how much a proceeding is like a traditional criminal trial. If the "experience" test is answered affirmatively, then the court addresses the "logic" question, which asks whether public access plays a significant positive role in the particular proceeding in question.

Once the First Amendment right of access is established, it is not absolute. Hearings and records can still be sealed if there is an overriding interest in closure in order to preserve higher values and where closure is narrowly tailored to serve that interest.

Although the Supreme Court has never addressed the First Amendment right of access outside the scope of criminal cases, the Sixth Circuit has extended the right to include civil cases. *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983). In 2002, the Sixth Circuit extended the right to include administra-

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tive deportation hearings. *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 702 (6th Cir. 2002).

KPA's First Amendment challenge to Kentucky's closure of juvenile courts focused on the fact that many of the kinds of cases in juvenile court are very much like traditional criminal cases, with similar procedures and penalties including incarceration and removal of children from their parents. KPA also emphasized that Kentucky's mandatory closure statutes removed the case-specific weighing of competing interests contemplated by the Supreme Court's First Amendment jurisprudence in cases such as *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-609 (1982), and replaced it with automatic closure, which is inherently not narrowly tailored.

District Court's Ruling

The Commonwealth made a litany of jurisdictional objections under federal abstention doctrines and theories of prudential standing. The District Court denied each of the objections and ruled on the merits of the First Amendment challenge. The District Court dismissed KPA's lawsuit, finding that it failed the "experience and logic" test because proceedings and records in the juvenile courts have been historically closed to the press and public.

According to the District Court, even if juvenile proceedings had been historically open to the public, the "logic" test would also fail because opening juvenile proceedings would frustrate the purpose of juvenile court, which is to protect the juvenile.

Sixth Circuit's Ruling

In the published opinion authored by Circuit Judge Alice Batchelder, the Sixth Circuit declined to rule on the merits of KPA's First Amendment challenge. Instead, the court dismissed the lawsuit under the doctrine of ripeness.

According to the Sixth Circuit, there is one fact of crucial importance to the lawsuit that has yet to be determined: whether Kentucky law, as interpreted by the Kentucky courts, completely closes juvenile proceedings and records to the media. "Until we know the answer to this question, our adjudicating KPA's First Amendment claim would constitute entangling ourselves in an abstract disagreement."

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As support for the ruling, the Sixth Circuit cited to the specific language in the challenged closure statutes. For example, KRS 610.070 mandates that "[t]he general public shall be excluded" from juvenile court hearings but also provides that the juvenile court judge may open the hearing to those who "have a direct interest in the case or in the work of the court."

According to the Sixth Circuit, this language might reasonably be interpreted by Kentucky's courts as permitting the news media to petition the Kentucky courts to release juvenile court dockets revealing the existence and nature of juvenile cases that are pending, which in turn could lead to the courts' permitting the media to attend juvenile court cases in some circumstances.

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