

No. 101802

In the Supreme Court
of the State of Illinois

Camco, Inc.,)	
)	
Plaintiff-Respondent,)	On Petition for Leave to
)	Appeal from the Appellate
)	Court of Illinois, First District
)	District No. 03-0144
v.)	
)	
Carol Lowery,)	On Appeal from the
)	Circuit Court of Cook County,
)	Municipal Department,
Defendant-Petitioner.)	No. 02 M1 713920
)	
)	Honorable Sheldon C. Garber
)	Trial Judge

BRIEF OF AMICI IN SUPPORT OF DEFENDANT-PETITIONER

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INTRODUCTION

Amici curiae the Office of the Cook County Public Guardian, Office of the Cook County Public Defender, Loyola University Chicago School of Law Civitas ChildLaw Center, Northwestern University School of Law Bluhm Legal Clinic and Children and Family Justice Center, Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School, Sargent Shriver National Center on Poverty Law, National Juvenile Defender Center, Chicago Coalition for the Homeless and the Juvenile Justice Initiative (collectively “*Amici*”), pursuant to leave of Court and Illinois Supreme Court Rule 345, respectfully submit this Memorandum in support of the Appeal filed by Defendant-Petitioner Carol Lowery. Ms. Lowery seeks review of the November 18, 2005 decision of the Illinois Appellate Court, First District, in which the Appellate Court held that a discovery subpoena served by a private party in a civil suit constitutes an “order of the court” sufficient to overcome the confidentiality provisions of Section 1-7(C) of the Juvenile Court Act, 705 ILCS 405/1-7(C). Section 1-7(C) by its terms provides that the “records of law enforcement officers concerning all children under 17 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public *except by order of the court*” (emphasis added).

Amici are not addressing the inconsistency of the Appellate Court’s decision with existing law. Rather, *Amici* are uniquely positioned to inform the Court of the practical implications of this decision under the Juvenile Court Act and to explain the historical and present day rationale for maintaining the privacy of these children.

The Appellate Court’s decision is erroneous, and creates a troubling breach of privacy for children who, until this ruling, could expect their law enforcement records to be largely screened

from public view. The decision is inconsistent with the reasons the juvenile court system was created and with the broad rehabilitative goals it is meant to foster.

These purposes are still central to today's juvenile justice system, as demonstrated by current social science research showing that young offenders are particularly receptive to rehabilitation when their offenses are kept confidential and not made the subject of public disclosure or public opprobrium. This ruling results in a substantial departure from the existing practice within the Juvenile Court System, which has never envisioned someone obtaining these confidential records by subpoena. It is of the utmost importance to the children who appear in juvenile court and the advocates who represent them that the erroneous conclusion of the Appellate Court be reversed.

STATEMENT OF INTEREST OF AMICI

Amici have a strong and unique interest in this appeal that makes them well-situated to assist the Court. *Amici* advocate for children, representing them in policy and legal matters concerning delinquency, criminal law, police misconduct, abuse and neglect, guardianship, discrimination, education, housing, health care, and public benefits. *Amici* represent children whose identities have historically been kept from the public eye to allow for rehabilitation, healing, and some limitation on the consequences resulting from their alleged actions. Without the Court's reversal of the Appellate Court's erroneous decision, this ruling could have serious consequences for *Amici*'s child clients with confidential law enforcement and court records.

Amici are uniquely situated to provide the Court with a broad spectrum of advocacy on behalf of children in the juvenile court system. Unlike the Petitioner and Respondent, *Amici* have extensive expertise in the representation of children and the existing local practices concerning confidentiality of children's law enforcement and court records. *Amici* routinely

appear in juvenile court on behalf of children and abide by the confidentiality provisions. *Amici* have seen first hand how the disclosure of children's confidential juvenile arrest or court records can have a negative impact on their emotional well being and maturation into healthy adults.

STATEMENT OF FACTS

Amici accepts the facts as stated by Defendant-Petitioner Ms. Lowery.

ARGUMENT

Without this Court's intervention, the Juvenile Court Act's confidentiality provisions protecting law enforcement records of juvenile offenders will be nullified by the Appellate Court's decision. The assumption that a discovery subpoena, obtained by a private litigant in civil litigation, is an "order of the court" for purposes of Section 1-7(C) means that no juvenile court judge need ever weigh the risks and benefits of the disclosure before entering an order granting or denying the discovery. In a case like Ms. Lowery's, in which the landlord obtained the records from the Chicago Police Department and the State Police's crime lab, the juvenile judge will never even know that the records are being sought. The decision thus pays no attention to the nationally recognized need to shield children from the stigma of delinquency and protect their chances for rehabilitation and a successful adult life. As Justice Rehnquist recognized in his concurring opinion in Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), the State's interest in preserving the anonymity of juvenile offenders is an interest of the highest order. 443 U.S. at 107.

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. . . . The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State. Id.

This “hallmark of our juvenile justice system” should not be swept away simply because a private party obtains the issuance of a discovery subpoena in an ordinary civil case, without any court intervention or oversight.

This decision also ignores language in the Juvenile Court Act as well as relevant local circuit court rules making it clear that the “order of the court” must come from a juvenile court judge. Finally, this decision may also expose confidential juvenile court records to public view, including the records of abused, neglected, or dependent children. Though the confidentiality interests of these children are substantially different from children in the delinquency division of the juvenile court system their privacy must likewise be maintained.

I. THE APPELLATE COURT’S DECISION IGNORES THE HISTORY OF THE JUVENILE COURT ACT AND THE CENTRAL ROLE OF CONFIDENTIALITY.

To understand why the Appellate Court’s interpretation of the confidentiality provisions of the Juvenile Court Act must be reversed, it is important to know how juvenile courts originated in the United States and why their creators considered confidentiality central to the interests of children who come before juvenile court judges. The juvenile court was born in Cook County in 1899 to regulate the treatment and control of dependent, neglected, and delinquent children. 1899 Ill. Laws 133. See also In re Gault, 387 U.S. 1, 14 (1967). For years, progressive reformers had concerned themselves with the plight of the nation’s children. Kara E. Nelson, Comment, *The Release of Juvenile Records under Wisconsin’s Juvenile Justice Code: A New System of False Promises*, 81 Marq. L. Rev. 1101, 1108-12 (1998). In devising a separate court system for children, they took steps “to secure for each minor . . . such care and guidance . . . as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community.” Barry C. Feld, *The Transformation of the Juvenile Court*, 75 Minn. L. Rev. 691, 709 (1991) (citing ILL. COMP. STAT. ANN. 37/P801-2 (1990)).

Reformers created a court reflecting their belief that child offenders were different from adult criminals. Because juveniles were “impressionable, malleable, and not yet hardened to the criminal life, they [were] considered perfect candidates . . . [for] treatment.” Nelson, *Juvenile Records*, at 1114 (citing Robert R. Belair, U.S. Dep’t of Justice, Privacy and Juvenile Justice Records 24 [1982] at 13). As explained by the Honorable Julian W. Mack, an early judge of the Cook County Juvenile Court, the operative question was:

Why is it not the duty of the state, instead of merely asking whether a boy or girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

Julian W. Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 107 (1909). Reformers believed that this was indeed the duty of the state, as part of its *parens patriae* power. Arthur R. Blum, Comment, *Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice*, 27 Loy. U. Chi. L.J. 349, 353 (1996). The resultant juvenile justice system centered on a rehabilitative ideal, a belief that human behavior can be modified, with the objective of reforming and rehabilitating juveniles in order to transform them into law-abiding citizens. Marygold S. Melli, *Juvenile Justice Reform in Context*, 1996 Wis. L. Rev. 375, 377-78 (1996).

Unfortunately, reformers soon realized that the general public may be more concerned with whether the boy or girl had committed a specific offense and may “brand a juvenile involved in the juvenile justice system as a wrong-doer.” Nelson, *Juvenile Records*, at 1118. They therefore identified confidentiality as a key component in maximizing the prospects of a young person’s rehabilitation. Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 526-27 (2004). As further noted by Judge Mack, “To get away from the notion that the

child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and, instead of first stigmatizing and then reforming it, to protect it from stigma—this is the work which is now being accomplished” Mack, *The Juvenile Court*, at 109.

The rehabilitation of children and the maintenance of their records as confidential continue to be two of the central purposes of the Juvenile Court Act today. See 705 ILCS § 405/5-101(1)(c); A.K., S.K. P.K., v. G.V. and E.V., 2004 WL 1093474 at *4 (N.D. Ill. April 30, 2004). The Appellate Court’s interpretation of the Juvenile Court Act’s confidentiality provisions puts the rehabilitation of thousands of Illinois children at risk.

II. CURRENT SOCIAL SCIENCE RESEARCH CONFIRMS THE IMPORTANCE OF MAINTAINING CONFIDENTIAL JUVENILE RECORDS.

Just as the early juvenile court advocates believed, recent research in the field of developmental psychology confirms that there are important differences between children and adults. Henning, *Eroding Confidentiality*, at 539. These studies uphold the validity of two key theories that set the foundation for the original juvenile court and for shielding juvenile records from the public. *Id.* First, the cognitive and psychological differences between adults and children affect the choices and decisions each make. *Id.* (citing Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. Crim. L. & Criminology 137, 141-44 (1997)). Second, those cognitive and psychological differences make children generally more malleable and amenable to treatment than adults. *Id.* (citing Laurence Steinberg & Elizabeth Cauffman, *A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles Be Treated As Adults?*, 63 Fed. Probation 52, 53-54 (1999)). Confidentiality of juvenile records is particularly important because of the research finding that children think differently and thus may have a diminished ability or capacity to fully

appreciate their actions. Scott & Grisso, *Evolution*, at 174. Children from preadolescence through the late teen years are more susceptible to peer pressure and the desire for peer approval; they are more willing to take risks with health and safety without considering probable negative outcomes or harms. *Id.* at 157, 163. Adolescents also tend to focus more on short-term consequences, especially in high-stress situations. *Id.* at 164-65.

These hallmarks of youth make children under the age of seventeen particularly receptive to treatment. Exposure to positive experiences – such as healthy family, mentor, and peer relationships; quality education; or counseling – may set a young person’s life on a completely new path. Steinberg & Cauffman, *Developmental Perspective*, at 53. Children who commit crimes in their youth are also more likely to grow out of that inclination in adulthood, with only a very small number continuing with criminal behavior as adults. Scott & Grisso, *Evolution*, at 154. “Personal statements of independence” and rebellion in youth often give way in adults to a more reasoned and practical appreciation of the drawbacks of crime, such as a lack of employment opportunities. *Id.* at 156.

III. THE EROSION OF CONFIDENTIALITY PROVISIONS HAS EMOTIONAL, SOCIAL, AND PRACTICAL CONSEQUENCES FOR CHILDREN.

Exposure to negative experiences can also greatly affect young people, and such influences can stay with them through adulthood. Steinberg & Cauffman, *Developmental Perspective*, at 53. As the creators of the juvenile court system understood, eroding the confidentiality surrounding a young person’s misdeeds can stigmatize that child severely and have a negative effect on the child’s efforts at rehabilitation. Authority figures and peers who learn about a child’s delinquent conduct tend to view the child as deviant, and may expect the worst from that child. Henning, *Eroding Confidentiality*, at 541 (*citing generally* Delos H. Kelly, *Labeling and the Consequences of Wearing a Delinquent Label in a School Setting*, 97

Educ. 371, 372-73 (1977); and Paul R. Kfoury, *Confidentiality and the Juvenile Offender*, 17 New Eng. J. on Crim. & Civ. Confinement 55, 56 (1991)). This labeling may cause a child to develop a negative self-image, which in turn may lead the child to socialize into an adult life based on negative expectations. *Id.* Children who feel publicly “branded” as delinquents are likely to experience long-term social and emotional consequences. Scott & Grisso, *Evolution*, at 187.

A public juvenile record also has practical implications in determining the course of a youth’s development. Henning, *Eroding Confidentiality*, at 527-28. The stigma of delinquency can damage a child’s relationships with authority figures, most notably teachers and school personnel. *Id.* The stigma can also damage healthy peer relationships. *Id.* The stigmatizing of the child can embarrass parents, thereby creating tensions in the home and dismantling the support systems a child needs for effective rehabilitation. *Id.* at 529-30. These disputes may even cause parents to force a child out of the home, for example, if the juvenile offense is considered cause for eviction and threatens the family’s security. *Id.* Having a child’s juvenile record disclosed can severely limit prospects for future employment or education. Harry Holzer, Steven Raphael, and Michael Stoll, *Will Employers Hire Ex-Offenders? Employer Preferences, Background Checks, and their Determinants*, Joint Center for Poverty Research Working Paper No. 238, Northwestern University and the University of Chicago (May 5, 2001); Derek Langhauser, *Use of Criminal Convictions in College Admissions*, 154 Ed. Law Rep. 733, 736 (2001). Without some veil of confidentiality, these children will never earn full reentry and status in the community. Henning, *Eroding Confidentiality*, at 528-29.

Despite a trend over the last ten years to adjudicate youth in a fashion similar to adults, nearly every state, including Illinois, still has some provision for maintaining the confidentiality

of juvenile records and proceedings. Henning, *Eroding Confidentiality*, at 536-37. Making access to confidential juvenile records as easy as serving a discovery subpoena on a person or entity that possesses them, without any judicial oversight, represents a sharp departure from the policies on which the juvenile justice system is based. Such easy access may ultimately have an incalculably negative impact on the particular children whose records are exposed.

IV. THE JUVENILE COURT ACT CLEARLY REQUIRES AN ORDER FROM A JUVENILE COURT PERMITTING ACCESS TO CONFIDENTIAL RECORDS.

This decision also ignores language in the Juvenile Court Act and relevant local circuit court rules that make it clear the “order of the court” language means a juvenile court judge granting access to the confidential records. Section 5-105 of the Act defines “court” as “the circuit court in a session or division assigned to hear proceedings under this Act, and includes the term Juvenile Court.” 705 ILCS § 405/4-105(1). In A.K., S.K. P.K., v. G.V. and E.V., 2004 WL 1093474 (N.D. Ill. April 30, 2004), a diversity tort case in which the defendant sought a protective order to preclude discovery of, among other things, access to his juvenile court records, the court relied upon that definition to determine that only the juvenile court could permit access to those records. The provision at issue, 705 ILCS § 405/1-8(C), concerns the confidentiality of juvenile court records and similar to Section 1-7 (C) (arrest records) allows inspection of juvenile court records by non-authorized parties only by “general or special order of court.” Id. at *3. 705 ILCS §§ 405/1-7(C) and 1-8(C). Utilizing the Act’s definition of “court” the court determined that “[t]he Juvenile Court Act requires an order of ‘the court’” for the exception to the confidentiality provisions to apply. Id. at *4. The court noted that:

It is for the Juvenile Court in that county to decide whether the records should be available for inspection. To the extent the plaintiff desires to pursue either of the two cited exceptions, she must proceed before the Juvenile Court in order to seek inspection or access to these files. Id.

Local circuit court rules in Illinois also provide that juvenile court judge hear requests for release of confidential juvenile law enforcement and court records. Cook County Cir. R. 19.5; 19th Cir. R. 9.03. Thus, the Appellate Court’s decision cannot be upheld under any interpretation of the Act.

V. THIS DECISION COULD ALSO EXPOSE THE CONFIDENTIAL COURT RECORDS OF ABUSED, NEGLECTED, AND DEPENDENT CHILDREN.

The Lowery case arises in the housing context, where the offense of a minor is used as the basis for evicting an entire family. But the Appellate Court’s decision could also expose the confidential court records of abused, neglected, or dependent children in the Child Protection Division of the juvenile court. Section 1-7(C)(juvenile arrest records) and Section 1-8(C) (juvenile court records), contain similar “order of court” language. Section 1-8(C), like Section 1-7(C), is found in Article I of the Juvenile Court Act. Article I applies to both Article V proceedings concerning children with delinquency matters and Article II proceedings concerning abused, neglected, or dependent children. Because the records of abused, neglected, or dependent children are subject to the same general confidentiality requirements as the records of children in delinquency cases, the Appellate Court’s decision likely opens the door to both types of records.

The confidentiality interests of abused, neglected, or dependent children are just as important as the confidentiality interests of delinquent children – but for different reasons. In the case of In re A Minor, 149 Ill 2d 247, 255 (1992) abused, neglected, or dependent children were found to have a compelling interest in their right to be free from invasion of their privacy. This Court considered it to be of utmost importance to maintain the privacy of these children, stating that:

In the case at bar, the State has an interest in the nondisclosure of the minor victims' identities in its role as *parens patriae*. It was in its role as *parens patriae* that the State initiated these juvenile proceedings to provide shelter and care for these abused children. . . . Public identity could cause continuing emotional trauma to these unfortunate children and impede the lengthy and difficult healing process which they must endure. Id.

The Appellate Court's decision ignores these important privacy concerns and threatens the confidentiality provisions that protect all children in the juvenile court system.

CONCLUSION

Viewing the legal issues in this case in conjunction with the devastating impact the Appellate Court decision will have on children in juvenile court, *Amici* respectfully urge this Court to reverse the Appellate Court's decision.

Dated: February 15, 2006

Respectfully submitted,

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