Exhibit A

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Dear Mr. Marks:

This is in response to your request for an opinion from this office regarding the following:

QUESTIONS

1. Is the provision of Tennessee Code Annotated section 37-224(d) which allows the judge to exclude the public from juvenile hearings constitutional?

2. Is a blanket order of the juvenile court closing all juvenile proceedings to the public and press constitutional?

3. Does the "press" have standing to contest such an order?

OPINION

It is the opinion of this office that Tennessee Code Annotated section 37-224(d) does not violate the First and Fourteenth Amendments to the United States Constitution, neither does it violate Article I, section

17, Constitution of Tennessee. However a blanket order of the juvenile court closing all juvenile proceedings is overbroad and violates the provisions of Article I, section 17, Constitution of Tennessee. The press is part of the general public, and as such may contest such a blanket order.

ANALYSIS

Tennessee Code Annotated section 37-224(d) provides:

> Except in hearings to declare a person in contempt of court, and in hearings under § 37-245, the general public may be excluded from hearings under this chapter . . ..

Recently the United States Supreme Court in a plurality opinion held that the First and Fourteenth Amendments to the United States Constitution confer an independent right on the part of the public and press to attend a criminal trial, unless the State can demonstrate an "overriding interest" in the exclusion of the public from the trial. Richmond Newspapers, Inc. v. Virginia, ___U.S.___, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). The Supreme Court of the United States has never addressed the particular question presented here, i.e., may a state constitutionally exclude public and press from juvenile proceedings.

It is elementary law that in Tennessee, as in most other states, juvenile proceedings are not criminal prosecutions, but are rather designed to reform and educate delinquents and separate them from the corrupting influence of criminals. State v. Jones, 220 Tenn. 477, 418 S.W.2d 769 (Tenn. 1966). To this end it is generally recognized that a state has a high interest in protecting the anonymity of a juvenile offender to protect him from the trauma associated with the publicity surrounding the

adjudication of the juvenile's transgressions. Thus, in at least some cases this state interest would rise to the level of an "overriding interest" and would permit the exclusion of the general public from juvenile proceedings.

The Constitution of Tennessee, Article I, section 17 provides as one of the Declaration of Rights:

> That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the state in such manner and in such courts as the Legislature may direct.

The appellate courts of Tennessee have apparently never addressed the applicability of Article I, section 17 to the right of public access to court proceedings. However, in the case of KFGO Radio, Inc. v. Rothe, 298 N.W. 2d 505 (N.D. 1980), the Supreme Court of North Dakota dealt with the right of the public and news media to attend a State Attorney Inquiry, a proceeding akin to a coroner's inquest. Section 22 of the Constitution of North Dakota provides in pertinent part that, "All courts shall be open . . ." The North Dakota Supreme Court held that section 22 meant exactly what it said and that the provision conferred an independent right on the part of the public to attend court proceedings, including a State's Attorney Inquiry. The conclusion that the words "all courts shall be open" or similar words confer an independent right to the public to attend court proceedings has been the conclusion drawn by virtually every state court that has considered the question. See State v. Holm, 67 Wyo. 360, 224 P.2d 500 (1950); Brown v. State, 222 Miss. 863, 77 So.2d 694 (1955); E.W. Scripps Co. v. Fulton, 100 Ohio App. 157, 125 N.E.2d 896 (1955); Phoenix Newspapers, Inc. v. Superior Court, 101 Ariz. 257, 418 P. 2d 594 (1966); Cohen v. Everett City Council, 85 Wash.2d 385, 535 P.2d 801 (1975); In re Edens, 290 N.C. 299, 226 S.E.2d 5 (1976); State ex rel. Herald Mail Co. v. Hamilton, 267 S.E.2d 544 (W.Va. 1980).

The policy fostering the state constitutional provisions mandating courts being open to public attendance is a result of the abuses of the Spanish Inquisition, the English Court of the Star Chamber and the French lettre de cachet, all proceedings conducted in secret. The policy of allowing public attendance at court proceedings may be summarized as follows:

> "Without publicity, all the checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance." 1 Jeremy Bentham, Rational of Judicial Evidence 524 (1827).

Thus, it appears that the provisions of Article I, section 17 of the Constitution of Tennessee requiring courts be open confer an independent right on the part of the public, press included, to attend court proceedings. Since the provisions of Article I, section 17 do not except juvenile courts it must be presumed that the public right to attend court proceedings extends to juvenile courts as much as any other court. However, this public right to attend court proceedings is not absolute and must be balanced against competing governmental interests in the orderly administration of justice and protecting the rights of the accused, and the anonymity of juvenile offenders. KFGO Radio, Inc. v. Rothe, supra.

The case most directly in point to the instant issues is the case of Oregonian Publishing Company v. Deitz, 613 P.2d 23 (Ore. 1980). In that case the public and press were barred by the juvenile judge from attending the delinquency proceedings involving a thirteen-year-old girl who was connected with the drowning of a small child. Oregon Revised Statutes § 419.498(1) provides:

> "Unless the child or parents otherwise request, the general public shall be excluded and only such persons admitted as the judge finds have a proper interest in the case or the work of the court. The judge may exclude the public during any portion of the hearing in which it appears that the presence of the public may embarrass a witness or party or otherwise prejudice the reception of trustworthy evidence."

The Oregon Supreme Court concluded that the above statute vested in the juvenile court the power to exclude the public when in the opinion of the court privacy would promote the goals of juvenile justice. However, Article I, section 10 of the Oregon Constitution provides:

> "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay."

The Oregon Court interpreted this state constitutional provision to confer on the public an independent right to attend court proceedings. Thus as applied in this particular case the juvenile court's order excluding the public violated Article I, section 10 of the Oregon Constitution. Apparently this decision is based on the juvenile court judge's failure to give any recognition to the right of the public to attend the proceedings and to make any findings concerning whether in that particular case the state could demonstrate an overriding interest in keeping the proceedings closed to the public. Indeed such a balancing test was approved for First and Fourteenth Amendment purposes by the United States Supreme Court in the context of criminal trials. Richmond Newspapers, Inc. v. Virginia, supra.

It can readily be seen that Tennessee Code Annotated section 37-224(d) does not mandate the exclusion of the public at juvenile proceedings, but rather gives the juvenile judge the discretion to exclude the public. This would seem to indicate a presumption on the part of the legislature that by and large juvenile proceedings would be open and would be closed only in the situation where the state is able to demonstrate an "overriding interest" in closing the proceedings. Thus the discretion of the juvenile judge to exclude the public is not unfettered; it is restrained by Article I, section 17, Constitution of Tennessee, which mandates that before he judge may exclude the public he or she must recognize the public's right to attend the proceeding and then make a case by case determination as to whether an "overriding interest" is present which would allow the closing of the proceeding. Such a construction of Tennessee Code Annotated section 37-224(d), renders it constitutional. A statute, whenever possible, should be given a construction which renders it both constitutional and effective to carry out the legislative intent. State v. Hudson, 562 S.W.2d 416 (Tenn. 1978).

However, a blanket order excluding the public and press from all juvenile proceedings does not take into account the rights conferred on the public by Article I, section 17, Constitution of Tennessee. No case by case determination is made, under a blanket closing, as to whether the state can demonstrate an interest sufficient to override the Article I, section 17 guarantees of the Tennessee Constitution. For this reason a blanket order closing all juvenile proceedings appears overbroad and therefore violative of Article I, section 17.

This opinion does not address the question of the applicability of the right to a public trial, guaranteed by the Sixth Amendment to the United States Constitution, to juvenile proceedings.

As to the question of the news media's right to challenge such an order, it appears that the news media's right to attend court proceedings is at least equal to that of the general public. Saxbe v. Washington Post Co., 417 U.S. 843, 94 S.Ct. 2811, 41 L.Ed.2d 514 (1974); Pell v. Procunier, 417 U.S.

817, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974). Thus the press would have standing as would any other member of the public to challenge an order excluding the public from court proceedings.

Respectfully submitted,

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