

DOCKET NO. H14-CP14-011149-A : SUPERIOR COURT FOR JUVENILE
IN RE EMMA F.¹ MATTERS

DOCKET NO. H14-CP14-011150-A : FOURTEENTH DISTRICT AT NEW
IN RE LOGAN F. BRITAIN

DOCKET NO. H14-CP14-011151-A : NOVEMBER 28, 2014
IN RE OLIVIA F.

SUPPLEMENTAL MEMORANDUM, CLARIFICATION, AND ORDER²

The court issues this memorandum to supplement and clarify its oral decision restraining The Connecticut Law Tribune from publishing certain information it had obtained. In view of recent developments, however, the court also hereby orders an immediate hearing on whether to vacate the prior order.³

¹ Pursuant to General Statutes § 46b-142 (b) and Practice Book §§ 32a-7 and 79-3, the names of the parties and children in these matters are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

² The contents of this memorandum are subject to the same confidentiality orders as the transcript of the oral memorandum of decision. A hearing has already been scheduled to address further release of the court's decision. Before any further dissemination, the court will review both for any necessary redactions.

³ One of the issues the court considered and addressed in the oral memorandum of decision was whether the availability of the father's habeas corpus petition on two internet websites affected the issue before the court. At the time, there were other motions before the court seeking to address the information on those websites, much like as had happened in *In re Brianna B.*, 66 Conn. App. 695, 785 A.2d 1189 (2001), where a respondent was ordered to effect the removal of information about a child protection case from the internet. In preparing this written memorandum, this court revisited those websites, one of which reports that the petition is now available and downloadable on the website of two newspapers; see <http://www.corruptct.com/dcf-cps/joette-katz-ct-dcf-served-petition-writ-of-habeas-corpus/>, last visited November 28, 2014. In view of the dissemination of the contents of the habeas petition by (at least) two other news organizations, the court now issues an order to show cause as to why the order of prior restraint entered on November 24 should not now be vacated. The clerk shall contact counsel for the parties, including for the Law Tribune, and schedule a hearing at the earliest possible opportunity.

This matter came before the court on the motion of the respondent mother seeking an order prohibiting the Connecticut Law Tribune from publishing any information regarding the contents of the habeas corpus petition filed by the respondent father. Her motion stated that she had received a telephone voice mail message from a reporter for the Law Tribune which had said that the Law Tribune wanted to speak to her about the habeas corpus petition. The mother then sought ex parte relief from this court, which the court denied for failure to comply with Practice Book sections 4-5⁴ and 34a-23.⁵ After the initial hearing on the motion on Friday, November 21, counsel for the respondent mother informed the court that representatives of the Law Tribune had informed counsel that the Tribune did not intend to publish that day. The court then issued an order to show cause directing the mother to serve the Law Tribune with her motion, and scheduled a hearing on the motion for Monday morning, November 24.

⁴ Practice Book Section 4-5, captioned "Notice Required for Ex Parte Temporary Injunctions," provides, in pertinent part, as follows: (a) No temporary injunction shall be granted without notice to each opposing party unless the applicant certifies one of the following to the court in writing: (1) facts showing that within a reasonable time prior to presenting the application the applicant gave notice to each opposing party of the time when and the place where the application would be presented and provided a copy of the application; or (2) the applicant in good faith attempted but was unable to give notice to an opposing party or parties, specifying the efforts made to contact such party or parties; or (3) facts establishing good cause why the applicant should not be required to give notice to each opposing party."

⁵ Practice Book Section 34a-23, captioned "Motion for Emergency Relief," provides, in pertinent part, as follows: "(a) Notwithstanding the above provisions, any party may file a motion for emergency relief, seeking an order directed to the parents, including any person who acknowledged before a judicial authority paternity of a child born out of wedlock, guardians, custodians or other adult persons owing some legal duty to the child, as deemed necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child or youth before this court for the protection of the child. . . . (b) No motion for emergency relief shall be granted without notice to each party"

Counsel for the Law Tribune appeared that day and filed an objection to any order of prior restraint. The objection stated that the Law Tribune had learned about the habeas corpus petition and spoken with the father about the matter. The court thus faced the possibility that more information had been provided to the Law Tribune about these confidential matters than was stated in the habeas corpus petition itself. During hearing on the motion and objection, the court inquired of the parties whether a judicial order was necessary in view of the private and confidential nature of the information but was informed by the Law Tribune's attorney that the newspaper intended to publish about the matter.

The mother's motion requires the court to consider and weigh two strong and competing interests. On the one hand is the First Amendment⁶ right to freedom of speech and press, as well articulated in the case of *In Re People v. Bryant*, 94 P.3d 624 (Colo. 2004), cited by the respondent mother:

The First Amendment limits the choices the government may make in its efforts to regulate or prohibit speech, but it does not bar all government attempts to regulate speech, and it does not absolutely prohibit prior restraints against publication. *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 570 (1976); *Hill v. Thomas*, 973 P.2d 1246, 1252 (Colo. 1999), *aff'd*, 530 U.S. 703 (2000).

The term "prior restraint" describes "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur." *Alexander v. United States*, 509 U.S. 544, 550 (1993). Prior restraint of publication is an extraordinary remedy attended by a heavy presumption against its constitutional validity. *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers); *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971). "The thread running through [the prior restraint cases]

⁶ The Law Tribune asserted its claim of a right to publish under both the United States and Connecticut Constitutions, but made no argument as to how such a right may be provided any greater protection under the state constitution. Accordingly the court does not specifically address such a claim.

is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press*, 427 U.S. at 559.

To justify a prior restraint, the state must have an interest of the "highest order" it seeks to protect. *Fla. Star v. B.J.F.*, 491 U.S. 524, 533 (1989); the restraint must be the narrowest available to protect that interest; and the restraint must be necessary to protect against an evil that is great and certain, would result from the reportage, and cannot be mitigated by less intrusive measures. *CBS, Inc.*, 510 U.S. at 1317 (citing *Neb. Press*, 427 U.S. at 562).

People v. Bryant, *supra*, at 628.

This court recognizes and acknowledges that any prior restraint on the press is presumptively unconstitutional, and is permissible only to protect an "interest of the highest order" and then only in the most narrowly available method sufficient to protect that interest. Such an "extraordinary remedy" may be employed "only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures." *CBS, Inc. v. Davis* 510 U.S. 1315, 1317 (1994) (*Blackmun, J.*, in chambers), citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 562 (1976). This case presents the question whether information about confidential child protection matters is such "an interest of the highest order" that must be protected against a great and certain evil that would result from reportage and that cannot be mitigated by less intrusive measures.

Some of the cases discussed during oral argument on the pending motion have held that the means by which the press obtains information may sometimes be a factor weighing against prior restraint, even of confidential or privileged information.⁷ In *Smith*

⁷ For example, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), a state statute made it a crime to publish the name of a rape victim, but that name had become known to the public through the release of official court records of the trial of the rapist. The court reasoned

v. Daily Mail Publishing Co., 443 U.S. 97 (1979), however, that whether the government itself provided the information may not always be controlling. In that case, certain newspapers had become aware of the name of a juvenile arrested for murder by monitoring the police band radio frequency and speaking to eyewitnesses, but were later indicted for violating a state law making it a crime to publish the name of a juvenile offender without court permission. In holding that the state could not criminalize the truthful publication of the alleged delinquent's name lawfully obtained by a newspaper, the court held that its prior cases

all suggest strongly that if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order. These cases involved situations where the government itself provided or made possible press access to the information. That factor is not controlling. Here respondents relied upon routine newspaper reporting techniques to ascertain the identity of the alleged assailant. A free press cannot be made to rely solely upon the sufferance of government to supply it with information. If the information is lawfully obtained, as it was here, the state may not punish its publication except when necessary to further an interest more substantial than is present here.

(Citations omitted.) *Id.*, 103.

that

By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. . . . States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.

Id., 495. In *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977), the court held unconstitutional a state-court injunction prohibiting publication of the name and photograph of an eleven-year-old boy on trial in juvenile court where the judge had permitted members of the press and public to attend a hearing in the case, even though state law required the proceeding to be closed to the public: once "publicly revealed" or "in the public domain," a court could not constitutionally restrain its dissemination.

This principle was reiterated in *Florida Star v. B. J. F.*, 491 U.S. 524 (1989), a case in which a sheriff's department had provided the press with a police report containing the name of a sexual assault victim, which was then published in a local newspaper. The state then brought an action for civil sanctions against the newspaper for violating the state's rape shield statute prohibiting publication of such a victim's name. The court reiterated its analysis under *Smith* that "[i]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *Id.*, 533. The court noted, however, that

the government retains ample means of safeguarding significant interests upon which publication may impinge, including protecting a rape victim's anonymity. To the extent sensitive information rests in private hands, the government may under some circumstances forbid its nonconsensual acquisition, thereby bringing outside of the *Daily Mail* principle the publication of any information so acquired. Where information is entrusted to the government, a less drastic means than punishing truthful publication almost always exists for guarding against the dissemination of private facts.

Id., 534.

The mother's motion asks the court to find that the interests of the state, parties, and children in the confidentiality of juvenile child protection proceedings and DCF records, as provided under this state's statutes and court rules, override the presumption of unconstitutionality for prior restraint. "By its express terms, [General Statutes] 46b-124 (a) protects the confidentiality of "[a]ll records of cases of juvenile matters as defined in section 46b-121, . . ." *In re Sheldon G.*, 215 Conn. 563, 580, 583 A.2d 112 (1990). Practice Book Section 32a-7 (a) provides that "[e]xcept as otherwise provided by statute, all records maintained in juvenile matters brought before the

judicial authority, either current or closed, including the transcripts of hearings, shall be kept confidential.” Similarly, General Statutes § 17a-28 provides that all records maintained by DCF shall be confidential, and the courts have taken a broad view of the records covered by this provision:

The plain language of General Statutes (Rev. to 2005) § 17a-28 (a) (5) indicates that the term “ ‘[r]ecords’ ” includes information “obtained in connection with the department’s child protection activities or activities related to a child while in the care or custody of the department. . . .” Any personal knowledge held by the plaintiff regarding the child, including observations and opinions thereof, necessarily was obtained as a result of his participation in the department’s child protection activities or activities related to a child while in the care or custody of the department. The term ‘records,’ as used in § 17a-28, thus encompasses the plaintiff’s personal knowledge of the child in the present case.

Abreu v. Leone, 120 Conn. App. 390, 408-409, 992 A.2d 331, cert. denied, 297 Conn. 926, 998 A.2d 1193 (2010). The statutes of this state also criminalize the dissemination of confidential records of the Department of Children and Families protected under § 17a-28.⁸

Subsection (b) of section 46b-124 expressly provides that “[a]ny records of cases of juvenile matters, or any part thereof, provided to any persons, governmental and private agencies, and institutions pursuant to this section shall not be disclosed, directly or indirectly, to any third party not specified in subsection (d) of this section, except as provided by court order or in the report required under section 54-76d or 54-91a.” This portion of the statute requires that a person who comes into possession of confidential juvenile records or information may not further disclose the information to others.

⁸ General Statutes § 17a-28 (b) provides, in pertinent part, as follows: “(b) Any unauthorized disclosure shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.”

There is no doubt, moreover, that the information obtained by the Law Tribune pertains to confidential juvenile records, but there is also no suggestion that the Tribune itself did anything wrong in how it obtained this information. For a brief period, the contents of the habeas corpus petition were publically available on the judicial branch website, which contains the contents of newly-filed civil actions. The respondent father electronically filed a habeas corpus action seeking custody of his three minor children. Although the text of his petition referred to the family rules, he appended a civil summons form to the petition and electronically filed it as a civil action. As a periodical for this state's legal community, it is natural that the Law Tribune would regularly review the contents of new civil actions publically available on the judicial branch website.

The writ of habeas corpus has long been recognized in this state as a means for obtaining an order of custody of minor children from the Superior Court when there was no other statutory means of presenting such a claim to the Superior Court. See *Pfeiffer v. Pfeiffer*, 99 Conn. 154, 157, 121 A. 174 (1923). The writ of habeas corpus sought here, however, should have been filed as a juvenile matter. The father's petition sought custody of three children who have been found to be neglected after a trial before this court, and whose best interest was found to be their commitment to the commissioner of children and families. Under General Statutes § 46b-1, "[m]atters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving: . . . (8) habeas corpus and other proceedings to determine the custody and visitation of children; . . . (11) juvenile matters as provided in section 46b-121;" The Practice Book further specifies that "habeas corpus and other proceedings to determine the custody and visitation of children" will be heard in the

family division of the Superior Court “except those which are properly filed in the superior court as juvenile matters,”⁹ General Statutes § 46b-121 (a) (1) defines juvenile matters as including “all proceedings concerning uncared-for, neglected or abused children and youths within this state,”

The father’s habeas corpus petition referred to many of the facts and proceedings of these juvenile matters both before the adjudications and commitment and afterwards. This information would never have been disclosed publically but for the decision of the father and his attorneys to file the petition as a civil matter, thereby breaching the statutory and practice book rules regarding confidentiality of DCF records and juvenile proceedings and matters, rather than properly bringing it as a confidential juvenile matter. Even if filed as a civil matter, moreover, the rules of court would have allowed the respondent father to ask the court to proceed anonymously, by using a pseudonym, thereby keeping the identities of the parents and children confidential, as should be known both by the respondent father, himself an attorney and member of this state’s bar, as well as his by attorneys. The respondent father chose, however, to eschew the opportunity provided under Practice Book § 11-20A (h) (2)¹⁰ to ask the court, before he ever filed his petition, to proceed using pseudonyms. Moreover,

⁹ Practice Book Section 25-1 provides, in pertinent part, as follows: “The following shall be ‘family matters’ within the scope of these rules: Any actions brought pursuant to General Statutes § 46b-1, including . . . habeas corpus and other proceedings to determine the custody and visitation of children except those which are properly filed in the superior court as juvenile matters,”

¹⁰ Practice Book § 11-20 (h) (2) provides as follows: “(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.”

although he belatedly filed a motion to seal the petition, Practice Book §§ 7-4B¹¹ and 74C¹² appear to give him the right to have sought to file the petition itself under seal so that even the contents of his complaint, in which he divulged confidential information, would not have become public even if filed as a civil action. He could have done so before electronically filing the petition and disclosing confidential matters. This case, should therefore not be regarded, the court concludes, as one in which the state itself has provided confidential information to the press. Rather, it is a matter where a private party has used the state's publically-available civil judicial matters website as a means to disclose confidential information. If a court system is to make civil complaints and

¹¹ Practice Book § 7-4B, captioned "Motion to File Record under Seal," provides, in pertinent part, as follows: "(a) As used in this section, 'record' means any affidavit, document, or other material. (b) A party filing a motion requesting that a record be filed under seal or that its disclosure be limited shall lodge the record with the court pursuant to Section 7-4C when the motion is filed, unless the judicial authority, for good cause shown, orders that the record need not be lodged. The motion must be accompanied by an appropriate memorandum of law to justify the sealing or limited disclosure."

¹² Practice Book § 7-4c, captioned "Lodging a Record," provides as follows: " (a) A 'lodged' record is a record that is temporarily placed or deposited with the court but not filed. (b) A party who moves to file a record under seal or to limit its disclosure shall put the record in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the court. (c) The party submitting the lodged record must affix to the envelope or container a cover sheet that contains the case caption and docket number, the words "Conditionally Under Seal," the name of the party submitting the record and a statement that the enclosed record is subject to a motion to file the record under seal. (d) Upon receipt of a record lodged under this section, the clerk shall note on the affixed cover sheet the date of its receipt and shall retain but not file the record unless the court orders it filed. (e) If the judicial authority grants the motion to seal the record or to limit its disclosure, the clerk shall prominently place on the envelope or container in bold letters the words "Sealed by Order of the Court on (Date)" or "Disclosure Limited by Order of the Court on (Date)," as appropriate, and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion. If the judicial authority denies the motion and the submitting party requests in writing that the record be retained as a lodged record, the clerk shall prominently place on the envelope or container in bold letters the words "Motion Denied, Retain as Lodged Record" and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion."

pleadings publicly available on a governmental website, as the Connecticut judicial branch has done, there is no way to avoid disclosure of protected or confidential information other than by compliance of litigants and attorneys with the confidentiality laws.

Our Supreme Court has acknowledged that information concerning juvenile matters may sometimes become public knowledge and lose its confidential status:

The confidentiality of juvenile records and proceedings established by General Statutes 46b-122 and 46b-124 cannot eliminate the publicity that frequently attends the commission of serious juvenile offenses, such as those which are transferable to the regular criminal docket pursuant to 46b-126 and 46b-127. By prohibiting disclosure of records and proceedings in juvenile matters, 46b-122 and 46b-124 do, however, curtail the additional publicity that a public trial would generate. The existence of statutes intended to protect juveniles from publicity concerning their crimes does not prevent the press from disclosing any information which may have come into its possession.

In re Juvenile Appeal [85-AB], 195 Conn. 303, 310 n. 4, 488 A.2d 778 (1985). The cases involving the disclosure of juvenile matters discussed above all involved juveniles accused of committing crimes, matters that are assuredly of far greater public interest than the affairs of neglected children. The present case poses the additional question whether there is any different result when the press comes into possession of information about confidential child protection proceedings, in which there is no allegation that the child has done anything wrong or criminal but instead is alleged (prior to any adjudication) or proven (after an adjudication) to have been a victim of abuse or neglect. Is non-disclosure of this type of information "an interest of the highest order" that must be protected against a great and certain evil that would result from reportage and cannot be mitigated by less intrusive measures?

As the court recognized in *In re Juvenile Appeal*, there are times when the public and press will become aware of the facts regarding a juvenile who has committed a crime. But there should be no such occasions regarding a child in foster care. Thus, in the case of *In re Brianna B.*, 66 Conn. App. 695, 785 A.2d 1189 (2001), the Appellate Court upheld an order that a respondent mother in a child protection proceeding not publically disclose confidential information about the case as a permissible prior restraint, holding that "an interest in maintaining the confidentiality of facts disclosed in the course of the juvenile proceedings is sufficiently compelling to justify the prior restraint." *Id.*, 702. As noted by the Appellate Court, in *State v. Abreu*,

§ 17a-28 (b) plainly prohibits the disclosure of information created or obtained in connection with the department's child protection activities or activities related to a child while in the care or custody of the department. Significantly, the statute provides that such information "shall not be disclosed. . . ." That broad mandate applies without regard to the particular status of the disclosing party, be it a department worker or foster parent. As our Supreme Court has observed, § 17a-28 "constitutes a broad legislative declaration of confidentiality." *State v. Kulmac*, 230 Conn. 43, 57, 644 A.2d 887 (1994). Just as the confidentiality of a psychiatric patient's identity is mandated by statute to shield the patient from the "stigma [that] may attach to one who seeks psychiatric care," as well as the accompanying "embarrassment, harassment or discrimination" that may follow; *Falco v. Institute of Living*, 254 Conn. 321, 329, 757 A.2d 571 (2000); the confidentiality of matters involving a child while in the care or custody of the department is required by § 17a-28 to protect that child from "the embarrassment, stigmatization and emotional harm that can result from the mere disclosure that he or she is under the department's care." *Abreu v. Leone*, [291 Conn. 332, 348, 968 A.2d 385 (2009)]. The gravity of those dangers is indicated by our General Assembly's decision to impose criminal sanctions for violations of § 17a-28 (b).

Abreu v. Leone, *supra*, 120 Conn. App. 401-402. Sections 46b-124 and 17a-28 (b) would seem to brook no disclosure of confidential child protection information except as expressly provided by the statute or as may be required under due process of law, for example, to provide information that is exculpatory or relevant for cross examination to

a criminal accused. See, e.g., *State v. David N.J.*, 301 Conn. 122, 137-39, 19 A.3d 646 (2011). The harms or “evil” to be avoided are “the embarrassment, stigmatization and emotional harm that can result from the mere disclosure that [a child] is under the department's care.” *Abreu v. Leone*, supra, 291 Conn. 348. It can be presumed that a child who has been found neglected, whose best interests have been found to lie in being removed from parental care and custody and instead by having care, custody, and guardianship vested in the Commissioner of Children and Families has already suffered harms leading to those judicial findings. The state’s child protection confidentiality laws are intended to prevent any more harm occurring to the child by unnecessary disclosures of the child’s status.

The *Bryant* case addressed a different interest – that of a rape victim in the confidentiality of prior or subsequent sexual conduct, as protected by a state law, but this court finds the analysis there instructive. The trial court in that case had held a pretrial hearing to determine what information covered by that state’s rape shield law was relevant and admissible in a pending criminal trial, and would therefore become public knowledge, and what information was irrelevant, inadmissible, and should therefore be shielded from public dissemination. After learning that a court reporter had mistakenly sent transcripts of that hearing to the media, the trial court entered an order prohibiting disclosure of those transcripts. On review of that order, the Colorado Supreme Court held that “the state has an interest of the highest order in this case in providing a confidential evidentiary proceeding under the rape shield statute, because such hearings protect victims' privacy, encourage victims to report sexual assault, and further the prosecution and deterrence of sexual assault.” *State v. Bryant*, supra, 94

P.3d at 626. The court noted that the First Amendment “does not absolutely prohibit prior restraints against publication,” *Id.*, 628, citing *Nebraska Press Association v. Stuart*, 427 U.S. 539, 570 (1976) (stating that “[t]his Court has frequently denied that First Amendment rights are absolute and has consistently rejected the proposition that a prior restraint can never be employed.”) The court then found that “[t]he state has an interest of the highest order in this case in providing a confidential evidentiary proceeding under the rape shield statute, because such hearings protect victims’ privacy, encourage victims to report sexual assault, and further the prosecution and deterrence of sexual assault.” *State v. Bryant*, *supra*, 94 P.3d at 632. It then concluded that certain portions of the trial court order should be struck down, but that a more narrowly tailored order for prior restraint on publication would pass constitutional muster.

The Associated Press then sought a stay of that order from the United States Supreme Court, which Justice Blackmun reviewed in his capacity as a Circuit Justice. Justice Blackmun noted that the trial court had recently issued its decision on the rape shield law issues, determined which evidence would be relevant, material, and admissible and which would not, “unless circumstances later warrant.” (Citation omitted.) *Associated Press v. District Court for Fifth Judicial District*, 542 U.S. 1301, 1303 (2004). The trial court, moreover, had identified the admissible evidence. Concluding that release of some of the transcripts was imminent, and that “a brief delay will permit the state courts to clarify, perhaps avoid, the controversy at issue here,” Justice Blackmun denied the application for stay without prejudice. *Id.*, 1304. There are no further reported decisions on the issue. Nothing in Justice Blackmun’s opinion,

however, rejected the notion that, under certain circumstances, a narrowly tailored prior restraint necessary to protect an interest of the highest order can survive First Amendment scrutiny.

The case of *Kamasinski v. Judicial Review Council*, 44 F.3d 106 (2nd. Cir. 1994) also provides some guidance on prior restraint of First Amendment rights. In that case, the plaintiff challenged the confidentiality provisions of a Connecticut statute regarding the Judicial Review Council (JRC), the body charged with investigating complaints of judicial misconduct. The court held that the state's interests in the confidentiality of a JRC investigation before a determination of probable cause regarding judicial misconduct were sufficiently compelling, under the strictest First Amendment scrutiny, to justify Connecticut's prohibition on disclosure of certain information, but not "the substance of an individual's complaint or testimony, i.e., an individual's own observations and speculations regarding judicial misconduct"; *id.*, 111; a disclosure not prohibited by the law. The court also concluded, however, that the state's interest did permit a rule of confidentiality, while the JRC investigation was pending (as provided by the law), about the fact that an individual had filed a complaint with the JRC.

Bryant and *Kamasinski* are two examples where the courts have found sufficiently compelling state interests to justify prior restraint on speech or the press. Under the circumstances as they existed on November 24, this court concluded that the interests of retaining the confidentiality of child protection proceedings and DCF records was, under the strict scrutiny required, also sufficiently compelling. Moreover, whether "the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures" must be assessed not just as a generic concern,

but also separately in terms of the harm to these three specific children. Not having been a party to those proceedings or privy to them, the Law Tribune may not be aware, absent other disclosures about this proceedings than were contained in the habeas petition, of the facts and circumstances regarding these three children; but this court is. The evil to be avoided is not theoretical harm to hypothetical children, but to three real children about whom the court has heard several days of testimony. As the habeas petition reveals, they were then found to have been neglected and committed to DCF. At the request of the parties, the court did not make detailed factual adjudicatory or dispositional findings. In committing them, however, the court expressly and necessarily¹³ found that continuation in the home of either parent was contrary to the children's welfare as of the end of trial, and that it was in the best interests of all three children to be committed to the Commissioner of Children and Families. Whether considering the interests protected by these laws with or without regard to the facts of

¹³ General Statutes § 46b-129 provides, in pertinent part, as follows: "(j) (2) Upon finding and adjudging that any child or youth is uncared for, neglected or abused the court may (A) commit such child or youth to the Commissioner of Children and Families, . . . " "After an adjudication of neglect, a court may (1) commit the child to the Commissioner, (2) vest guardianship in a third party or (3) permit the parent to retain custody with or without protective supervision. General Statutes § 46b-129 (j)." *In re Brianna C.*, 98 Conn. App. 797, 804, 912 A.2d 505 (2006). "In determining the disposition portion of the neglect proceeding, the court must decide which of the various custody alternatives are in the best interest of the child. To determine whether a custodial placement is in the best interest of the child, the court uses its broad discretion to choose a place that will foster the child's interest in sustained growth, development, well-being, and in the continuity and stability of [the child's] environment." (Internal quotation marks omitted.) *In re Ja-lyn R.*, 132 Conn. App. 314, 323-24, 31 A.3d 441 (2011). Practice Book § 35a-13 provides, in pertinent part, as follows: "Whenever the judicial authority orders a child or youth to be removed from the home, the judicial authority shall make written findings: (1) at the time of the order that continuation in the home is contrary to the welfare of the child or youth;"

this specific cases and the circumstances of these three children, the court believes the order on November 24 was then justified.

BY THE COURT


STEPHEN F. FRAZZINI
JUDGE OF THE SUPERIOR COURT