



FOSTERING MEDIA CONNECTIONS

A Watched System Forum

A Watched System, 2012

A discussion of the role of responsible journalism in covering sensitive juvenile dependency hearings and the child welfare system writ large

-A Fostering Media Connections Initiative

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Introduction

In the six years that I have covered the foster care system and worked along its fractious point of contact with the news media, an all-too-common theme has been one of mistrust, fear and subsequent misinformation.

On one side you have a foster care system burdened with the almost impossible task of mitigating the worst effects of societal dysfunction: child abuse, neglect and child death. On the other side you have a cast of overwhelmingly well-intentioned journalists, working under a deadline, who are met with a foster care system practically and – in more than half the states – legally cloaked in obscurity.

The system's culture of confidentiality invariably erodes the news media's confidence in it, resulting in more of the sensationalist coverage that the foster care professionals fear. It is a closed loop, which has given us our current, warped public perception of a broken foster care system. The plain result is that myriad opportunities to engender public and political will are missed and children suffer as a result.

To combat this issue, Fostering Media Connections' staff and a talented student in Harvard Law School's Child Advocacy Program reached out to stakeholders across the field of journalism and social advocacy to produce a Code of Ethics that will govern the stories produced by journalists writing about the dependency court system. In November, we will present a forum to debate whether journalists adhering to a strict code of ethics can produce stories that both protect the privacy of hearing participants while increasing the transparency and integrity of the system.

With a consensus-built code of ethics in our hand, we will have created an opportunity to make an important bargain between the foster care system and the news media. Both professions will be improved for it: child welfare shedding fear and journalism raising its ethical standards, offering the chance for everyone to do their best work in the best interest of children.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Heimpel', written in a cursive style.

Daniel Heimpel
Executive Director
Fostering Media Connections

The Forum

This forum is designed to advance the current debate over the news media's role in covering the juvenile dependency system specifically and the child welfare system generally. Today we will examine the need for transparency in our child welfare system and the ethical standards journalists who cover the system should adhere to. You will hear from journalists, judges, advocates, and former foster youth themselves.

The prevailing question to consider is: whether journalists covering the juvenile dependency system have a responsibility to serve the "best interests" of children, which exceeds their basic journalistic responsibility to disseminate information to the public freely. And if so, what are the ethical standards journalists should or should not accept when accessing highly sensitive juvenile dependency hearings.

First, Barry Krisberg, Director of Research and Policy at The Warren Institute, will provide a brief history of the juvenile court system, taking us back to Chicago at the turn of the 19th century when the first juvenile court was formed. Immediately following him, Jamie Kapalko, a third year law student at Harvard Law School and the author of FMC's report on presumptively open juvenile dependency courts, will describe the current state of law across the country in regards to journalist access to juvenile dependency proceedings.

The conversation will then be broken down the into three sequential concept areas. These are designed to help us better understand the legitimate barriers to – and opportunities for -- media coverage of juvenile dependency hearings that drives positive change to the system, while sparing children from the dire consequences of having the worst moments of their hard lives splayed across the front page. These are:

Representation & Exploitation:

- Former foster youth and current student of law at Berkeley, Lily Eagle Dorman Colby, will argue the merits of opening juvenile dependency hearings to the press from the youth perspective.
- Chantel Johnson, the California Youth Connection's Legislative and Policy Coordinator, will discuss the inherent dangers of the news media divulging a child's identifying information while covering the juvenile courts and share measures that her organization argues must be taken for journalists to be granted access.

Accountability & Sensationalism:

- Presiding Judge of Los Angeles County's Juvenile Court and President of the National Council of Juvenile and Family Court Judges Michael Nash will discuss his reasoning behind issuing a blanket order changing court procedures to encourage more media coverage of the his court – and the results of that order.
- Children's Law Center Executive Director Leslie Heimov will describe her agency's experience since the blanket order. She will also describe the unique sophistication of Los Angeles' juvenile court and news media, which she believes is an important factor in responsible coverage of the court

Responsibility of the Press & Freedom of the Press:

- *San Francisco Chronicle* Editorial Page Editor John Diaz will explain his views on the responsibility of journalists who take on covering the courts and the child welfare system. Diaz will also discuss how he



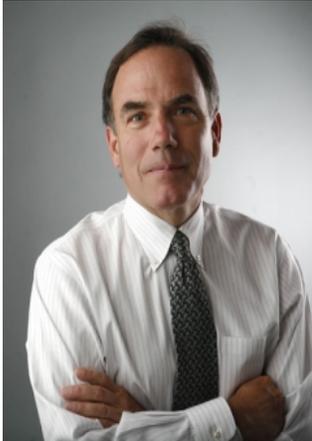
and other journalists have been able to drive reform to California’s child welfare system through responsible coverage that did not hurt children, hearkening to the potential benefit of open courts.

- *Los Angeles Times* Editor-at-Large Jim Newton will discuss his experience covering Los Angeles County’s Juvenile Court since Judge Nash’s order, and will argue that the courts should be open regardless of a journalist’s stated adherence to ethical standards.

Forum Agenda

- ❖ 12:30-1:00.....Doors Open, Lunch
- ❖ 1:00-1:04.....Introduction, Daniel Heimpel
- ❖ 1:04-1:10.....The History of Dependency Courts, Barry Krisberg
- ❖ 1:10-1:15.....An Introduction to the Code and Research, Jamie Kapalko
- ❖ 1:15-1:17.....Framing the Conversation, Daniel Heimpel
- ❖ 1:17-1:23.....Representation, Lily Dorman Colby
- ❖ 1:23-1:29..... Exploitation, Chantel Johnson
- ❖ 1:29-1:37.....Accountability, Judge Nash
- ❖ 1:37-1:45..... Sensationalism, Leslie Heimov
- ❖ 1:45-1:52..... Responsibility of Press, John Diaz
- ❖ 1:52-1:59..... Freedom of the Press, Jim Newton
- ❖ 1:59-2:45.....Q/A with Panel
- ❖ 2:45-3:00.....Clean Up, Event Ends

Featured Speakers



John Diaz, Editorial Page Editor for the San Francisco Chronicle

John Diaz joined the San Francisco Chronicle in 1990 as an Assistant City Editor and has spent the last 22 years producing effective and informed journalism with the paper. In 2007, Diaz won the Scripps Howard Foundation National Journalism Award for his editorials on the foster care system and has a body of experience producing work at the intersection of media and social welfare.



Leslie Heimov, Executive Director for the Children's Law Center of California

Leslie Heimov has worked at the intersection of law, public policy, and child welfare for years with the Children's Law Center as the Policy Coordinator and now Executive Director. Leslie leads a staff of 220 paralegals, attorneys, and social workers that represents children going through the dependency court system.



Daniel Heimpel, Executive Director and Founder of Fostering Media Connections

Daniel Heimpel, an award winning journalist and founder of FMC, has spent his career working to affect change in the child welfare system by harnessing the power of journalism to create change. Heimpel has written and produced stories about foster care for the *Los Angeles Daily News*, *Newsweek*, the *Seattle Times*, the *Huffington Post*, Current TV, and the *San Jose Mercury* among many others.



Jamie Kapalko, Harvard Law Student and FMC Legal Intern

Jamie Kapalko is a third-year student at Harvard Law School. She worked with FMC from January to May of this year researching the issue of open dependency courts through Harvard's Child Advocacy Program Clinic. Jamie has a background in journalism and interned at Sports Illustrated and Salon before law school. She has also interned at Kiva in San Francisco and, more recently, at the National Women's Law Center in Washington, D.C. After she graduates, Jamie will work at Lowenstein Sandler, a law firm based in New Jersey.



Barry Krisberg, Director of Research and Policy, Lecture in Residence at the Chief Justice Earl Warren Institute on Law and Social Policy

Barry Kirsberg has served a long and distinguished career in both academia and the state analyzing issues in juvenile justice. Prior to joining Berkeley, Dr. Krisberg was the President of the National Council on Crime and Delinquency from 1983 to 2009. He is known nationally for his research and expertise on juvenile justice issues



Chantel Johnson, Former Foster Youth and Legislative and Policy Coordinator for California Youth Connection

Chantel Johnson brings both professional and personal experience with the system to her position at California Youth Connection and has worked to improve child welfare throughout her career. Prior to her work with CYC, Chantel participated in the Center for California Studies, Capitol Fellows-Senate Fellowship and has held numerous internship positions including work with the Office of the California Lieutenant Governor.



Judge Michael Nash, Presiding Juvenile Court Judge

Judge Michael Nash was appointed to the Los Angeles Municipal Court in 1985 and has served as a Juvenile Court Judge since 1990. Judge Nash made headlines this year when he opened juvenile dependency courts to the press, sparking a national debate on the role of journalism and the media in these proceedings. Judge Nash has received numerous accolades including being named National Judge of the Year by the National Court Appointed Special Advocates Association in 2006.



Jim Newton, Editor at Large for the Los Angeles Times

Jim Newton is a seasoned editor with the Los Angeles Times, serving on the editorial board, advises on editorial matters, and writes and edits for the Editorial Page. Newton has spent over twenty years covering national and local issues and has produced a series of impactful stories on the opening of juvenile dependency courts in Los Angeles.

Code Of Ethics

Preamble

The juvenile dependency court has the potential to be a useful resource for journalists reporting on the child welfare system. It is also a forum that addresses difficult and often traumatizing experiences faced by some of the most vulnerable members of our society: abused and neglected children. Many people believe that the risk of harm to these children and their families outweighs any prospective benefit of press access to the juvenile dependency court and thus seek to exclude the media from the courtroom.

This distrust in the press is not unfounded; the mainstream media narrative about the child welfare system is sensationalistic and often inaccurate. However, many journalists strive to challenge this narrative by producing better stories that portray the system fairly and can draw attention to necessary reforms. When courts do allow members of the press to attend hearings, journalists must behave ethically in order to earn trust, improve coverage, and avoid harming children and families. This code of ethics seeks to define ethical behavior with respect to some of the common issues faced by journalists attending dependency court hearings. It requires journalists to treat their subjects with respect and compassion. It prioritizes the needs of children ahead of the journalist's story. It demands a great deal of research and encourages journalists to establish relationships with other individuals working in the system. This code of ethics was developed through consultation with a variety of stakeholders, including judges, journalists, people who work directly with children, and people who work in the field of public policy. It also draws from existing codes of ethics for newspapers, the Society for Professional Journalists, and international publications

Section 1: Professional Protocol for Hearings

A journalist who promises to adhere to the precepts in this Code of Ethics will:

- 1.1 Observe numerous hearings to gain an accurate picture of the system as a whole.
- 1.2 Identify oneself at the beginning of trial so that all stakeholders have the chance to understand the implications of having a journalist in court and raise any concerns they might have about the presence of a journalist.
- 1.3 Be familiar with court procedure, language, and protocol to ensure that the court runs smoothly and that the journalist can maximize effectiveness
- 1.4 Respect the child's decision regarding the presence of journalists and leave if the child is uncomfortable, regardless of the judges decision on the matter
- 1.5 Strive for accurate coverage of the system as a whole and do not exploit individual, sensationalistic details of a child's experience to garner attention
- 1.6 Maintain the anonymity of the child and the safety of all participants by
 - a. Not publishing the child's name or address
 - b. Not publishing parents or sibling's name or address that would identify child, even if other reporters have published them
 - c. Not publishing the name or address of any individual who may be reasonably endangered by identification
 - d. Reasonably assessing the community where the story is being published and the level of detail that could be used to identify a child or participant in the case

Section 2: Working with Children and Families

A journalist who promises to adhere to the precepts in this Code of Ethics will:

- 2.1. Recognize that the children and families involved in the child welfare system are some of the most vulnerable members of society
- 2.2. Consider a child's maturity level, mental health, disabilities, age, and other relevant factors in assessing whether or not an interview is in his or her interests.
- 2.3. Explain the foreseeable consequences of agreeing to an interview to ensure that consent is meaningful by including basic information like where the story will be published (newspaper, online, etc.), the fact that the interviewee will be quoted, and the possibility that the child's classmates will read the story.
- 2.4. Give the children the option to go off the record and fully explain what that means
- 2.5. Explain the scope of the story, including the events it will cover and the other people that will be interviewed.
- 2.6. Ensure that the interview does not give the interviewee false hope (Ex. Make it clear to parents that the publication of their story does not mean they will get their child back).
- 2.7. Get permission from the child and the appropriate adult before interviewing a child. If an adult has a clear personal interest in denying permission to interview a child (Ex. To protect their reputation) it is fair to state that in your story and warn the adult that you are doing so.
- 2.8. Ensure that the child feels comfortable by providing a list of questions beforehand.
- 2.9. Allow the child to choose an adult to be present in the room for the interview who is capable of setting boundaries and assessing the child's feelings
- 2.10. Explain to the child that he or she can refuse to answer a question at any point.



Section 3: System-Wide Understanding

A journalist who promises to adhere to the precepts in this Code of Ethics will:

- 3.1. Understand that there is more to the child welfare system than the dependency courts and that the courts are only one part of the system

A Watched System: Should Journalists be granted access to juvenile dependency court hearings?

Every day in courts around the country, children, families, social workers, attorneys, and guardians ad litem attend hearings involving some of the most acute determinations that can be made by the state. In these hearings (called “dependency hearings”), courts find that parents have abused or neglected their children, remove children from their homes, send children in foster care back into the custody of their parents, require families to use rehabilitative services, and sometimes even terminate parental rights (or decline to do any of these things). In over half of all states, these hearings are presumptively closed to members of the public and press. Some see this closure as secrecy that prevents journalists from accurately informing the public and legislators about the child welfare system. Others see it as a protective measure for children and families at one of the most sensitive times of their lives. In a growing minority of states, dependency hearings are presumptively open to the public and press. Most recently, Judge Michael Nash issued an order opening Los Angeles County’s dependency hearings to the press. The Los Angeles dependency court is a part of the Los Angeles Superior Court, the largest trial court system in the nation,¹ and the county’s foster care system is one of the country’s largest.

This report characterizes the state of the law around the country, describing the varying levels of access to dependency hearings that states give to members of the press. It then provides a closer look at the laws in three states – California, Minnesota, and Arizona – and how they function. Finally, this report describes the arguments made by those in favor of and opposed to open dependency hearings. This report focuses solely on the issue of press access, not wider public access, which involves a different set of considerations. The purpose

¹ *Court Services*, LOS ANGELES COUNTY SHERIFF’S DEPARTMENT, http://la-sheriff.org/lasd_services/contract_law/court_srv1.html (last visited Mar. 4, 2012); Kevin O’Leary, *And Justice for Some: L.A.’s Shrinking Court System*, TIME (Mar. 21, 2010), <http://www.time.com/time/nation/article/0,8599,1973909,00.html>.

of this effort is not to draw a conclusion about whether hearings should be presumptively open or closed to the press, but rather to gain a fuller understanding of the issue.

Overview of the State of the Law

Juvenile dependency courts are “presumptively closed” to the press in 28 states and “presumptively open” to the press in 24 states.² Statutes usually do not discuss the press specifically; rather, they refer to the general public, which includes the press. A few states distinguish between the general public and the press in their statutes and treat them differently.³ “Presumptively closed” generally means that by default, journalists may not attend a hearing, and journalists who want to attend have the burden of convincing the court to allow them to do so (under standards dictated by statute, usually involving some judicial discretion). Most commonly, state laws establishing presumptively closed courts allow judges to permit individual journalists to attend a hearing when they have a “proper,” “legitimate,” or “direct” interest in “the case or work of the court.”⁴ Several states also restrict journalists who attend from divulging information that identifies the child or family.⁵ A few states have statutes with language that minimizes opportunities for access to closed hearings, either by not mentioning the possibility of allowing access at all or by allowing judges to open hearings only when there are “compelling reasons” for doing so.⁶

“Presumptively open” courts allow members of the press to attend by default. State laws establishing these courts usually give the judge discretion to close hearings to all members of the press and public or bar specific individuals from attending (while leaving the hearing open to others) under certain circumstances, often

² The District of Columbia is included, and Nevada is counted in both categories because the law varies by county. See *infra* Tables 1 & 2.

³ 705 ILL. COMP. STAT. 405/1-5 (West, Westlaw through 2011 Reg. Sess. P.A. 97-679); N.M. STAT. ANN. § 32A-4-20 (West, Westlaw through 2011 Sess.).

⁴ CAL. WELF. & INST. CODE § 346 (West, Westlaw through 2012 Reg. Sess. Ch. 5); R.I. GEN. LAWS § 14-1-30 (West, Westlaw through 2011 Reg. Sess. Ch. 409); S.C. CODE ANN. § 20-7-755 (West, Westlaw through 2011 Reg. Sess.).

⁵ D.C. CODE § 16-2316 (West, Westlaw through Jan. 11, 2012); 705 ILL. COMP. STAT. 405/1-5.

⁶ ARK. CODE ANN. § 9-27-325 (West, Westlaw through 2011 Reg. Sess.); TENN. R. JUV. PROC. ART. III, R. 27 (West, Westlaw through Jul. 15, 2011); S.D. CODIFIED LAWS § 26-7A-36 (West, Westlaw through 2011 Sp. Sess.).

when doing so is in the child’s best interests.⁷ Like the “presumptively closed” category, there are also several states that prohibit journalists from disclosing identifying information about the child or family (or give judges discretion to prohibit such identification).⁸ Finally, a few states limit closure to “exceptional circumstances” or do not address closure at all in their statutes.⁹

This paper will assess three states’ laws in greater depth: California, Minnesota, and Arizona. California’s statute is representative of most states with presumptively closed courts, since it uses the common language -- “direct and legitimate interest in the particular case or the work of the court” -- mentioned above. Minnesota’s statute is one of the most open, allowing closure “only in exceptional circumstances.” Finally, Arizona’s courts are presumptively open and can be closed “for good cause shown” (in consideration of a set of factors listed in the statute), but the statute prohibits attendees (both members of the press and the general public) from releasing identifying information about the child. This feature is found in statutes establishing both presumptively closed and presumptively open courts.

California

Under California law, juvenile dependency courts are presumptively closed, but judges may allow individuals with a “direct and legitimate interest in the particular case or the work of the court” to attend.¹⁰ State courts have interpreted this language to allow press access unless there is a “reasonable likelihood” that such access will be harmful to the child’s best interests.¹¹ In practice, a journalist’s chances of being admitted to court vary from county to county,¹² and, individuals perceive the process by which journalists can seek

⁷ COLO. REV. STAT. § 19-1-106(2) (West, Westlaw through 2012 2nd Reg. Sess. Ch. 1); N.Y. R. FOR FAM. CT. § 205.4 (West, Westlaw through Sept. 15, 2011); N.C. GEN. STAT. § 7B-801 (West, Westlaw through 2011 Reg. Sess. S.L. 2012-1).

⁸ ARIZ. REV. STAT. ANN. § 8-525 (West, Westlaw through Feb. 16, 2012); CONN. GEN. STAT. § 46B-122 (West, Westlaw through 2011 Oct. Sp. Sess.).

⁹ MINN. STAT. ANN. § 260C.163(1)(C) (West, Westlaw through 2012 Reg. Sess. Ch. 123); NEB. REV. STAT. § 24-1001 (West, Westlaw through 2011 1st Special Session).

¹⁰ CAL. WELF. & INST. CODE § 346.

¹¹ *San Bernardino County Dept. of Public Social Services v. Superior Court*, 232 Cal. App. 3d 188, 208 (1991).

¹² Telephone interview with Michael Nash, Presiding Judge, Los Angeles County Juvenile Court (Jan. 11, 2012).

access to court very differently. For example, Judge Michael Nash of Los Angeles County says that before his blanket order, the process involved “some scrutiny” but that journalists sometimes gained access, but *San Francisco Bay Citizen* reporter Trey Bundy says that many journalists believe that they cannot gain access at all, at least in the Bay Area.¹³ Statutes establishing presumptively closed courts generally do not specify the procedure a journalist must follow to be considered for admission, so this procedure may vary across courts as well.

There are several examples of journalists gaining access to juvenile dependency courts in California under the presumptively closed system and writing significant stories as a result. For example, Karen de Sá of the *San Jose Mercury News* wrote a series in part about the dependency court’s failure to facilitate children’s attendance at their own dependency hearings,¹⁴ which led to legislation designed to increase youth participation in those hearings.¹⁵ She says she spent six months “cajoling” judges to allow her to attend proceedings, coming to different agreements about whom she could interview and what she could publish (generally, no information identifying the parties). One court asked her to sign a contract.¹⁶ In the late 1990s, Judge Leonard Edwards opened his Santa Clara County courtroom to two journalists, who wrote a book about the system.¹⁷

In November 2011, Judge Nash proposed a blanket order to presumptively open courts in Los Angeles County to the public.¹⁸ Judge Nash explains that his proposal was motivated by a desire to standardize the manner in which judges determine whether to allow someone into a hearing, characterizing the process under existing law as “ad hoc.”¹⁹ On January 31, 2012, Nash modified his proposal to limit presumptive openness to

¹³ *Id.*; interview with Trey Bundy, Reporter, *Bay Citizen*, in San Francisco, Cal. (Jan. 17, 2012).

¹⁴ Karen de Sá, *Broken Families, Broken Courts*, SAN JOSE MERCURY NEWS, Feb. 8-12, 2008.

¹⁵ See A.B. 3051, 2008 Leg. Serv., Reg. Sess. (Cal. 2008) (enacted); STAFF OF THE ASSEMBLY JUDICIARY COMMITTEE, OPTIONS FOR IMPROVING OUTCOMES FOR FOSTER CHILDREN BY INCREASING THE EFFECTIVENESS OF DEPENDENCY HEARINGS, at 4 (2011) (hereinafter “California Legislative Report”).

¹⁶ Telephone interview with Karen de Sá, Staff Writer, *San Jose Mercury News* (Feb. 15, 2012).

¹⁷ JOHN HUBNER AND JILL WOLFSON, SOMEBODY ELSE’S CHILDREN (1997).

¹⁸ Blanket Order Re: WIC 346 and Public and Media Attendance at Dependency Court Hearing, Superior Court of California, County of Los Angeles (2011) (proposed).

¹⁹ Interview with Judge Michael Nash, *supra* note 12.

the press and issued the order, which became effective immediately.²⁰ The first journalists promptly began attending and reporting on hearings.²¹ One week after the courts opened, the Children’s Law Center of California, whose attorneys represent children in dependency hearings, filed a writ seeking a stay of the order on the grounds that Judge Nash exceeded his authority in issuing it.²² The writ was denied.²³

Minnesota

Juvenile dependency courts in Minnesota are presumptively open to the press and general public, and, in addition, hearings can be closed only in “exceptional circumstances.”²⁴ When a judge closes a hearing, he or she must note the reasons for doing so on the record, and any order closing a hearing must be accessible to the public.²⁵ Minnesota opened some of its courts to the public in a pilot program from 1998 to 2002.²⁶ The committee that developed the standards that would govern the pilot program recommended the “exceptional circumstances” standard, arguing that a closed system lacks accountability and is inconsistent with open criminal proceedings, which can also involve juvenile victims.²⁷ The committee also noted that Michigan had a positive experience with open courts.²⁸ It added two caveats to its recommendation of presumptive openness:

²⁰ Blanket Order Re: WIC 346 and Public and Media Attendance at Dependency Court Hearing, Superior Court of California, County of Los Angeles (Jan. 31, 2012).

²¹ See Garrett Therolf and John Hoeffel, *Media Gain Access to L.A. County Children’s Courts*, LOS ANGELES TIMES (Feb. 7, 2012, 10:21 PM), <http://www.latimes.com/news/local/la-me-open-child-court-20120207,0,7550479.story>.

²² Petition for Writ of Mandate and Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities; Declaration of Notice – Local Appellate Rule 6; Exhibit 1 at 2, *Children’s Law Ctr. of Cal. v. Superior Court of Los Angeles*, No. B238899 (Cal. Ct. App. 2012).

²³ Appellate Courts Case Information, CALIFORNIA COURTS, http://appellatecases.courtinfo.ca.gov/search/case/disposition.cfm?dist=2&doc_id=2004628&div=2&doc_no=B238899 (last visited Mar. 4, 2012).

²⁴ MINN. STAT. ANN. § 260C.163(1)(C).

²⁵ *Id.*

²⁶ FRED L. CHEESMAN, II, NATIONAL CENTER FOR STATE COURTS, KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS ii (2001).

²⁷ MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON OPEN HEARINGS IN JUVENILE PROTECTION MATTERS, INTRODUCTION TO FINAL REPORT OF NATIONAL CENTER FOR STATE COURTS 6-7 (2001) (hereinafter “MINNESOTA ADVISORY COMMITTEE REPORT”).

²⁸ *Id.* at 7.

that parents should have the opportunity to plead no contest because of the risk that openness could chill admissions of wrongdoing, and that the media be trained, particularly about relevant ethical issues.²⁹

The National Center for State Courts (NCSC) assessed the pilot program in 2001. It found that in the pilot program, few hearings were closed, and those that were closed tended to involve incest, sexual abuse, a parent's psychological condition, child death, children whose identities were readily discernible, HIV, or sensational cases.³⁰ The NCSC reported that the switch to presumptive openness had almost no impact; attendance increased somewhat, but journalists rarely attended.³¹ Media coverage did not change when the courts were opened and did not improve the public's awareness of child welfare issues,³² although a court watchdog group attended hearings and produced an extensive report detailing how the court functioned and how it could improve.³³ The NCSC attempted to discern whether the pilot program caused "instances of extraordinary harm" to children and families through surveys and a study of newspaper articles.³⁴ It found one case that involved a "media frenzy," in which the judge closed the hearing and the press videotaped the mother through the windows of the courthouse.³⁵ However, it is unclear exactly what role the pilot program played in this frenzy, particularly since the case had been ongoing for two years and had already involved significant media coverage.³⁶ Other than this isolated example, the NCSC found no evidence of any "gross irresponsibility" by journalists or instances in which presumptive openness harmed a party to a case.³⁷

²⁹ *Id.* at 7-8.

³⁰ Cheesman, *supra* note 26, at 6.

³¹ *Id.* at 6.

³² *Id.* at 16.

³³ REBECCA CUTTY, WATCH, WATCH'S MONITORING OF OPEN CHIPS CASES IN HENNEPIN COUNTY JUVENILE COURT 1 (2001).

³⁴ Cheesman, *supra* note 26, at 15.

³⁵ *Id.* at 16.

³⁶ *See id.*

³⁷ *Id.*

However, at least one academic has criticized the reporting for not adequately researching whether such harm occurred.³⁸

After the NCSC submitted its report, the Minnesota Supreme Court issued a court order establishing presumptively open dependency courts throughout the state (under the standard discussed above) beginning in 2002.³⁹ Before the order took effect, journalists had the opportunity to attend a media orientation sponsored by the state supreme court, the Minnesota Newspaper Foundation, and the Society for Professional Journalists.⁴⁰ The stated purposes of this orientation were “to provide reporters with an understanding of child protection process and proceedings,” “to inform reporters about access to child protection hearings and records,” and “to provide reporters with information and contacts helpful to them in covering child protection proceedings.”⁴¹ Court administrators, judges, attorneys, and social workers also received training.⁴² The state legislature amended the relevant statute to match the court order in 2008.⁴³

Arizona

Under Arizona law, juvenile dependency courts are presumptively open to the press and general public. A judge can close a hearing for good cause shown, in light of six factors: 1) “the child’s best interests,” 2) the possibility that openness will “endanger the child’s physical or emotional well-being or the safety of any other person,” 3) “the privacy rights of the child, the child’s siblings, parents, guardians and caregivers,” 4) “whether all parties have agreed to allow” openness, 5) “the child’s wishes,” if he or she is twelve or older and a party,

³⁸ See William Wesley Patton, *Revictimizing Child Abuse Victims: An Empirical Rebuttal to the Open Juvenile Dependency Court Reform Movement*, 38 SUFFOLK U. L. REV. 303, 310-12 (2005).

³⁹ Order Mandating Public Access to Hearings and Records in Juvenile Protection Matters, Minnesota Supreme Court, C2-95-1476 (Dec. 26, 2001).

⁴⁰ See MINNESOTA SUPREME COURT, MINNESOTA NEWSPAPER FOUNDATION, & SOCIETY OF PROFESSIONAL JOURNALISTS, OPEN CHILD PROTECTION HEARINGS AND RECORDS (2002) (inviting journalists to the orientation); MEDIA ORIENTATION: ACCESS TO HEARINGS AND RECORDS IN CHILD PROTECTION PROCEEDINGS (2002) (outlining the agenda for the orientation) (hereinafter “MINNESOTA ORIENTATION AGENDA”).

⁴¹ MINNESOTA ORIENTATION AGENDA, *supra* note 40, at 1.

⁴² E-mail from Judith C. Nord, Staff Attorney and Manager, Children’s Justice Initiative, Minnesota State Court Administrator’s Office – Court Services Division, to Jamie Kapalko (Feb. 16, 2012, 18:44 CEST) (on file with author).

⁴³ MINN. STAT. ANN. § 260C.163(1)(C).

and 6) whether openness “could cause specific material harm to a criminal investigation.” Additionally, when a hearing is open to the public, the judge must prohibit attendees from divulging information that may identify “the child and the child’s siblings, parents, guardians and caregivers, and any other person whose identity will be disclosed during the proceeding.” If an attendee violates this prohibition, the judge may find him or her in contempt of court.⁴⁴

The Arizona legislature passed this law and transitioned from presumptively closed courts in 2008 based on a pilot program it had completed several years earlier to test open courts.⁴⁵ Like Minnesota, it found that members of the public, especially journalists, rarely attended proceedings and that openness had little impact.⁴⁶

Arizona is not alone in barring any attendees, including journalists, from disclosing identifying information; eight other states do the same or give judges discretion to prohibit such disclosure.⁴⁷ However, this practice raises a potential First Amendment problem, and similar practices have been found unconstitutional in other contexts.⁴⁸

⁴⁴ ARIZ. REV. STAT. ANN. § 8-525.

⁴⁵ H.R. 2453, 48th Leg., 2nd Regular Sess. (Ariz. 2008).

⁴⁶ GREGORY B. BROBERG, ARIZONA OPEN DEPENDENCY HEARING PILOT STUDY: FINAL REPORT 9 tbl.3, 15 (2006).

⁴⁷ See *infra* Tables 1 & 2; ALA. CODE § 12-15-129 (West, Westlaw through 2011 Reg. Sess.); ALASKA STAT. § 47.10.070 (West, Westlaw through 2011 First Sp. Sess.); CONN. GEN. STAT. § 46B-122; D.C. CODE § 16-2316; GA. CODE ANN. § 15-11-78 (West, Westlaw through 2011 Sess.); 705 ILL. COMP. STAT. 405/1-5; N.M. STAT. ANN. § 32A-4-20; VT. STAT. ANN. TIT. 33, § 5110 (West, Westlaw through 2012 Sess. No. 67)..

⁴⁸ In one case involving a juvenile delinquent, the Supreme Court struck down a court order prohibiting journalists from publishing the minor’s name and photo as a violation of the freedom of the press. *Oklahoma Pub. Co. v. District Court in and for Oklahoma County*, 430 U.S. 308, 311 (1977). The minor’s name and photo were already in the public domain. *Id.* at 309. In another juvenile delinquency case, the Court found unconstitutional a statute criminalizing the publication of a juvenile delinquent’s name, even when obtained lawfully by listening to police radio frequency and interviewing witnesses, under the same principle. *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104-06 (1979). In these cases and in the dependency context, the privacy at issue is that of a minor, but these cases differ because they involve delinquency. They also differ from most dependency cases because in *Oklahoma Publishing*, the identifying information was already in the public domain, and in *Smith*, it was obtained outside of court via reporting. *Smith* also involves a criminal sanction. Similarly, in an invasion of privacy lawsuit grounded in a statute criminalizing publication of rape victims’ names, the Court found unconstitutional the imposition of sanctions on a media organization for publishing a victim’s name, which was in the public record. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975). However, this case involved sanctions, and the victim was an adult. The Supreme Court has never assessed restrictions on publication in the juvenile dependency context, but several state courts have done so. In California, a lower court granted a newspaper permission to attend a specific set of dependency proceedings as long as it refrained from publishing the children’s names (among other restrictions). The newspaper petitioned for a writ of mandamus or prohibition, and an appellate court found that the prohibition on publication of names was unconstitutional. *San Bernardino County Dept. of Public Social Services v. Superior Court*, 232 Cal. App. 3d 188, 206 (1991). Again, unlike the identities of most children involved in dependency proceedings, this information was in the public domain before the hearing; the newspaper

Other Approaches

Some states have taken more unique approaches to dependency court access. For example, Illinois and New Mexico preceded Los Angeles County in distinguishing between the press and the public.⁴⁹ Both states' statutes specify that dependency hearings are presumptively open to the press but presumptively closed to the general public. Several legislatures have identified parts of hearings that must be closed, even when the hearings in general are open. For example, Alaska requires judges to hear in camera any information about the location of a "parent, child, or other party to the case who is a victim of domestic violence or whose safety or welfare may be endangered by public release of the information."⁵⁰ Indiana requires closure of hearings during the testimony of a child if the testimony involves sexual matters and closure is necessary to protect the child's welfare.⁵¹ It also requires closure in some circumstances during the testimony of healthcare providers, social workers, and therapists.⁵² Michigan similarly demands that judges close hearings during the testimony of juvenile witnesses or the victim if necessary to protect their welfare.⁵³ Nevada distinguishes districts containing counties with a population of 700,000 or more from the rest of the state's counties.⁵⁴ Juvenile dependency courts are presumptively open in districts that break the 700,000 mark and presumptively closed in all other districts.⁵⁵ This distinction specifically targets Clark County, the most populous county in the state and the only

had already reported on the case and the story had even received national attention. *Id.* at 193. In Illinois, the state supreme court held that a dependency court's prohibition of the publication of information identifying the minor victims of abuse was constitutional. In re Minor, 595 N.E.2d 1052, 1057 (Ill. 1992). It emphasized the privacy right of the innocent minors. *Id.* at 1056. This case is perhaps the most relevant, as it does not involve information in the public domain or the enforcement of a sanction, and it involves minors in a dependency hearing. However, the court also noted that the hearing was closed to the general public, unlike the hearing in *Oklahoma Publishing*. *Id.* at 1057. It is unclear how the court would have ruled if the hearing had been open to the general public, as many dependency hearings are.

⁴⁹ 705 ILL. COMP. STAT. 405/1-5; N.M. STAT. ANN. § 32A-4-20.

⁵⁰ ALASKA STAT. § 47.10.070.

⁵¹ IND. CODE § 31-32-6-4 (West, Westlaw through 2011 1st Reg. Sess.).

⁵² *Id.*

⁵³ Mich. Comp. Laws § 712A.17 (West, Westlaw through 2012 Reg. Sess. P.A. 2012 No. 13).

⁵⁴ Act of Jun. 4, 2011, ch. 253 sec. 214, 2011 Nev. Reg. Sess. Laws (2011) (amending Nev. Rev. Stat. § 432B.430 (West, Westlaw through 2010 Sp. Sess.)).

⁵⁵ *Id.*

one with more than 700,000 residents.⁵⁶ In North Carolina, hearings are presumptively open and cannot be closed if the juvenile requests openness, even if the judge thinks closure would be in the child's best interests.⁵⁷

Arguments About Presumptive Openness

The two most important debates about open courts are 1) whether openness harms the children involved in the open cases, and 2) how openness affects media coverage and social change. These arguments are discussed below.⁵⁸ This section also addresses the role of court records in this debate, as well as an argument questioning the need for the debate at all.

Best Interests of the Child

Opponents of presumptive openness present the following arguments: Press access to juvenile dependency hearings presents an unacceptable risk of harm to the children involved. If a journalist publishes a story with the details of a child's case, particularly details that allow a child to be identified, the child may be traumatized. For example, if a child's classmates find out that he or she is HIV-positive or is the victim of sexual abuse, they may harass the child. Many children in the child welfare system do not want others to know about their experiences in the system and just want to be treated like "normal" children. Also, if a child attends his or her hearing, the presence of additional strangers in the room can make the experience more upsetting. In the states whose open courts have been studied, children did not attend hearings frequently.⁵⁹ However, California has a

⁵⁶ See Legislative Counsel Bureau, *2010 Population of Counties in Nevada*, NEVADA LEGISLATURE (Feb. 25, 2011), <http://www.leg.state.nv.us/Division/Research/Districts/Reapp/2011/Tables/PopulationOfCountiesInNevada2010.pdf>. The statute previously used 400,000 as the relevant number of residents instead of 700,000, but amended the law in 2011, *see* Act of Jun. 4, 2011, ch. 253 sec. 214, 2011 Nev. Reg. Sess. Laws (2011) (amending Nev. Rev. Stat. § 432B.430), near the time when the second most populous county in the state crossed the 400,000 mark, indicating an intent to limit presumptive openness to Clark County.

⁵⁷ N.C. GEN. STAT. § 7B-801.

⁵⁸ Interviews with stakeholders are cited throughout this section. Those interviewed had nuanced views of the debate, so even though interviews may be cited in an argument on either side (or even both), this does not necessarily reflect the person's ultimate position on the issue.

⁵⁹ *See, e.g.,* Broberg, *supra* note 46, at 15 ("Children were present in 260 (6%) of the 4,100 dependency hearings that were part of this analysis [of the Arizona pilot program]. The vast majority of these children were older, dually-adjudicated youth.")

strong commitment to youth participation in their own hearings.⁶⁰ The child’s attorney often identifies the strangers in the courtroom for the child, but is typically able to explain the role that each of these strangers plays in assisting the family (“That’s your mom’s lawyer, that man takes notes for the judge...”).⁶¹ Adding journalists makes the experience more embarrassing and discomforting.⁶² It may also discourage children, who are often already reluctant to testify, from sharing information.⁶³ Furthermore, parents may be less willing to admit to wrongdoing in court if they know the media is watching, ready to alert the public,⁶⁴ and allowing parents to plead no contest allows them to deny responsibility, which is a necessary step toward rehabilitation and reunification.⁶⁵ The children in the child welfare system have done nothing wrong, and their interests and wishes must be prioritized. They should have the right to determine whether the media or any other member of the public is allowed into the proceedings.

Supporters of presumptive openness present the following arguments: The risks are not as significant as opponents claim. Journalists, particularly those who cover the child welfare system, are sensitive to children’s vulnerabilities and are not the exploitative “vultures” opponents describe.⁶⁶ In fact, the pilot program studies in Minnesota, Arizona, and Connecticut did not find any evidence that stories resulting from open dependency courts harmed children.⁶⁷ Many of the most gruesome cases and those likely to attract media attention also involve criminal trials, which are open to the press, so details of those cases can be publicized anyway.⁶⁸ Also, not all children would want privacy, if given the choice with full understanding of the consequences; some

⁶⁰ See Erik S. Pitchal, *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 U.C. Davis J. of Juvenile Law & Policy 233, 259-60 (2008) (describing California’s success, and particularly the success of Los Angeles County, in facilitating youth participation).

⁶¹ Telephone interview with Leslie Heimov, Executive Director, Children’s Law Center of California (Feb. 27, 2012).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ MINNESOTA ADVISORY COMMITTEE REPORT, *supra* note 27, at 7-8.

⁶⁵ *Id.* at 9.

⁶⁶ Telephone interview with Marjie Lundstrom, Reporter, *Sacramento Bee* (Jan. 31, 2012).

⁶⁷ Broberg, *supra* note 46; Cheesman, *supra* note 26; JUVENILE ACCESS PILOT PROGRAM ADVISORY BOARD, REPORT TO THE CONNECTICUT GENERAL ASSEMBLY (2010).

⁶⁸ See MINNESOTA ADVISORY COMMITTEE REPORT, *supra* note 27, at 6-7; interview with Karen de Sá, *supra* note 16; telephone interview with Howard Davidson, Director, ABA Center for Children and the Law (Feb. 8, 2012).

would prefer to take on an advocate role and share their stories.⁶⁹ There are even examples of children who have benefited from media exposure of their cases.⁷⁰ Additionally, the risk of harm to children can be minimized in several ways. Judges can be given discretion to close proceedings to protect the child or family.⁷¹ Children and their attorneys can be given the opportunity to object to an open proceeding or perhaps even a more powerful right to obtain closure on demand.⁷² In some states, journalists can be prohibited from divulging identifying information (although this raises a First Amendment issue, discussed above). Perhaps the issue can also be addressed on a community-by-community basis; for example, presumptive openness might be more appropriate in a large urban area than in a smaller, less populated area where individuals in stories can be identified more easily.⁷³ To address the problem of parents being less willing to admit to wrongdoing when the press is present, states can allow parents to plead no contest.⁷⁴

Improved Media Coverage, Accountability, and Systematic Reform

Opponents of presumptive openness present the following arguments: The claim that presumptive openness will cause sweeping reform or even an improvement in media coverage is dubious. The reports on pilot programs in Minnesota, Arizona, and Connecticut all found that journalists rarely attend hearings or write about them when the courts are presumptively open. Supporters of openness are too trustful of journalists and their ability and willingness to write responsible stories about the child welfare system rather than the sensationalistic coverage that dominates the mainstream narrative and has the potential to harm children. Journalists take advantage of

⁶⁹ Telephone interview with Martha Matthews, Directing Attorney of the Children's Rights Project, Public Counsel (Jan. 13, 2012).

⁷⁰ Telephone interview with Robert Fellmeth, Price Professor of Public Interest Law and Founder of the Children's Advocacy Institute, University of San Diego Law School (describing instances of children receiving trust funds after publicity from news stories); interview with Marjie Lundstrom, *supra* note 66 (discussing one young woman who had a positive experience sharing her story with the media).

⁷¹ Interview with Trey Bundy, *supra* note 13; interview with Robert Fellmeth, *supra* note 70.

⁷² Interview with Martha Matthews, *supra* note 69.

⁷³ Telephone interview with David Sanders, Executive Vice President of Systems Improvement, Casey Family Programs (Feb. 10, 2012).

⁷⁴ See MINNESOTA ADVISORY COMMITTEE REPORT, *supra* note 27, at 7-8.

open courts when a case is “grisly,” but generally do not make an attempt to observe “the slog.”⁷⁵ If the grisly, high-profile cases are closed to protect the interests of the child, “we would be left with this paradox: the press would not be admitted to the hearings they most want to report on and they would not report on the hearings in which they would be entitled to attend.”⁷⁶ Furthermore, simply “parachuting in” and observing a few hearings over the course of a few hours is not going to give a journalist an accurate picture, and reporting about such an experience misinforms the public and may even lead to the wrong reforms.⁷⁷ In addition, do journalists need access to hearings to adequately cover the system? There is already a great deal of information available to journalists who want to write about child welfare issues, and attending hearings may not be particularly enlightening.⁷⁸ Many cases are settled, and much of what happens that affects case outcomes takes place in bench conferences or at pre-trial conferences (which are not open).⁷⁹ In fact, simply attending a hearing may give a journalist a skewed perspective on the system.⁸⁰ Instead, journalists can talk to judges, attorneys, social workers, and community organizers to get a balance of perspectives.⁸¹ On the other hand, it is understandable that a journalist writing about child welfare would want to observe hearings, and they should be able to do so – on a case-by-case basis.⁸² A presumptively closed system can give journalists sufficient access; for example, Karen de Sá got permission to attend court and wrote her articles in a presumptively closed system.⁸³

Supporters of presumptive openness present the following arguments: News media access to juvenile dependency hearings allows journalists to produce stories about the child welfare system in a way that increases

⁷⁵ Telephone interview with Jim Theofelis, Executive Director, Mockingbird Society (Feb. 2, 2012).

⁷⁶ William Wesley Patton, *Pandora’s Box: Opening Child Protection Cases to the Press and Public*, 27 W. ST. U. L. REV. 181, 194 (1999-2000).

⁷⁷ Interview with Leslie Heimov, *supra* note 61.

⁷⁸ Interview with Martha Matthews, *supra* note 69 (arguing that attending court will not help a journalist identify systematic problems because hearings are short and most of what happens in the system happens outside of court. However, there is a tremendous amount of information available, including statistics, that will show a journalist the systematic problems).

⁷⁹ Interview with Howard Davidson, *supra* note 68.

⁸⁰ Discussion with Child Advocacy Clinical Seminar Class, Harvard Law School (Jan. 25, 2012).

⁸¹ Interview with Shalita O’Neale, Founder and Executive Director, Maryland Foster Youth Resource Center (Feb. 21, 2012).

⁸² Interview with Pamela Butler, Child Welfare Policy Manager, Children First for Oregon (Feb. 22, 2012).

⁸³ Interview with Chantel Johnson, Legislative and Policy Coordinator, California Youth Connection (Feb. 23, 2012).

accountability for individuals working in the system (like judges and social workers) and can lead to reform. There are many examples of journalists who accessed hearings and wrote stories that drew attention to issues in the system and sometimes even led to reform, like Karen de Sá's series on youth participation for the San Jose Mercury News.⁸⁴ The court provides an opportunity for journalists to learn about important problems.⁸⁵ De Sá says that the experience of attending dependency courts was "absolutely invaluable," and that she was able to observe important (and sometimes problematic) elements of the hearings, like varying qualities of legal representation for the parties, judges' commitment to the juvenile court bench, and the length of hearings.⁸⁶ If journalists had access to more information, the "master narrative" of the child welfare system, which is a "horror story" of "monstrous parents" and "government malfunction"⁸⁷ lacking "contextualizing information, such as data or references to patterns, themes, or trends" might transform into a more accurate one.⁸⁸ If journalists could provide a more complete, realistic portrayal of the system, the public and legislators would be better able to understand what types of reform are necessary and possible.⁸⁹ Additionally, actors in the system like social workers, judges, and attorneys would be forced to answer to the public, rather than working in secrecy.⁹⁰ In our democratic society, the public has a right to know how our government is functioning, and that knowledge is necessary to the proper functioning of our political system.

⁸⁴ See de Sá, *supra* note 14; California Legislative Report, *supra* note 15; see also CHILDREN'S ADVOCACY INSTITUTE, *Price Child Health and Welfare Journalism Award*, <http://www.caichildlaw.org/price-awards.htm> (last visited Feb. 2, 2012).

⁸⁵ Interview with Jim Theofelis, *supra* note 75 (describing his personal experience attending dependency court and witnessing an unprepared social worker ask for a continuance, as well as a conflict between an infant's attorney and the guardian ad litem for the infant's siblings that showed the importance of legal representation).

⁸⁶ Karen de Sá interview, *supra* note 16.

⁸⁷ See Matthew Fraidin, *Stories Told and Untold: Confidentiality Laws and the Master Narrative of Child Welfare*, 63 ME. L. REV. 1, 12-13 (2010).

⁸⁸ *Id.* at 6.

⁸⁹ *Id.* at 4 (describing the media's power of "agenda-setting").

⁹⁰ Interview with Robert Fellmeth, *supra* note 70; interview with Marjie Lundstrom, *supra* note 66.

Transcripts and Records

As of 2010, dependency court records were presumptively available to the public to some extent in seven states.⁹¹ Records include documents submitted to the court by the parties and sometimes documents from the child's social worker's or attorney's files. Some people argue that these records should be open to the press for many of the same reasons given in the argument about hearings, while others say that information in the records is even more sensitive than hearings and thus must be kept private.⁹² It is important to note that under federal law, records must be kept confidential in order for states to receive certain federal funding for child welfare programs. The Child Abuse Prevention and Treatment Act ("CAPTA") requires states to use "methods to preserve the confidentiality of all records in order to protect the rights of the child, his parent or guardians."⁹³ What about limiting access to the court's transcripts of hearings as a substitute for attending hearings? Some believe that transcripts can provide most of the information of value that a journalist would otherwise get from a hearing,⁹⁴ while others think that important things are lost in the transcription of a hearing. Access to transcripts eliminates the concern about the presence of journalists upsetting children at their hearings, which is particularly important in states like California that encourage children to attend, but not the concern that children will be traumatized by articles that journalists publish about their cases, since transcripts will reveal much of the same sensitive information discussed at the hearing. These transcripts could be redacted, although that raises new issues of the extent to which they should be redacted and the administrative difficulties of doing so (including a lack of resources and time).

⁹¹ *Public Access to Dependency Court Records*, FIRST STAR, <http://www.firststar.org/library/legal-research/public-access-to-dependency-court-records.aspx> (last visited Mar. 4, 2012).

⁹² See, e.g., Fraidin, *supra* note 87, at 59; Veena Srinivasa, Note, *Sunshine for D.C.'s Children: Opening Dependency Court Proceedings and Records*, 18 GEO. J. ON POVERTY L. & POL'Y 79, 80, 97-98 (2010).

⁹³ 42 U.S.C. s. 5106a(b)(2)(B)(viii) (West, Westlaw through 2012 P.L. 112-89). CAPTA was amended in 2003 to state that "nothing... shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families."

⁹⁴ Interview with Trey Bundy, *supra* note 13.

Implications of the Lack of Impact of Open Courts

One final perspective on the debate over open juvenile dependency courts questions the need for any debate at all. If, as the studies of pilot programs show, opening the courts has almost no discernable impact, perhaps it does not matter whether they are presumptively open or closed. Arguing about it simply distracts stakeholders from accomplishing real reform.⁹⁵ Unfortunately, there are no short- or long-term external, independent studies of the effects of open courts,⁹⁶ and it is unlikely that the debate will end anytime soon. It is too easy to imagine the potential consequences of an open court system, good and bad, however unlikely. The discussion has focused on what legislatures and courts should do to protect children and families and to encourage systematic reform, but there is yet another angle: the journalists' responsibilities. If journalists covering the child welfare system followed a code of ethics that 1) promoted media coverage aimed at accurately depicting the system's problems and bringing about reform, and 2) demanded that journalists treat vulnerable children and families with respect, open courts might have a significant positive impact.

Conclusion

State laws dictating whether dependency hearings are presumptively closed or open to the press vary from state to state. Most states prohibit the press from attending hearings unless certain conditions are met, while a significant minority allows the press to attend hearings except in particular circumstances. Some states bar the press from identifying the parties in the hearings they attend, and a few states use more unique methods of striking the right balance between transparency and privacy. The issue is a contentious one, particularly in California, where Los Angeles County recently converted to presumptive openness by court order. Stakeholders strongly disagree about the effects of open courts on the best interests of children, the quality of media coverage, the accountability of actors in the child welfare system, and systematic reform. There is a

⁹⁵ Interview with Martha Matthews, *supra* note 69.

⁹⁶ Interview with Howard Davidson, *supra* note 68.

strong possibility that presumptively open courts have little impact at all. If that is the case – and even if not – part of the focus on the issue must turn to the responsibility of journalists. What can journalists do to inform the public in a way that enables reform? How can journalists ensure that their work does not harm children? Perhaps if these questions were answered and media coverage of the child welfare system improved, the benefits of open courts would grow and the risks would diminish.

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Openness of Juvenile Dependency Hearings by State

Table 1: Presumptively Closed

<i>State</i>	<i>Standard for opening</i>	<i>Code provision</i>
Alabama	Individuals with proper interest in the case or work of the juvenile court Must not divulge information identifying the child or family	Ala. Code § 12-15-129
Arkansas	No opening allowed in cases of child maltreatment or children in foster care	Ark. Code Ann. § 9-27-325
California	Individuals with direct and legitimate interest in the particular case or the work of the court	Cal. Welf. & Inst. Code § 346
Delaware	In the public interest	Del. Code Ann. tit. 10, § 1063
District of Columbia	Individuals with proper interest in the case or work of the court (can include press) Must not divulge information identifying the child or family	D.C. Code § 16-2316
Hawaii	Individuals with a direct interest in the case, from the standpoint of the child's best interests, or in the work of the court	Haw. Rev. Stat. § 571-41
Idaho	Individuals with a direct interest in the case	Idaho Code Ann. § 16-1613
Kentucky	Individuals with direct interest in case or work of court	Ky. Rev. Stat. Ann § 610.070(3)
Louisiana	Individuals with proper interest in proceedings or work of court	La. Child. Code Ann. art. 407
Maine	Court order	Me. Rev. Stat. tit. 22, § 4007
Massachusetts	Individuals with direct interest in the case	Mass. Gen. Laws ch. 119, § 65
Mississippi	Individuals with direct interest in the cause or work of the court, and they then have the right to appear and be represented by counsel	Miss. Code Ann. § 43-21-203
Missouri	Individuals with direct interest in case or work of court	Mo. Rev. Stat. § 211.171
Montana	Records can be disclosed to the public if disclosure is necessary to the fair resolution of an issue before the court	Mont. Code Ann. § 41-3-205
Nevada	Openness allowed when in best interests of child, taking into consideration child's wishes Individuals with direct interest in case	Nev. Rev. Stat. § 432B.430
New Hampshire	Individuals invited by a party, with court approval	N.H. Rev. Stat. Ann. § 169-C:14
North Dakota	Individuals with proper interest in proceedings	N.D. Cent. Code § 27-20-24
Oklahoma	Individuals with direct interest in case Confidential information cannot be discussed in open court	Okla. Stat. tit. 10A, § 1-4-503

Pennsylvania	Individuals with proper interest in proceeding or work of court	42 Pa. Cons. Stat. Ann. § 6336
Rhode Island	Individuals with a direct interest in the case	R.I. Gen. Laws § 14-1-30
South Carolina	Individuals with direct interest in case or work of court	S.C. Code Ann. § 20-7-755
South Dakota	Compelling reasons to require openness	S.D. Codified Laws § 26-7A-36
Tennessee		Tenn. R. Juv. Proc. art. III, R. 27
Vermont	Individuals with proper interest in case or work of court No publicity given to any proceedings without consent of child, guardian ad litem, and parent/guardian/custodian	Vt. Stat. Ann. tit. 33, § 5110
Virginia	Judge's discretion to allow individuals	Va. Code Ann. § 16.1-302
West Virginia	Individuals with legitimate interest in proceedings	W. Va. R. Proc. for Child Abuse & Neglect Proceedings 6A
Wisconsin	Individuals with proper interest in case or work of court Proceedings can be opened to public if child requests a hearing about it, but if parent or guardian can object court must refuse hearing	Wis. Stat. § 48.299
Wyoming	Individuals with proper interest in proceedings or work of court	Wyo. Stat. Ann. § 14-3-424

Table 2: Presumptively Open

<i>State</i>	<i>Standard for closure</i>	<i>Restrictions on openness</i>	<i>Code provision</i>
Alaska	Written order that openness would reasonably be expected to A) stigmatize or be emotionally damaging to a child; B) inhibit a child's testimony; C) disclose matters otherwise required to be confidential; or D) interfere with a criminal investigation or a criminal defendant's right to a fair trial	Several types of hearings are always closed Court hears in camera information about location of a party who is a domestic violence victim or whose safety or welfare may be endangered by public release of that information Attendees must not disclose information identifying the child and court can impose appropriate sanctions	Alaska Stat. § 47.10.070
Arizona	Good cause shown, considering 1) child's best interests; 2) physical or emotional danger of open proceeding to child or others; 3) privacy rights; 4) agreement of parties; 5) child's wishes, if 12+; 6) possibility of specific material harm	Attendees must not disclose information identifying child, siblings, parents, guardians and caregivers and any other person whose identity is disclosed in hearing, and court can find violators in contempt	Ariz. Rev. Stat. Ann. § 8-525

	to criminal investigation		
Colorado	Best interests of child or community, in which case only people with interest in the case or the work of the court are allowed in		Colo. Rev. Stat. § 19-1-106(2)
Connecticut	Judge can exclude anyone whose presence is not necessary Judge can permit anyone with a legitimate interest in the hearing or work of the court, including media	For child's safety and protection and good cause shown, judge can prohibit attendees from disclosing information identifying the child, custodian or caretaker, or child's family	Conn. Gen. Stat. § 46b-122
Florida	Public interest or welfare of child is best served by closure TPR and adoption proceedings must always be closed		Fla. Stat. § 39.507(2), 39.809(4), 63.162
Georgia	Court must make finding upon the record and issue a signed order as to the reason for closure Proceeding involves allegation of sexual offense or closure is in best interests of child, considering age, nature of allegations, effect of openness on ability to reunite and rehabilitate family, privacy of child, foster parent or other caretaker, or a domestic violence victim If closed, individuals the court finds having a proper interest in the proceeding or work of the court can be admitted	In any proceeding court can deny admittance to an individual if his/her presence would be detrimental to the best interests of the child, impair the fact-finding process, or be otherwise contrary to the interest of justice Judge can order media not to release information identifying child, family, or caretakers	Ga. Code. Ann. § 15-11-78
Illinois	Presumptively open to news media, but not to general public Court can admit individuals with direct interest in case or work of court	Court can prohibit disclosure of information identifying the minor	705 Ill. Comp. Stat. 405/1-5
Indiana	During testimony of child if court finds it involves matters of sexual nature and closure is necessary to protect welfare of child During testimony of healthcare provider if testimony involves protected matters or privileged communications During testimony of social worker		Ind. Code § 31-32-6-2, 31-32-6-4, 31-32-6-5

	<p>regarding client or a school counselor/psychologist regarding student</p> <p>Court must take into account nature of allegations, age, psychological maturity, and child's wishes</p>		
Iowa	<p>Possibility of damage or harm to child outweighs public's interest in open hearing</p> <p>After closure, court may admit individual with direct interest in case or work of court</p>		Iowa Code § 232.92
Kansas	<p>Best interests of child or necessary to protect privacy rights of the parents</p> <p>Proceedings pertaining to disposition of child are closed, but court can allow individuals when it would be in best interests of child or the conduct of the proceedings and can set appropriate limitations</p>	Information required to be kept confidential by law can be introduced into evidence in camera or judge can exclude individuals not authorized to receive that information during that part of the proceeding	Kan. Stat. Ann. § 38-2247
Maryland	<p>Court can close any proceeding in which child is alleged to be in need of assistance or any voluntary placement hearing and admit only individuals with direct interest in the proceeding</p> <p>Court must close any hearing involving discussion of confidential information or any information obtained from child welfare agency concerning child or family receiving certain types of assistance</p>		Md. Code Ann., Cts. & Jud. Proc. § 3-810(b)
Michigan	During testimony of juvenile witness or the victim if necessary to protect welfare, considering age, nature of proceeding, wishes of the witness/victim		Mich. Comp. Laws § 712A.17
Minnesota	Exceptional circumstances		Minn. Stat. Ann. § 260C.163(1)(c); Minn. Juv. Prot. Proc. R. 27.01
Nebraska	Otherwise specified by statute		Neb. Rev. Stat. § 24-1001
Nevada	Districts including a county with a		Nev. Rev. Stat. §

	<p>population of 700,000+ (Clark County/Las Vegas only) must be open unless judge determines that closure is in child's best interests (taking into consideration child's wishes), and if closed, people with direct interest in case may be admitted</p> <p>See section on closed courts for counties with fewer than 700,000 residents</p>		432B.430
New Jersey	Judge's discretion, in which case only individuals with an interest in the case may be admitted		N.J. Stat. Ann. § 9:6-8.43
New Mexico	Hearings are presumptively closed to the general public, but court can admit individuals with proper interest in case or work of court, on condition that they refrain from divulging information identifying child or family	<p>Accredited representatives of news media allowed at closed hearings as long as they refrain from divulging information identifying child, parent, guardian or custodian</p> <p>Child may object to presence of media</p> <p>Court may exclude media if presence is contrary to best interests of child</p>	N.M. Stat. Ann. § 32A-4-20
New York	Judicial discretion, considering whether 1) individual is disruptive to proceedings, 2) party objects to individual's presence for a compelling reason, 3) administration of justice, privacy of individuals, and need of protection of children from harm requires exclusion, and 4) availability of less restrictive alternatives	Judge can make rules to preserve decorum of proceedings	N.Y. R. for Fam. Ct. § 205.4
North Carolina	Judge's discretion, taking into consideration nature of allegations, age and maturity, benefit to juvenile of confidentiality, benefit to juvenile of open hearing, and extent to which confidentiality of juvenile's record will be compromised		N.C. Gen. Stat. § 7B-801
	No closure if juvenile requests		

	openness		
Ohio	Separate hearing to determine whether closure is appropriate Court may still admit individuals with direct interest in case and those who demonstrate that need for access outweighs interest in closure		Ohio Rev. Code Ann. § 2151.35
Oregon	Best interests of child during child's testimony		<i>Oregonian Publishing Co. v. Deiz</i> , 613 P.2d 23; Or. Rev. Stat. § 419B.310
Texas	On agreement of all parties, court can limit attendance to individuals with direct interest in suit or work of court		Tex. Fam. Code Ann. § 105.003
Utah	Finding upon the record that individual's presence would be detrimental to child's best interests, impair fact-finding process, or be otherwise contrary to justice		Utah Code Ann. § 78-6-114
Washington	Best interests of child If closed, only relatives, foster parents, and individuals requested by parent can attend		Wash. Rev. Code § 13.34.115