

SURVEY OF PROFESSIONALS IN SELECTED STATES WHERE CHILD PROTECTION PROCEEDINGS ARE NOT COMPLETELY CLOSED

EXECUTIVE SUMMARY

Methodology

This report is the product of phone interviews conducted with professionals in selected states where there was either openness in child protection proceedings or where there was some level of access for the media and/or individuals that were non-essential to a case. 32 interviews representing 16 and the District of Columbia states were conducted in all. Interviews were conducted with individuals from the following states: Alaska, Arizona, California, Colorado, Delaware, Washington DC, Florida, Illinois, Indiana, Iowa, Michigan, Montana, New York, Nevada, Ohio, Oregon, and Wisconsin. Interviewees were found through inquiries to national organizations like the American Bar Association and the National Council of Juvenile and Family Court Judges, and through Internet research to look for institutions where people might have formulated an answer to the questions.¹ Interviewees worked in state agencies, courts, media outlets, and advocacy organizations.

The two questions asked were those posited by Judge Michael Mack: “For those states without confidentiality statutes, what are the safeguards and are they effective[?] For those states with modified confidentiality, what does the statute look like and are there negative aspects[?]” Since the chart of statutes accompanying this memo reveals what relevant statutes look like, this study concentrated on asking about the negative effects of statutes in states with modified confidentiality. The number of interviews conducted per state depended both on the willingness of subjects to be interviewed and on the uniqueness of the state’s statutory scheme and practices. At least two interviews were conducted in states with particularly unique statutory schemes or practices regarding child protection proceedings.

Key Findings

NOTE: States listed here in parenthesis are states included in this survey where interviewees mentioned the bulleted concept. If interviews had been conducted in all remaining states, there may well have been corroboration for some or all of these findings.

- Just because statutes say proceedings are presumed open doesn’t mean they are consistently open. In many states with some level of non-confidentiality, either a majority of judges prefer to close proceedings when the option is there (IN), members of the media and

¹ A contact that provided extensive assistance was Jennifer Lee Renne, Adjunct Professor of Law and Assistant Director of Child Welfare for the ABA’s Center on Children and the Law, phone: 202-662-1731. Another national source of information was Chris Bailey at the National Council for Juvenile and Family Court Judges, phone: 775-784-6675.

public hardly ever show up when proceedings are open (OR, OH, NY, IL, AZ), or parties with a right to demand a public hearing rarely request it (AZ, NV, WI).

- The main safeguards mentioned as ways of protecting children and families in states where there is openness or modified confidentiality were:

- The fact that open courts can be closed on a case-by-case basis or that closed courts can be opened on a case-by-case basis. (most states)
- Requirements that reporters apply for admittance (D.C., FL), sign non-disclosure agreements (D.C.), or omit names of children from their reporting (most states) due to an agreement or rapport with the courts or due to editorial board rules.
- Criminal penalties for disclosure of private information. (D.C.)
- Children’s testimony *in camera* (with only a judge) or on closed circuit t.v., etc. (FL, IN, MI)
- Permission for a bailiff to screen entry to open proceedings. (i.e. requiring a rational reason which could include a general interest in studying child protection cases).
- Limiting the number of cameras or limiting coverage to print media. (FL, IN)
- Keeping social records and files closed to the public. (IN, MI)
- Closing termination of parental rights trials and adoption proceedings but allowing all other proceedings to be open. (FL)
- Reconfiguring courtrooms to privilege a child’s comfort. (MI)

- Interviewees mentioned that the chief drawbacks of opening (or partially opening) child protection proceedings are:

- Embarrassment for children and families. (CA, IL)
- A lack of actual “light” shed on agency performance. (CA)
- The possibility of decreasing numbers of parents seeking help and possible declines in the reporting of abuse. (CO)
- Wrongful or inaccurate disclosure of names and information. (D.C., NY)
- Discriminatory treatment of parties outside the courtroom. (CA)

- Increased numbers of motions to close, which can elevate court costs and agency expenses. (CA)

NOTE: An Arizona interviewee noted that there weren't any negative effects of presumed closure with the option to open.

- Interviewees mentioned that the chief positive aspects of opening child protection proceedings are:

- Increased accountability and decreased impunity for all players in the family court system. (AZ, CO, D.C., IN, MI, OH, WI)
- More information going to the public and policy-makers about the problems of child abuse and neglect, and increased attention to inadequate resources in the system. (CO, FL, MI)
- Parents become more aware of the legal consequences of bad parenting. (NV)
- Children with the right to demand a public hearing feel they have more of a say in what's going on. (WI)
- Prevention of child fatalities due to expedited operation of the court system.

- Whether to open child protection proceedings should depend largely on the social nature of the jurisdiction. If it's likely that media members are largely untrustworthy and may sensationalize private details of a case, or if it's likely that even with names withheld, members of an insular community *will know* who the story is about, it may be wise not to open proceedings. (AK, WI)

- Two out of three interviewees in Delaware saw no negative effects resulting from the practice of publishing the date, time and party names affiliated with a child protection proceeding prior to the proceeding. This practice serves to notify parents of proceedings in case they are estranged from their children or wouldn't otherwise know about the proceedings.

QUOTES FROM INTERVIEWS WITH INDIVIDUALS IN SELECTED STATES

NOTE: Parts of all block quotations are boldfaced to assist readers in gleaning key parts of the quotations.

ALASKA – Closed with judicial discretion to open

This quote is from Shell Hutchinson,² a Family Advocate at Stevie’s Place Children’s Advocacy Center³:

“I’ve never encountered a problem with that [the possibility of judges opening child protection proceedings]. Family advocates and victim’s advocates can get in when they need to. Communities are small, so confidentiality is hard to protect. Usually someone working with the family can get in. No one random. . . I think that works for our community. **Each community needs to find what works for them. Everyone knows everyone so I like that some things can be kept confidential, [versus] talking about it on the street.”**

ARIZONA – Closed with judicial discretion to open, accused person can request opening, pilot project to open proceedings in Maricopa County

This quote is from an anonymous source in the Court Appointed Special Advocate Program on November 4, 2004:

“Our experience is there’s been absolutely no difference. A lot of folks came forward and fought legislation about opening with worry about information about kids and victims splattered over the press. **We’ve found the press virtually never shows up. Nor outside people.** No effect on cases whatsoever. The only thing it may have had an effect on is at the start of hearings the judge says “this case can be open unless someone objects” so hearings take 5 minutes longer! I was against opening it.”

This quote is from Suzanne Matsumori,⁴ Court Improvement Coordinator with the AZ Supreme Court on November 1, 2004:

“We have two things going on 1) a law in effect January 2004 where the judge needs to state at every hearing that a parent is entitled to an open hearing, but no one has taken advantage of that. 2) On September 18, 2003 we started an open court pilot and the Phoenix area County opened a pilot to determine how opening dependency proceedings would be The Legislature opened this to all counties in January 2004 where there’s a need to identify a certain percentage of cases to automatically open. Each county has made its own criteria. The two biggest urban counties. . .need to identify 10% of all cases as part of this pilot, and what they decided to do was identify specific juvenile court judges all of whose cases are “open court pilot.”

²Website: <http://www.rcpcfairbanks.org/stevie.html>, Phone: 907-374-2850.

³ Stevie’s Place is a program to provide forensic interviews and medical exams when it is suspected a child has been sexually abused. Stevie’s Place also offers support and information to the non-offending caregiver in order to reduce the trauma experienced by the child and family. It brings together a multi-disciplinary team of trained professionals to offer comprehensive services.

⁴ Phone: 602-542-9416.

Maricopa County (Phoenix area) took the lead developing admonishment to non-interested parties with a sign-in sheet so if someone gave out personal identifying information they can be found in contempt; but it hasn't been an issue because the only non-interested parties have been friends who want the kids in their home or extended family members. Some counties only have a couple cases. . .rural counties. It's not on the statute books yet because it's still a pilot. The Supreme Court and Child Protective Services (CPS) and Maricopa County are supposed to work together. There was a report CPS generated (a memo with the AZ State University for input with data collection. . .a semi-annual report). It's only lengthened the cases for a couple minutes. . .if a high profile case comes up, we'll keep it open. **The media says we're hiding something, so this gets [others] to know there isn't anything being hidden. . .The parents go to the media but CPS gives it balancing. There haven't been any negative effects"**

<p>CALIFORNIA – Closed with judicial discretion to open, legislative bill to open hearings (A.B. 2627)</p>

A quote from Marie Ramiu,⁵ Staff Attorney at the Youth Law Center (The Center)⁶ from October 15, 2004.

"We have opposed opening up the dependency courts here in California. Primarily because. . .we didn't feel there were appropriate protections for children and families. It also didn't advance the purposes of opening dependency proceedings that made the most sense to us. **The argument that dependency court should be open to improve accountability of courts and CPS [Child Protective Services] Agencies [doesn't work] because it only opens up a particular proceeding but doesn't shed light on an agency.** But we don't have a position paper on [that]."

A letter from Ms. Ramiu to the CA Assembly Judiciary Committee is attached to this memo.

⁵ Phone: 415-543-3379.

⁶ The Youth Law Center is a non-profit, public interest law office that has worked nationally to protect abused and at-risk children since 1978. With offices in San Francisco and Washington, D.C., the Center focuses on children in child welfare and juvenile justice systems. The Center's staff attorneys are widely recognized as leading legal advocates in children's law.

COLORADO – Open with judicial discretion to close
--

This quote is from Shari F. Shink,⁷ Founder and Exec. Director of the Rocky Mountain Children’s Law Center,⁸ from October 17, 2004:

“Some are the same cases someone wants open for press attention. We’ve had proceedings open for the longest time. . .I don’t think anyone takes advantage of open courts. **I think we should all remove the blanket of confidentiality.** . . .To remove the barrier of information of social services. . .They say ‘I can’t talk because it’s confidential.’ **I don’t think we [Americans] do a great deal of protecting kids because of the veil of secrecy, and there’s a way to inform the public and policy makers and that’s what’s going to make a difference.** That’s what’s going to move communities.

Kids are floating. . .Parents without services. . .I’ve been present in this system for so long and it continues not to work. There’s an entire nation failing kids. . .I’m sure there are drawbacks (parents won’t seek help. . .others won’t report abuse) but many are theoretical. . .There are ways to protect privacy and get information out. For 30 years we’ve ignored the child protective system that doesn’t work and until we’re honest, systems won’t be a safety net for kids. There’s been a lot of debates. . .Yet we continue to miss the gross negligence to kids due to the theoretical discussion. . .I’m at this point ready for a revolution! It’s just a piece of a bigger problem.”

Ms. Shink suggested we speak to Judge Kathleen Blatz from MN, who will be the keynote speaker at the November 17th Univ. of Connecticut conference “*Public Access to Juvenile Court Child Protection Proceedings: Should the Doors be Open or Closed?*” Blatz began a movement to open up child protection proceedings. We were unable to reach Judge Blatz, but her number is 651-296-3380.

This quote is from Teresa Spawn,⁹ Executive Director of CO Office of Child Representative, which is equivalent to the Office of the Child Advocate in CT:

“Each judicial district does safeguards differently. ”

⁷ Website: http://www.rockymountainchildrenslawcenter.org/resources_sites.html. Phone: 303-302-9914 or 303-692-1165. Fax: 303-302-2890. Cell phone: 303-717-0033.

⁸ The Rocky Mountain Children’s Law Center strives to deliver high quality legal services for at-risk and maltreated children, promote their healing and healthy development, and ensure that each foster child finds a permanent, loving home - whether this is with their biological family or a new family - as soon as possible.

⁹ Phone: 303-860-1517. Website: coloradochildrep.com.

A quote from Charles Thetis,¹⁰ Unit Manager of the Child Welfare Division of the CO Dept. of Human Services:

“Someone wouldn’t be getting written documents circulating. **A judge can call for a closed hearing but you don’t see it very often. . .**”

<p>DELAWARE – Closed but publication of party names and proceeding date are considered as a form of notice, when in the public interest</p>
--

This quote comes from Susan Radecki,¹¹ Services Administrator for the DE Division of Family Services, from October 13, 2004. It is her personal perspective on publication in the public interest:

“**It doesn’t really change the nature of what we’re doing.** We’re [child welfare agencies are] the ones the public takes the most interest in when there’s a decision by the court.”

This quote is from an interview on November 5, 2004 with M.C. Landis,¹² Deputy Child Advocate of DE:

“**No I don’t see negative aspects. Because publication is notice for parents.** Notice of an upcoming proceeding if it’s a T.P.R. It’s not publication of what happens or what’s going to happen. [There’s publication] for abuse, neglect and TPR [proceedings] if we can’t locate a parent. Just for certain hearings.”

This quote comes from Wendy Gerlach,¹³ Office Manager in the Office of the Child Advocate of DE, from November 4, 2004:

“The reason it’s published is the high number of kids in state custody, so it serves as notice to parents. Because it involves *children* it’s closed. **It makes parents think there’s an open door they can walk through when you publish something.** Parents see a way to get back in their child’s life. . . There are no negative drawbacks I can think of.”

¹⁰ Phone: 303-866-5139.

¹¹ Website: <http://www.state.de.us/cprb/>. Phone: 302-255-0239, 302-633-2659.

¹² Website: <http://courts.state.de.us/childadvocate/>, Phone: 302-577-6830.

¹³ *Ibid.*

D.C. – Closed But Media Admitted

The following quote is from an interview with the General Counsel of the Washington, D.C. Child and Family Services Agency, Terri Thompson Mallett,¹⁴ on Nov. 3, 2004:

“When courts have been opened it’s been over the objections of [our] agency. Not because we agreed, but despite the objection. **Our position is it should not be opened because children and families are entitled to privacy. . .there’s no public interest in opening. Usually the sensationalized cases are opened up.** The court is supposedly issuing an agreement that a reporter signs saying they’re not going to make disclosures of names, but it’s not enforceable as a matter of law and we can’t find how it’s been enforceable. It’d be different if the court issued an order [to reporters]. There is no way to protect confidentiality. **It’s often not clear how the info gets out sometimes, and having the media there gives one more possible way for it to get out.**”

This quote is from Ms. Despina Belle-Isle,¹⁵ Attorney Advisor with Families in D.C. Superior Court, on November 5, 2004:

“They [reporters] have to make an application to the court and request **permission to be admitted.** Rules require a written application. It goes to the presiding and chief judge, I think. As a practical matter, when there’s a high profile case, the presiding and chief judge expect this type of request and respond to whoever is making the request and put conditions on the attendant. **We have a good enough relationship with the media that they know what the conditions will be.** It’s give and take. Our court’s aware that a purpose is served when the public has access to info about child protection proceedings, but media has a duty to protect persons involved from public scrutiny. . . There are rules throughout the statute and procedural rule about what’s permitted to be made public, and there are criminal penalties for making information public. Attorneys practicing in the legal area or who have cases that day are permitted to be in the court room as well as social workers. No members of the public. I can’t really speak for the court or for what the presiding judge sees as negative, but from my point of view, **as long as everyone abides by the law and respects the position of others and works out the rules of the relationship in advance and abides by the rules, I think it’s a service to the public to allow the public to be aware of these things.**”

¹⁴ Phone: 202-442-4238.

¹⁵ Phone: 202-879-4621.

FLORIDA – Open with judicial discretion to close

This quote comes from Cindy Bruschi,¹⁶ Supervising Attorney for the FL Dept. of Children and Families, from October 18, 2004:

“The media has to ask permissions from administrative judges in juvenile court. Normally it is opened to the media. After permission, it [the media participation] has to be unintrusive. The media can’t ask questions. . .only 1 camera in the courtroom,. DCF doesn’t talk to the media. It’s not opened to the public. [But] If you’re an individual who looks like you belong, you can walk in [though]. Dade County is pretty open. Broward isn’t as open [When asked if the general public effectively gets in, she noted], The bailiff does monitoring to some extent and in most proceedings if there’s a family friend or preacher or anyone who knows the family, they can come in. Mom’s friend, a schoolteacher, anyone for support. They are allowed to speak if they ask permission. [When asked if someone with general interest in child protection proceedings can come in she replied,] **People unrelated can come in and the bailiff might catch them and ask ‘Who are you?’ but you can get in there. A student writing a paper could definitely get in. Someone from the streets—if they want to just come in and watch that would be a problem. **Our position is no one off the streets should walk in and view hearings. Just like no one in the public can view files.”****

A quote from Paul Indelicato,¹⁷ Director of Juvenile Court Operations with the Administrative Office of the Courts in the 11th Judicial Circuit, Miami Dade County (from November 4, 2004):

“Legally there’s no law [about definite closure] with the exception of two proceedings. . . **In TPR cases, only the parties associated are allowed in the courtroom during a trial proceeding and an adoption proceeding. But lots of other proceedings occur in TPR and are not closed.** Even witnesses have to wait on the outside until they’re called in [in the aforementioned two types of proceedings]. **Dependency proceedings are not protected unless the court deems it a detriment.** [When asked about the safeguards, he replied,] If a child is to testify we do it by closed circuit t.v. video linkage (the judge and child are separate and everyone else is in the courtroom). We bring the child in ahead of time to that room unbeknownst to the parents. **In dependency cases, the court has to show there’s irreparable harm by having names printed.** We don’t have issues here where John Q. Public wants to come in and watch proceedings. **It’s of least concern to the community.** . . .We have other cases cued and those people waiting to hear cases being heard before them [are present]. But nobody’s coming in saying ‘I wanna come in and watch’ [but that wouldn’t be a problem] unless the judge said ‘no.’ [When asked the negative aspects he responded,] Yes to have that info brought

¹⁶ Website: <http://www.dcf.state.fl.us/mentalhealth/ebi/index.shtml>, Phone: 305-377-5080, 305-637-4564.

¹⁷ Phone: 305-638-6205 or 638-6102.

out in front of anybody is a problem and there's risk of irreparable harm, but we probably need to do more public awareness in that area to show it's not just the court's problem. This is a community problem. . .we're woefully inadequate with state resources. And having the legislature be more aware of these proceedings dollars-and-sense-wise is good. **What we've done thus far hasn't been sufficient in public awareness and there's a duty to make the public aware that certain aspects of the system are inadequate. But every case has its own merits and you have to decide to open and close based on the specific case."**

A quote from Sonia Crockett,¹⁸ Guardian Ad Litem Program Attorney, Leon County FL (the capital county):

"Our T.P.R. proceedings aren't open to the public. Dependency trials and shelter hearings are open. **The judge could clear a courtroom but it generally doesn't happen.** We had a couple high profile cases involving the death of a spouse, but I haven't seen big news coverage of those cases. I didn't notice any. **I don't see negative aspects to openness except if a child is testifying, but there is protection** in the rules that children can testify out of the presence of other parties with safeguards that they won't be exposed."

ILLINOIS – Closed but media admitted

This is a quote from Judge James Wexstten,¹⁹ Circuit Judge in the 2nd Judicial Circuit, IL:

"The statute allows for the media and victim [to attend]. I'm in a rural area and the media never comes, so it's not a problem. . .**If the media does come, they would not be allowed to disclose names by statute. I haven't had any press, but in the abstract I could see a major problem if the media was to cover juvenile proceedings. . .That's nobody's business.**

Regarding delinquency, there's a crime involved, and that's more in the public interest. . .**We've had to turn people away [from child protection proceedings] but sometimes we allow it. . .a law student getting into this type of work. . .But first I have to ask permission of the parties. It's never been a problem.**

One issue we're dealing with that's testy is we've allowed service providers in the case following to sit in the courtroom just as a courtesy. But I've taken the position now that they're not allowed due to the IL Mental Health and Developmental Disabilities Act that provides confidentiality and [says] any waiver of it is void. They have to sit in the hall way. . .we don't allow non-involved personnel in the court. **Sometimes we get a non-party, family member, member of the clergy, teacher,**

¹⁸ Phone: 850-488-7612.

¹⁹ Phone: 618-244-8005.

and I ask the family if they waive their confidentiality to have them in their case, and I ask the state, and sometimes they say ‘yes’ with no problem. The statute provides for a waiver.”

INDIANA – Open with judicial discretion to close

A quote from Cindy Booth,²⁰ Executive Director of the Indianapolis Child Advocates²¹ on October 15, 2004:

“Proceedings are open with the discretion to close, and all judges prefer to close. Unless someone can show it’s in the public interest to open, it’s closed. [A delinquency and dependency court was opened for a special news story]. **My personal opinion is they should be open with the discretion of names withheld from the newspaper.** That would show that foster kids aren’t faceless kids. Once a case is closed, people don’t think about kids in foster care. There are certain cases that they open but the majority are closed.”

A quote from Judge James Payne,²² Judge of the Marion Superior Court, Juvenile Division, Marion County, IN on November 4, 2004: (Judge Payne trains judges in the state and opened up his courtroom to the media for a special news program on *Dateline*).

“There are protections. They’re varied and include closing proceedings, excluding names for sensitive testimony, ensuring reports and info aren’t available to the public and media. . .Pre-disposition reports, drug assessments, review reports, and any reports dealing with service delivery. . .therapeutic reports. . .all are confidential. So this doesn’t mean all information is open to the public.

I’m pretty much the lone wolf on this. Most people think all things that are to happen in the public harms kids. I believe that things are happening in the public. . .**when things are not kept confidential, we convey information in ways the public can comprehend. The public doesn’t always believe kids are harmed and abused and doesn’t understand that people need services.** People don’t understand ‘these could be kids in my neighborhood,’ and when you’re able to demonstrate what this means. . .I don’t know if you saw our *Dateline* piece with the picture of this boy that was sexually abused. . .They showed everything. . .

[When asked about the safeguards he noted,] We can use closed circuit t.v. or close proceedings. It’s open but there are protections.”

²⁰ Website: <http://www.childadvocates.net/AboutUs/Staff.asp>, Phone: 317-205-3055.

²¹ The Child Advocates are Court Appointed Special Advocates and Guardians Ad Litem appointed by the courts in Marion County (Indianapolis) to represent the best interests of abused and neglected children.

²² Phone: 317-924-7501.

IOWA – Open with judicial discretion to close
--

This quote comes from an interview on November 4, 2004 with Judge Stephen C. Clarke,²³ District Court Judge of the 1st Judicial District of IA:

“Proceedings in Iowa have been open to the public for 20 years at least. **Most media doesn’t know and we don’t really advertise it. In Des Moines they are more likely to show up at high profile hearings.** The rest of the media is pretty sensitive to juvenile issues. **No cameras or t.v. are allowed, only the print media.** [When asked about other safeguards he asserted,] Really there are no other safeguards other than the protection available under the code for sexually abused victims in all criminal proceedings.

[When asked about the drawbacks of openness he stated] I’m not doing juvenile court much now. During the time I was, it was more likely that disgruntled parents would call a press conference on the steps of the courthouse. The Dept. of Human Services couldn’t hold press conferences because of their confidentiality agreements. But I’d tell [interested parties] to see the time and date of the hearing to attend. **The press doesn’t have access to social records of children.** Delinquency files are public records. **I think openness has improved the system because it takes away the secrecy aspect and people are less likely to blame the system and walk away.** When you aren’t under public scrutiny you have a tendency to call your own shots. When I did legal services and public defense in Mississippi where the juvenile court was closed, the judge said “I’m going to do what’s in the best interest of the child” and there was self-monitoring of lawyers. **But [openness] makes lawyers better. Often in juvenile court you see the same players. . .it can become casual and sloppy. I’m a believer in the positive aspects.**

The general public can walk in—people that are not family members but family support people. . .**It’s an eye-opener that breaks down things reinforcing negative behavior and helps to change things.**

MICHIGAN - Open with judicial discretion to close
--

A quote from an interview Don Duquette,²⁴ Clinical Professor of Law and Director of the Child Advocacy Clinic at the Univ. of Michigan:

“They [child protection proceedings] have been open since the ‘80s. I think everyone thinks it works just fine. **The real advantage to openness are the traditional advantages of a public trial. People see how business is done.** I practiced in court when it wasn’t open. There was more imperious activity by judges then. It provides that kind of protection. . .**It builds a bigger constituency for a child protection agency and a court itself.** . . [L]egislators get a better

²³ Phone: 319-833-3332.

²⁴ Phone: 734-763-5000.

understanding of how serious and difficult these cases are. **In our state, openness helped create public sentiment in favor of a family division of the circuit court.** It elevated the status of juvenile court. It's hard to measure in a social science way, but we've got 20 years experience. [When asked about the safeguards he stated,] **We've got court rules. . .MI Court Rule 3.925. . .criteria are that court may close during a child's testimony or victim's testimony to protect the welfare of either. . .** Our Child Protection Clinic did legislative advocacy around opening the courts. **The files themselves can also be open so the public can read the proceedings, but this is only with initials [for protection].** Reporter Jack Kresnak [who is quoted below] sometimes reports on personal aspects of a case, but with discretion. **Journalists have a sense of the discretion.** I testified as an expert in *Brown v. Damiani* [a CT case challenging a gag order on a CT adoption proceeding²⁵] on behalf of the ACLU. But the case was dismissed. ”

This quote comes from Jack Kresnak,²⁶ Juvenile Justice Reporter with The Detroit Free Press for a decade and a half:

“Confidentiality kills children and protects incompetents in the system. In 1988 we opened both child protection and juvenile proceedings in Michigan. **I have never heard of a child whose name I'd used (& I don't often use names, but occasionally do) being damaged by having their name used in the paper. Many children have been helped because I'm able to sort through the truth of the matter with access.** You'll get fairness and balance in coverage of juvenile and family court issues if a journalist has access to this info. It's often a stretch in this day and age to say 'you have to trust the journalist' but I've heard I'm fair and accurate, and I consider the damage to kids that I'm inadvertently causing when I decide what to use.

[When asked to explain some safeguards in the MI system, he states,] **“We have a policy of not naming a juvenile unless we decide we should:** is there a way to tell the story without using the child's name? Is there good reason to use a child's name? **And it has to be signed-off on by newspaper editors. If a child is dead we use the name. Siblings we would not. . . In MI because they realize certain things must be confidential, they have a two-file system.** A legal system where you can [on an initial, non-confidential level] see subpoenas, etc., where you can see what a case is about, and then [on a more confidential file level] a social file with school records, psychological records, which are not open to the public. But

²⁵ See *Brown v. Damiani*, 154 F.Supp.2d 317 (D.Conn. Jul. 19, 2001) and *Brown v. Damiani*, 228 F.Supp.2d 94 (D.Conn. Oct 16, 2002) (In these cases, a reporter for a NJ Internet publication brought a §1983 action against a Superior Court Judge alleging that his First Amendment rights were violated by a gag order issued by that judge. The gag order prohibited the parties in a juvenile court proceeding from discussing the dispute with the media and the court had threatened the pre-adoptive mother in that dispute with jail for contempt of court if she did not remove certain pictures and postings from the Internet. The District Court first denied the defendant's motion to dismiss, holding that the reporter had standing to pursue the §1983 claims as a news gatherer or recipient of speech; *Younger* abstention did not apply and that the *Rooker-Feldman* doctrine also did not apply. Subsequently, the Superior Court Judge amended his gag order on disclosures regarding the juvenile court proceedings involving this child, and following a bench trial, the District Court held that the reporter lacked standing to sue.

²⁶ Phone: 313-223-4544.

the judge has discretion to release [the social file] to an interested party. They give me access [to social files] trusting me and knowing a better story will result.

In 2000 I did a 7 part series on a child abuse murder. There was a question. . .two of three siblings had witnessed a murder [by the parents]. We didn't know if we should use names because they were suffering psychological trauma. In talking to prosecutors and relatives caring for the kids . . .Noah and Mariah were the kids' names. . . Noah was especially having trouble adjusting. People said 'he's a behavioral problem but we're working with the community and church.' They said we could use names but not current pictures. They appreciated what [Noah]'d done and said he received a lot more kindness and help when people understood more what he'd gone through. The state had been dragging its feet providing services, but because of the series [the kids] got what they needed.

We don't exploit children, but writing about the system keeps kids on track. . . Fewer court delays. . .I can name numerous cases where the reporting changed the system. A runaway foster kid no one was looking for. . . Confidentiality only protects people who need to lose their job. I don't get complaints that I'm violating confidentiality. What I do get are complaints that I'm not doing enough reporting.

These quotes come from a conference call with Judge Maura Corrigan,²⁷ Chief Justice of the MI Supreme Court, Kathryn O'Grady, Director of Child Welfare Services in the MI State Court Administrative Office, and Deborah McGuire, Administrative Counsel with the MI State Court Administrative Office, on November 1, 2004:

Kathryn O'Grady: "It's the way it's always been. There are few limitations on when a case is closed. **[There's a safeguard] if a motion has been made due to the sensitivity of the issue (such as when there's sex abuse or when there's a young respondent or a young person making the claim).** . . .But generally things go through without much problem."

Justice Corrigan: I just finished serving on the Pew Commission and we took a strong position in recommending opening the proceedings. Everything is to be gained by public access. The thrust of Commission was to let light shine on proceedings.

Deborah McGuire: [Answering the question about what some safeguards are] **There may be a motion to have a child testify *in camera*** just before a judge if case is sensitive. . . Sometimes the attorney is let in and sometimes not. . .Sometimes a child doesn't want to testify before their parents. **Granting of the motion depends on the judge.**

²⁷ Phone: 313-972-3232.

Justice Corrigan: There are provisions for reconfiguration of a courtroom. Other states don't have this. . . So it's less antagonistic for the child. One person is designated to physically sit near the child if necessary. . . Or so the person doing the questioning is in the witness box so the child isn't looking out into an audience and there isn't an environment where the child feels stared at.

Justice Corrigan also suggested we speak to Judge Kathleen Blatz from MN, who will be the keynote speaker at the November 17th Univ. of Connecticut conference *"Public Access to Juvenile Court Child Protection Proceedings: Should the Doors be Open or Closed?"* Blatz began a movement to open up child protection proceedings. We were unable to reach Judge Blatz, but her number is 651-296-3380.

MONTANA – Closed but parents may speak to media

A quote from Sarah Corbally,²⁸ Deputy County Attorney with Cascade County Montana, on October 28, 2004:

"All T.P.R., neglect and abuse proceedings are closed. Families can talk but it can't violate the rights of parents or children. If the Department and parents o.k. it, it's ok. I haven't seen any problems with it. Frequently they ask for extended family and advocates [to enter proceedings] but we've never had the media to get in."

NEW YORK - Open with judicial discretion to close

This quote comes from Cecilia Fiermonte,²⁹ Assistant Director of Child Welfare for the A.B.A. Center for Children and the Law, who practiced law in NY for 7 years:

"Nobody ever showed up or cared about those hearings. It wasn't a big issue because there wasn't a lot of public interest about what goes on in children's court. I practiced in NY from 1993 to 2000. One time the murdered child had siblings and I made a motion to exclude the press to protect the siblings. But the motion was denied. There were one or two reporters sitting in. News papers have policies about printing those kinds of things. I wouldn't say it was effective but where I practiced it wasn't a big issue. . . We had a problem trying to get people interested. Doctors, etc. There are long waits in the courts. The reporters who did come didn't really understand what was going on in court. **The danger for the press is that things get misreported. So in terms of public accountability, I'm not sure it helps. There's equal danger that things get misreported because people are non-legal."**

²⁸ Phone: 406-454-6915.

²⁹ Phone: 202-662-1731.

A quote from Karen Fisher Gutheil,³⁰ Staff Attorney with the Legal Aid Society of NY Juvenile Rights Division:

“We need to consult with our clients and get a social worker’s opinion about press coverage. **We might seek a protective order or exclusion, depending on the case.** Often a judge won’t let the press in if a child is going to testify. I’d usually request that last names aren’t used but it depends what they’re there for. **I don’t have any inherent objections, but there are times I want to know what info they’re going to be using. [Whether press is there] depends on the situation.**

[An example of a case where there were safeguards:] For example: there’s a proceeding right now where there was a fatality and the mother was accused of killing the child. A criminal court case started before the family court case. When the family proceeding began there were press. Clients were nowhere near the courtroom. There were orders from the judge about what would be published. The law guardian asked that they stop publishing pictures of the kids. **By and large we don’t have press for standard child protection proceedings.** Unless it’s a case like that one that hits the press before it goes to family court. **They’re just not interested.** Every now and then someone may want to do a story and a reporter comes in and asks to speak to the judge and asks if there are any objections. **The public doesn’t usually come.** It’s interesting because whenever I’ve served on a jury I’d see people come to observe but that rarely happens in family court. Usually friends of the family or students writing a paper. **More press in celebrity custody cases. . .[like the recent case involving] Al Pacino.”**

NEVADA – Closed in judicial districts with a county whose population is under 400,000, with possible opening in child’s best interests; Open if population is 400,000+ with possible closure in a child’s best interests; And a pilot project to open hearings in Clark County (Las Vegas) via 2003 NV A.B. 132

This quote comes from Ron Cordes,³¹ a “parent’s attorney” who is sometimes court appointed. On November 8th Mr. Cordes will be “switching sides” to become a district attorney to prosecute child protection cases:

“It’s rarely ever done [opening proceedings in a child’s best interest where they are closed]. Practice is that hearings are still closed. Occasionally someone may ask that outside individuals sit in but usually it’s educational groups. Rarely someone involved in a case from a different perspective. Court permits case workers and supervisors and foster parents to be present during a hearing typically. In reality, that [the allowance for opening in the child’s best interests] was done so the media could have access in highly controversial cases, but I haven’t seen that done in two years. I don’t see any drawbacks. I’m an attorney that represents parents. **I think it would be important to the public to see how these cases are**

³⁰ Phone: 212-312-2303.

³¹ Phone: 702-562-2300.

handled. . .that you'll get a TPR if you do drugs. . .and more scrutiny into what the state does. In some instances it's necessary."

A quote from Special Public Defender Jane Femiano,³² speaking about locations where proceedings are presumptively closed with the option to open:

"I don't see anyone other than my clients (the parents involved) appearing in court. The option [to open proceedings] is there but it only went into effect in July I think. . .Just this last legislative session. . .It's an option. I haven't had a parent yet tell me they wanted it opened or closed. It hasn't come up yet. Initial removals are closed. T.P.R. proceedings are closed. In between cases are available to be open, but can be closed."

OHIO – Open with judicial discretion to close
--

A quote from an interview with Ronald Browder,³³ the Director of the OH Children's Defense Fund,³⁴ on November 3, 2004.

"In my previous role [a previous job with the state] I was responsible for child protective services for the state. Each county has local delivery services for child protection, directed by the state. We drafted rules and policies about what had to happen when child is questioned.

Here at CDF we see there's always a concern. **There was a great push to record interviews with children and we thought this would be too gut-wrenching. When they do bring in the child they're careful. I've seen them taken in chambers with prosecutors, the defense, the judge, and the child and the defendant wasn't even in chambers. They ensure children's emotional stability is paramount. In Ohio they're careful about children's names being listed in papers.** There's a high threshold for confidentiality. The media may have access to the facts and particulars of a case but I've never heard of a court having a child's name given out.

We went through the 1990s working closely with the [state] Supreme Court scrutinizing child welfare statutes. . .[this effort] included how children should be interviewed, making sure a child was not exposed to things counter to their comprehension level.

³² Phone: 702-455-6834.

³³ Phone: 614-221-2244, E-mail: rbrowder@cdfohio.org.

³⁴ The Children's Defense Fund (CDF) was founded in 1973 and is a private, nonprofit, nonpartisan research and advocacy organization supported by foundations, corporate grants, and individual donations. The mission of the Children's Defense Fund is to Leave No Child Behind® and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF focuses on programs and policies affecting large numbers of children, rather than on helping families on a case-by-case basis. CDF educates the public about the conditions of children and successful programs. It works to shape federal, state and local policies for children by identifying cost-effective remedies. CDF's main office is in Washington, DC. CDF-Ohio began its work from Columbus in 1981.

The only time you'll see a lot of media. T.P.R. cases are more public than when children are talking about issues. Historically in Ohio you won't have media unless there's a highly charged and venomous charge against the person that brought notoriety. In our largest county there are so many [child protection] cases and the papers don't see it as viable to report on a regular basis.

The dilemma is because we're state supervised and county administered, there's 88 ways of doing child protection and 88 ways of a court doing things because each judge is authorized to run his court how sees fit. . . Some courts are very protective and in some courts they see it as an obligation of free press to be there. But no one can speak except relevant parties. Anyone can come in though. No prohibition against officers of the court and the press except when the judge wants to protect the child."

This quote is from Yvette McGee Brown,³⁵ President of the Center for Child and Family Advocacy,³⁶ and a retired family court judge in Franklin County, on November 3, 2004.

"I wouldn't go for completely open access. Our Supreme Court ruled that proceedings are presumed open and if someone wants to close, they have a hearing on it. Part of the reason for that is that you want the light of publication on it for greater accountability. The safeguard is the hearing.

As a judge, a t.v. camera made me sit up a bit straighter and consider the public impact. But you need the ability [to close] in sensitive cases where the child could be ostracized (cases with sexual abuse, information about an HIV positive status) where it outweighs the public interest. In *In re. T.R.* and a subsequent case, the court made a balancing in the best interest and the public's right to know. It's rare to have a gag order later if its opened already. . .

I see it as good. I fall in favor of openness. In all honesty, most abuse and neglect cases don't get the attention they deserve. A judge may or may not have read the file, and everyone makes decisions based on 5 minutes of information and I think that's wrong. We're making decisions about their lives. The abuse and neglect arena changes when there's public interest in decisions judges make. Otherwise they act with impunity. And nobody has the ability to assess. . . .

I think there are negatives if there's carte blanche for an open court. Sometimes things released to the media are so damaging that they would harm the child if released. Release of sex abuse information about the parent

³⁵ Phone: 614-722-4044, E-mail: brownny@chi.osu.edu.

³⁶ The Center for Child and Family Advocacy serves children and families experiencing violence. The Center offers treatment, support services, research, training, education, advocacy and prevention. It was first in the country to fully integrate child abuse and domestic violence services. The Center is a collaborative effort of Children's Hospital and the Columbus Coalition Against Family Violence. For more information, visit www.columbuschildadvocacy.com.

harms the child. . . **There are things the court can do if there's high interest--deciding to allow coverage but saying the media can't release a victim's or parent's names.** I had cases when I was on the bench where the mother was a dominatrix. That's not something a child should read about their parent. **I would strongly urge Connecticut not to adopt an open court amendment without any ability to protect the child. I would recommend something like the Ohio system which allows you to balance the public's interest and the child's best interests."**

OREGON – Open proceedings

A quote from Elizabeth Welch,³⁷ Chief Judge in the Family Court of Multnomah County, OR, on November 5, 2004:

"Nobody comes. Not because they're prevented. It seems like it's a big issue and none of us thought it was a good decision when the OR Supreme Court decision was made, but it's not a problem. **One of the safeguards is probably guidelines with the press about what's put in the paper.** I'm not very knowledgeable about that, but **we don't have circumstances where children have names in the paper. Not so much that it's a law or rule, but protocol is established** between the bar and the press. I think it's probably a good thing but I probably wouldn't think so if [lots of people came]. If people misconduct themselves they get tossed, and it doesn't have any repercussions that I can think about. **I'm an old timer and I can't think of any circumstance where it's been misused."**

WISCONSIN – Closed with judicial discretion to open, and a party may demand public fact-finding hearing or jury trial

This quote comes from an interview with Michelle Jenson Goodwyn³⁸ Court Improvement Program Coordinator for the Director of State Courts, on November 5, 2004:

"For three-and-a-half years I was a public defender in one county. I'd never seen that [the demanding of a public hearing] occur in the jurisdiction I was in. I guess is it's not very common in Wisconsin. One issue I can think of is a lot of times a case involves more than one child. So if a child is requesting a fact-finding hearing, that would have implications for other siblings. . .they may be old enough and don't want it public. . .or else have no say in having it public.

I would say personally it could go either way. It depends on the particular case and jurisdiction. Really I don't hear a lot about any public fact-finding

³⁷ Phone: 503-988-3008, 503-988-5165.

³⁸ Phone: 608-266-6828, 608-266-1557.

hearing. In my own experience there hasn't been any. But statewide I couldn't tell you. **We have the right to ask for a jury trial in dependency hearings even if they're closed to public. The Guardian Ad Litem can, parent can, children can. Any party to the case. . .This is unique. In abuse, neglect, dependency and T.P.R. but not delinquency cases. I see there are some positives to jury trials and public hearings—a check on the system and making the child request it helps them feel they have more of a say in what's going on. And if there was a biased judge. . .making sure human services and the court are doing what they're supposed to do. But having hearings open all the time can have negative aspects as far as embarrassment for the parents or children. . .These are sensitive issues.”**

This quote is from Mary Dibble,³⁹ a Child Protective Service Specialist with the Wisconsin Dept. of Health and Family Services, on November 10, 2004:

“I've heard of it [a public fact-finding hearing] being done only once in a very emotional situation where a Chicago columnist was very involved. I have not heard of the issue coming up at all from the counties. Each county has its own system with standards set by our Department. Parents can object-- not just the G.A.L. I haven't seen anything in the papers about this.”

CONCLUSION

The above interviews reveal that there are myriad ways to open child protection proceedings, and that a balancing test between the public's right to information and the best interests of the parties and the child is optimal. While many safeguards can be put in place to protect the child, parties, and witnesses in child protection cases, families and vulnerable youth would be subject to public scrutiny in emotional, life-altering personal matters through any measure of increased openness, so careful and cautious administration of public access in CT is crucial. A number of interviewees acknowledge that there needs to be increased scrutiny on the behavior of state agencies, judges, lawyers, and parties in child protection proceedings. Yet, many interviewees also draw attention to the dangers of allowing full public and media access. When done carefully, opening child protection proceedings can respond to the need for increased public awareness about the co-existing tragedies of child abuse and neglect and poor accountability and depleted resources in the family court system. Many jurisdictions continue to implement pilot projects and create informal working groups to study the issue cautiously rather than instantly opening juvenile courts.

The issue of whether to open child protection proceedings is a difficult one, and many studies look into the issue from a professional perspective.

The Pew Commission on Children in Foster Care addressed this issue. Its report, *Fostering the Future: Safety, Permanence and Well-being for Children in Foster Care*

³⁹ Phone: 608-266-1865, 608-267-2073.

can be found at <http://pewfostercare.org/research/docs/FinalReport.pdf>. Sections of the Pew report (pp. 41-43) recommend that the voices of kids, parents, and other caring community members should be increasingly and “safely and equitably” heard in court proceedings. The report does not refer to fully opening child protection proceedings to the public, however.

We are also sending the report *To Open or Not to Open: The Issue of Public Access in Child Protection Proceedings*, by The National Council of Juvenile and Family Court Judges (2004), in hopes that it will be of assistance.