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Order opening dependency courts: Nothing new except procedure

By Robert Fellmeth and Ed Howard

In Los Angeles County, the lives of tens of thousands of abused and neglected children are every day irrevocably changed by what happens in the County's dependency courts. There, judges with massive caseloads make life and death decisions about children based entirely upon information provided by lawyers and social workers who themselves have massive caseloads.

With an appellate court "summarily" (the court's word) rejecting the two legal challenges to the new blanket order by the presiding judge of the Los Angeles County dependency court, it is a good time to clarify some of the myths that lead some well-intentioned people to oppose the order.

Myth #1: Dependency courtrooms were sealed from the public before the order.

Prior to the order, there were no bouncers at the doors of the county's dependency courtrooms. At a hearing about the legality of the (then draft) order, an advocate familiar with court practice acknowledged that: "[H]ere in [the] Los Angeles [dependency court] we regularly see many interested persons; family members, friends, etc., and on occasion, press."

So, when the order says "[m]embers of the public seeking access in cases where a child does not request or consent to admission may enter the courtroom," the order changed nothing when it comes to prior court practice.

Myth #2: The order places a new procedural burden on counsel for children when it comes to protecting their privacy. The order says that if a lawyer for a child does not want someone in the courtroom, they have to object. Is this new?

Again, let's consult with an advocate familiar with court practice. At the same hearing, the judge asked the advocate: "We talk about the child consenting to someone coming into the courtroom. Does that have to be an express consent or is an implied consent just as adequate?" The reply: "I think historically it's been implied consent. If there's no objection, the court has implied. That's been our practice up until this time."

Because there were no bouncers at the dependency courtroom door, the advocate confirmed that prior practice was that counsel had to object to someone being in the courtroom. So, when the order says that it is procedurally up to the counsel for the child to object to someone being in the courtroom, the order changed nothing.

Myth #3: The order gives the press new rights to attend dependency hearings.

The current statute governing who can attend dependency court hearings is only two sentences. The first sentence says that the hearings — not courtrooms — are closed to the public unless the child consents otherwise. The order seeks to provide consistency to the second sentence, which gives broad discretion to judges when it comes to access: "The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court."

In 1978, the California Supreme Court held: "We conclude that in vesting the judge with the discretion to admit to juvenile court proceedings persons having a 'direct and legitimate interest in the particular case or the work of the court,' it was the purpose of the Legislature to allow press attendance at juvenile hearings."

The court reporter taking down every word, the bailiff wearing a gun and the judge sitting above the child in a robe are all strangers likely to be a bit more intimidating to a child than some reporter making some notes in the audience.

So, when the order says that the press has a "direct and legitimate interest" in dependency court proceedings, it changed — you guessed it — nothing. This has been the law for more than 30 years.

Myth #4: The order does not protect children.

There is only one thing the order allows a judge to consider when an objection to the public or press attending a hearing is raised: the well-being of the child. Not the parent. Not the press. There is no balancing of interests.

Plus, the order does not require proof that the press or public being there will inevitably harm the child. Echoing a prior appellate case that has been law for years, the order says, if "there is a reasonable likelihood that such access will be harmful to the child's or children's best interests," the press or the public shall be barred.

True, under the order it is up to the party claiming harm to the child to explain the harm, but that is just common sense — who else could make that case? — and likewise consistent with how the press or public were excluded from courtrooms previously.

Moreover, the Los Angeles Parents Dependency Lawyers' losing challenge to the order argues against having the child's interests as the only governing standard. If they had their way, the interests of the parents would be given equal weight to the interests of the child, emphasizing that some of the opposition to the order — while sincere — is not about children.

Myth #5: The order will make children testify in fear in front of strangers.

This is a straw man argument. First, the court reporter taking down every word, the bailiff wearing a gun and the judge sitting above the child in a robe are all strangers likely to be a bit more intimidating to a child than some reporter making some notes in the audience. Sometimes children do not meet their own attorney until the day of a hearing. Second, the child is most likely to suffer embarrassment or anguish by testifying before the people who already have a right to be in court: parents, for example. Third, if a stranger's presence could hurt the child, the child's lawyer can successfully object to him or her being there. And fourth, family courts, probate courts and criminal courts are all open to the public, and abused children testify in those courts all the time, and have literally forever, without outcry or protest.

If the order does not do anything new, then why all the fuss? Some of the fuss has been due to people not actually reading the order or knowing the factual or legal background. But some of the fuss is because, by gathering all of the current legal authorities in one place and establishing a certain process for implementing them, the order takes most of the guesswork about whether the press will be allowed into dependency hearings. This, in turn, has made the press more willing than before to re-direct resources to covering these courts. Those who have consistently opposed greater transparency and accountability for the dependency system do not like this — they really hate it, in fact. But this is exactly what the state Supreme Court had in mind in 1978 when it ruled the press has a "direct and legitimate interest" in the work of these courts. The press does because we, the public who pay for and are morally responsible for what happens in those courts to children, do too.

Soon after the order was issued, actress and child advocate Rhea Perlman from the TV show "Cheers" was given permission by the lawyers representing the county's children permitted to attend a day of county dependency hearings. Did all of the children appearing in court that day individually have no objection to this famous stranger attending their hearings?

Maybe, but in any case, Perlman wrote a splendid article about her experience for the Huffington Post. So while the order did not change whether strangers could be allowed into dependency courtrooms or hearings, it does make the process of implementing current law predictable and consistent for everyone, and — most importantly — reliably child-centered.

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