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Confidentiality no longer benefits children and families in crisis

, Dependency Court is a therapeutic court which seeks first to protect children, second to rebuild and restore families and finally to find new homes for children when their families cannot be restored.

James H. Seals

JAMES H. SEALS
kkellum@ca.cjis20.org

Recently, stories appeared in The News-Press about a Guatemalan girl illegally trafficked into the United States and made to suffer despicable harm. Part of the story focused upon whether the Department of Children and Family Services did its duty to protect the child once her terrible plight was noticed. In the course of its investigation, The News-Press sought certain DCF records on this case. DCF refused. In this age of Government in the Sunshine and the Freedom of Information Act, how, you might ask, can DCF hide the government's business from the people?

The answer is simple: The law allows it. A law on the books for 42 years bars any and every member of the public from access to any and all DCF records and court records pertaining to any abused, abandoned or neglected child. You and everyone not actually involved in the case have no right to see these records.

When passed in 1963, the law making all child protection system records confidential had good intentions, but now the law has become antiquated. The reasons existing then are not that relevant today. While good reasons still remain for continuing the confidentiality of some records, others no longer need to be hidden from the public.

Back in the 1960s, artist Andy Warhol prophetically declared, "In the future everyone will be famous for 15 minutes." Today, everyone seems willing to say or do just about anything to gain recognition on talk shows and reality television. They will fistfight with their loved ones, eat worms, get fired, reveal sordid secrets or just plain open themselves wide to public voyeurism for the sole purpose of having it published or broadcast.

OLD LAW, NEW TIMES

The culture of 1963 was not that way. Family business, especially its potentially embarrassing facets, was very personal and deeply private. People then went to great lengths to avoid public embarrassment, harassment or humiliation, especially in family matters. Accordingly the government honored those widely

held principles. It did not add to a family's burden by making its business about its children known to the public.

Today much of that has fallen by the wayside. One need only compare the unwed, pregnant teenagers of today with their similarly situated grandmothers of 1963. Forty-two years ago, most pregnant teens went into seclusion, gave their babies up for adoption and returned home to try to recapture their pre-pregnancy lives, all the while keeping their pregnancies a tightly guarded secret. Today's pregnant teens stay where they are, not hiding anything. That is a significant cultural shift. Whether it represents society's lack of concern or greater tolerance is not the issue. The point is: A compelling interest no longer covers all child maltreatment matters with a comprehensive cloak of confidentiality.

Nowadays, instead of serving only the interests of children and families, this cloak of confidentiality serves as the cover under which the child protection system has come to comfortably operate, virtually free from public scrutiny. But to me the most disturbing aspect of these antiquated laws is: They make it too difficult for communities to hear the cries for help from children and families in crisis, thus failing to generate an appropriate and proportional public response.

CHILDREN IN CRISIS

That said, confidentiality laws still have a useful purpose. Children and families in crisis do not need to have their entire lives publicly exposed and dissected like cadavers on an autopsy table. They do not deserve to be held up to public ridicule and condemnation just because they are experiencing serious problems.

Dependency courts do not seek to punish or exact retribution from parents who have caused their children to be unsafe. It is a therapeutic court which seeks first to protect children, second to rebuild and restore families and finally to find new homes for children when their families cannot be restored. We offer parents a fair chance to demonstrate parental competency. We offer services. We praise those who work their tasks; we warn those who do not. We try to meet the special needs that maltreated children present to us. Surely that deserves some amount of deference and restraint from the public and the media.

Therefore, confidentiality laws are needed but they must be wisely drawn to balance the interests of children and their families with the public's interest in the child protection system. Specifically, families need to work out their problems without undue interference, harassment and embarrassment from public exposure. The public needs to know whether it is getting a good return on its investment and to hold accountable those who have failed in their stewardship. More important, the public needs to know whether enough of the right human and fiscal resources are being given to the child protection system, and, if not, what it can do to make up the shortfall.

These articles will give readers a primer on the child protection system. This system is comprised of the Department of Children and Family Services, Community Based Care providers and the Dependency Court, one of two courts in the Juvenile Division of the Circuit Court. My purpose is not only to educate you about the child protection system, but also to tell you how you, the community, can add to the human resources we need to protect and help our abused, abandoned and neglected children.

-- Write to Circuit Court Judge James H. Seals at 1700 Monroe St., Fort Myers, FL 33901, fax (239) 335-

2586 or e-mail kkellum@ca.cjis20.org.

ABOUT THIS SERIES

Editor's note: This is the first in a series of weekly columns Judge James Seals is writing about Lee County's child protection system, which handles cases of abused, neglected and abandoned children. Few citizens know about this system's vital work on behalf of children and families in crisis because all of its records and many of its hearings are closed to the public. Seals believes Florida's child protection confidentiality laws to a great extent have outlived their original purpose.

Seals, 60, has lived in Fort Myers since 1973, and practiced law here for 11 years. A 1970 graduate of the University of Florida College of Law, he was elected county judge in 1984 and was appointed to the 20th Judicial Circuit Court in 1986. He has served as a full-time Juvenile Court judge for nearly six of his 19 years on the bench. Seals is a member of the National Council of Juvenile and Family Court Judges and has lectured on Juvenile Court law at the Florida Judicial College, College of Advanced Judicial Studies and the Conference of Circuit Court Judges.

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