A PLACE AT THE TABLE: CREATING PRESENCE AND VOICE FOR TEENAGERS IN DEPENDENCY PROCEEDINGS

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Teens who find themselves entangled in the child welfare system, the subject of a number of the *UNLV Conference Recommendations*[1] reported in this volume, present unique issues of legal representation.[2] The most recent available figures indicate that roughly 250,000 young people over the age of eleven are in foster care in the United States.[3] They make up nearly half of the foster care population.[4]

If most Americans think about teenagers in foster care at all,[5] they probably form their views based on images in popular culture such as the television series *Judging Amy*.[6] The fortunate youngsters who appear in Judge Amy Gray's fictional family court receive her full attention; the judge sees each child several times and remembers her conversations with each one. A separate show, *The Guardian*, celebrates attorneys who appear to have unlimited time for their child clients.[7] Going one step further, on the *O.C.* (short for Orange

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[1] Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham, William S. Boyd School of Law, University of Nevada, Las Vegas NV, January 12-14, 2006 (hereinafter the "*UNLV Conference*"). The *Recommendations* can be found at *Recommendations of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 NEV. L.J. 592 (2006). The author participated in the *UNLV Conference* as a member of the Working Group on Representing the Whole Child.

[2] I focus on teens as an uncontroversial proxy for children with capacity to direct representation, to form views about their needs and express them, hoping to avoid debate on where capacity starts. The Working Group on the Role of Age and Stage of Development suggests that a presumption of capacity should apply to all children age seven or older. *Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623, 623 (2006).

[3] ADMIN. FOR CHILD. & FAMILIES, DEP'T OF HEALTH & HUMAN SERVICES., THE AFCARS REPORTS, PRELIMINARY FY 2003 (estimates as of April 2005), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report10.htm at 1 [hereinafter AFCARS].

[4] *Id.*

[5] A Hart Research poll conducted in April 2003 found that only twelve percent of registered voters consider themselves "very familiar" with "the issue of foster care;" only six percent reported that they had "seen, heard, or read [a lot]about the issue of foster care in the past two or three months." PETER D. HART RESEARCH ASSOCIATES, RESULTS OF A NATIONAL SURVEY OF VOTERS (May 7, 2003), http://www.pewfostercare.org/docs/index.php?DocID=21 (*see* "Complete Survey Results").

[6] *See generally*, JUDGING AMY (CBS).

[7] *See generally*, THE GUARDIAN (CBS).

County, California) the court-appointed attorney for a first offender in a delinquency case takes his teen client into his ocean-front home after the boy's mother abandons him; the boy gets to live in the chic pool-house, attend an elite private school and is ultimately adopted into the lawyer's family.[8]

Perhaps these shows reflect a collective rescue fantasy. Although social scientists have argued that "little is known about how children experience . . . any aspect of foster care,"[9] it is fair to say that for the typical teen in the dependency system the real world looks nothing like these television shows.

Several recent studies of how youth in foster care actually see their world reinforce the direction of the *UNLV Conference Recommendations* that bear specifically on young people in the child welfare system. Applying these findings, this comment underscores why it is essential to expand the voices of foster youth in the court process–that supervises their care. I propose some additional steps to ensure meaningful participation in dependency hearings by foster youth in response to obstacles they have identified.

This comment summarizes the *Conference Recommendations* designed to guarantee foster youth the opportunity to participate in dependency proceedings, explains the significance of such engagement in decision-making, and considers what additional steps are necessary to help young people realize the right to be heard. In particular, I focus on the interaction between school attendance and the unique demands of the child welfare system. Finally, I examine the role that judges and court systems should play in reform efforts if we are to achieve the goal of guaranteeing that courts actually hear what teens in foster care have to say.

I. PERTINENT CONFERENCE RECOMMENDATIONS

The *UNLV Conference* makes several recommendations that focus on the broad goal of ensuring that foster youth participate in the court proceedings that determine the course of their lives. The recommendations include:

1. Children should participate directly in the court process, which, among other things, would assure that judges associate a human face with the proceedings;[10]

2. Children should have full party status and a statutory right to counsel in child welfare proceedings. Children should have a right to attend and participate in hearings affecting them;[11]

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[8] THE O.C., PREMIERE (FOX television broadcast Aug. 5, 2003), www.tv.com/the-o.c./show/16960/summary/html (last visited May 1, 2006). It is unclear whether the writers intend to communicate the adopted son's outsider status by keeping him in the pool house while the biological son lives in the main house or whether the living situation just furthers other plot lines by providing maximal privacy from parental oversight.

[9] MARNI FINKELSTEIN, MARK WARMSLEY & DOREEN MIRANDA, WHAT KEEPS CHILDREN IN FOSTER CARE FROM SUCCEEDING IN SCHOOL: VIEWS OF EARLY ADOLESCENTS AND THE ADULTS IN THEIR LIVES 2 (2002) http://www.vera.org./publications/publications.asp (then search for "Finkelstein").

[10] *See Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623 (2006).

[11] *See Report of the Working Group on Representing the Whole Child*, 6 NEV. L.J. 665 (2006); *Report of the Working Group on the Best Interests of the Child and the Role of the Attorney*, 6 NEV. L.J. 682 (2006).

3. Counsel for children should engage in holistic representation;[12]

4. Where children are involved in both the dependency system and the juvenile justice system, the same attorney should represent youth in both the dependency and delinquency proceedings;[13]

5. International norms dictate that youth have the right to express themselves in all matters affecting them;[14] and

6. Attorneys must help their child clients become effective advocates for themselves, so that they can effectively identify and secure needed services and benefits and take active roles in court proceedings and other actions affecting them.[15]

In addition, a number of recommendations call for holistic representation of child clients, in which lawyers familiarize themselves with the multiple contexts of the child's life, and assume a broad advocacy role.[16]

This approach responds to the current frustrations of foster youth from diverse backgrounds around the country who recently spoke in unison when they told interviewers: "involve us in . . . our own destinies."[17] It parallels recent recommendations from other groups, including the federal Guidelines for Public Policy and State Legislation Governing Permanence for Children issued in 1999,[18] and the Pew Commission on Children in Foster Care, which

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[12] *See Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623 (2006); *Report of the Working Group on Representing the Whole Child*, 6 NEV. L.J. 665 (2006).

[13] *See Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623 (2006); *Report of the Working Group on Representing the Whole Child*, 6 NEV. L.J. 665 (2006).

[14] *See Report of the Working Group on the Lessons of International Law, Norms, and Practice*, 6 Nev. L.J. 656 (2006). This recommendation is based on Article XII of the Convention on the Rights of the Child which provides: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." U.N. Office of the High Commissioner for Human Rights, Convention on the Rights of the Child, Sept. 2, 1990, http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm.

[15] *See Report of the Working Group on Representing the Whole Child*, 6 NEV. L.J. 665 (2006); *Report of the Working Group on the Best Interests of the Child and the Role of the Attorney*, 6 NEV. L.J. 682 (2006).

[16] *See, e.g.*, *Recommendations of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 NEV. L.J. 592, pt. V.D. (2006).

[17] JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, VISION STATEMENT ON YOUTH ENGAGEMENT 2 (Feb. 2003), http://jimcaseyyouth.org/docs/youth_vision.pdf.

[18] CHILDREN'S BUREAU, ADMIN. ON CHILDREN, YOUTH AND FAMILIES, DEPT. OF HEALTH AND HUMAN SERVS., ADOPTION 2002: THE PRESIDENT'S INITIATIVE ON ADOPTION AND FOSTER CARE, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN VII-11 (1999) ("We recommend that States guarantee that all children who are subjects of child protection court proceedings be represented by an independent attorney at all stages and at all hearings in the child protection court process. The attorney owes the same duties of competent representation and zealous advocacy to the child as are due to an adult client."). The author chaired the subcommittee of the Expert Work Group that drafted the *Standards for Legal Representation of Children, Parents and the Child Welfare Agency* included in the Guidelines.

in 2004 called for children to have "a direct voice in court [and] effective representation" in dependency proceedings.[19]

After surveying the conditions under which guardians *ad litem* ("GALs") are appointed for children in the fifty-six U.S. jurisdictions, whether the GALs must be lawyers, and whether they act as client-directed attorneys or substitute their own judgment about the child's best interests, Jean Koh Peters and her students at Yale Law School concluded that the reality on the ground is a far cry from the current scholarly consensus and international norms about legal representation for minors.[20] They report that a substantial minority of states do not "require the child's representative to express or advocate the child's views in court."[21] Each jurisdiction has a unique approach to child representation; "no two" are identical.[22] The jurisdictions resemble each other in one disturbing respect. Child representation practice is "extremely varied [and] unclear . . . within and among jurisdictions."[23]

II. Beyond the Conference Recommendations: The Voices of Youth

Of course, the *Conference Recommendations* constitute a crucial first step toward ensuring that children in dependency proceedings all over the country are represented by lawyers and appear in court. We have known for decades that involving young people in decision-making promotes more positive outcomes.[24]

Appointing attorneys for children in foster care and insuring that they act as attorneys in the broadest sense, with all of the reforms that effort will entail, is critical. But appointment of attorneys, even good, well-trained attorneys is likely not sufficient to give children voice in dependency proceedings unless young people have the chance to tell their stories in court, and unless judges listen.

Two recent sets of interviews with foster youth, conducted with other goals, provide evidence that courts are not hearing what adolescents in foster

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[19] The Pew Commission on Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster* Care at 18 (2004), www.pewfostercare.org. The nation's leading legal associations have endorsed the Commission's recommendations. *Pew Commission Progress Report*, Newsletter (Pew Commission on Foster Care, Wash. D.C.) Mar. 1, 2006, at 1, http://pewfostercare.org/newsletter/index.php?NewsletterID=25 (reporting endorsements from, among others, the Conference of Chief Justices, the National Council of Juvenile and Family Court Judges, and the American Bar Association). One federal district court recently held that children in deprivation and termination proceedings have a due process right to an appointed "advocate attorney" to protect the child's interest in his or her own safety, health and well-being . . . ." Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353, 1360-61 (N.D. Ga. 2005).

[20] *See* Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 Nev. L.J. 966, (2006).

[21] *Id.* at 1015.

[22] *Id.* at 1014.

[23] *Id.*

[24] *See, e.g.*, Trudi Festinger, No One Ever Asked Us—A Postscript to Foster Care 1983; Ruth Massinga and Peter J. Pecora, *Providing Better Opportunities for Older Children in the Child Welfare System*, Child., Fams. & Foster Care, Winter 2004, at 151, 160 *available at* http://www.futureofchildren.org/information2850/information.htm.

care have to say.[25] The Ombudsman in the State of Washington interviewed thirty-two foster children over the age of eleven (the "Washington Study").[26] These young people told interviewers that "success in foster care occurs when . . . they are able to influence what is happening to them."[27] They did not, however, believe that the existing child welfare system was in fact listening. The interviewers did not ask whether the foster youth they spoke with were expressly aware that under Washington statutes a GAL is not under any obligation to present the child's views to the court, or that the GAL, while required in all dependency cases, does not need to be a lawyer.[28]

A second study conducted by the Vera Institute of Justice in 2002 examined the educational experiences of twenty-five middle school students in public schools in Bronx, New York who were in foster care (the "Vera Study").[29] The Vera Study focused on one particular aspect of the children's lives, and involved interviews with school staff, foster parents and caseworkers engaged with each child. In New York, unlike Washington, a law guardian in dependency proceedings must be an attorney. However, GALs in New York fill two roles that are potentially in conflict: GALS are required to "help protect [the children's] interests and to help them to express their wishes to the court."[30]

III. Court Appearances

The *Conference Recommendations* seek to guarantee foster youth the right to participate in hearings affecting their care. Federal law assigns courts an enormous role in child welfare cases. Courts must determine whether abuse or neglect has occurred, whether children should be removed from their homes, and whether the agency is meeting its legal obligations. They also supervise the child's safe return or placement in a safe, permanent home within the statutory time frame, and make related decisions about termination of parental rights. Even though courts retain all of the formal power in child welfare cases, the practitioners and scholars at the Conference understood that children are often frozen out of the dependency court process. I am unaware, however, of any studies that document the extent of the problem.

Just two weeks after attending the *UNLV Conference*, I participated in a planning conference that launched the American Bar Association's Youth at Risk Initiative, which focuses on teenagers at high risk of entering the juvenile justice system whether as dependents or delinquents. Participants included sev-

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[25] A third study also relies in part on interviews with eight young adults who were raised in foster care; that study focused equally on the experiences of biological and foster parents. Gloria Hochman, Anndee Hochman, Jennifer Miller, *Foster Care: Voices from the Inside* at 4 Pew Commission on Children in Foster Care 2004, *available at* http://www.pewfostercare.org.

[26] Office of the Family & Children's Ombusdman, Foster Care, What Young People Say is Working 3, 16 (January 2001), http://www.governor.wa.goc/ofco/00rpt/fostercare.pdf [hereinafter Ombudsman].

[27] *Id.* at 10.

[28] Peters, *supra* note 20, at App. C, 1080.

[29] Finkelstein et al., *supra* note 9.

[30] Peters, *supra* note 20, at App. C, 1078.

eral teenagers who are currently or have been in foster care; they are all members of Voices of Youth, which advocates for a more responsive child welfare system, and writers for *Represent*, a magazine of and by foster youth. These teen representatives are accomplished and impressive; they have learned to speak out for themselves.

They expressed dissatisfaction with their lawyers—whom they barely knew—and their case workers—whose short tours of duty conformed to the national data. I was stunned, however, by their reports that they almost never had an opportunity to appear in court or to tell their stories to the judge who would make critical decisions about their lives.

Natasha Santos, whose eighteenth birthday fell on the opening day of the conference, entered foster care at age eight and remained in the child welfare system for six years until she was adopted after she asked her most recent foster mother to make her home permanent.[31] She reported that during her six years in the system she had never appeared in court. She believes that a judge was involved in her case three times, because each time she met briefly with a new lawyer who seemed to be preparing for a hearing. None of the three lawyers ever contacted her to tell her what had happened in court. Natasha exited the dependency system after an informal appearance where her adoption was finalized.[32] Having met Natasha, who had the gumption to demand that someone adopt her, I am confident that she could have communicated her concerns eloquently to a family court judge if she had only had the opportunity: concerns first about whether her removal had been necessary, later about an emotionally abusive foster mother and her search for a safe environment. Natasha is determined and resilient; she landed on her feet and is about to apply to college.

I informally asked the other Voices of Youth representatives (all of whom were or had been in foster care in New York City) whether they shared Natasha's experience. Did they have the opportunity to appear in court when their lives were being discussed? They all seemed surprised by my question. It seemed obvious to them that courts did not directly engage with foster children. When I asked why they did not go to court, one teen told me, "my lawyer thought it was more important not to miss school."

IV. School or Court?

My informant's lawyer was acting on a partial truth, but failed to appreciate the comparative importance of school and court in a foster child's life. Success in school is extremely important for all young people, including those in the dependency system. School achievement can both reflect and promote resiliency in foster children.[33] And it is also true that foster youth may miss a great deal of school because of their involvement with the dependency system.

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[31] Natasha Santos, *No Easy Answers*, N.Y. Daily News, Jan. 30, 2006, *available at* www.nydailynews.com/news/ideas_opinions/story/386853p-328254c.html; Interview of Natasha Santos, Feb. 2, 3 and Mar. 3, 2006.

[32] Interview of Natasha Santos, Mar. 3, 2006.

[33] *See* Barbara Lowenthal, *Effects of Maltreatment and Ways to Promote Children's Resiliency*, 75 Childhood Education 204 (1999).

The Vera Study concluded that "mandated court appearances" caused foster youth "to miss school frequently,"[34] as discussed more fully below.

At first glance, one can understand why an adult might think that a foster teen should not miss any more school. Foster youth face many obstacles to success in school, even in comparison to children from similar socioeconomic backgrounds.[35] These include some widely recognized factors such as the traumas that may have led to initial involvement with the child welfare system and frequent moves with attendant school transfers. Recent studies have begun to emphasize the interactive effect between foster care and educational outcomes. These studies underscore what should have been obvious: "foster care placement itself can have a traumatic effect on children, causing them to feel a sense of loss, fear, abandonment, isolation, helplessness and confusion."[36]

In addition, the Vera Study noted that the child welfare system fails to designate any adult to oversee the children's education; case workers and foster parents frequently fail to focus on school performance except in the event of a crisis such as a disciplinary issue or actually failing a course. Foster children may move before they even receive their grades, or may be told that barely passing their courses is all that is necessary.[37]

Youth in foster care miss school for a number of reasons directly attributable to their involvement in the child welfare system, although some research suggests that many foster children attend school more regularly that they did before they entered the child welfare system.[38] Children and foster parents report that required medical appointments lead to repeated absences.[39] Some children have health problems of long standing that were never addressed until they entered care. More than half of the children in the Vera Study told researchers the "they miss school because of frequent doctor's appointments."[40] Robert, for example, attributed his failing grades in math and English

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[34] FINKELSTEIN ET AL., *supra* note 9.

[35] *Id.* at 1, 12 (foster children perform below their peers on measures including standardized tests and grade point averages). According to HHS, less than forty percent of the children in foster care are non-Hispanic whites. *AFCARS*, supra note 3, at 2. Roughly half of all of the cost of foster care comes from the federal government under Title IV-E, which is available based on the income eligibility of the child's birth parents. Eligibility continues to be tied to the rules that apply to Aid to Families With Dependent Children ("AFDC"), even though that program has been eliminated. Temporary Assistance for Needy Families ("TANF"), the federal program substituted for AFDC currently provides about fifteen percent of the federal dollars available for foster care. FUTURE OF CHILDREN, *Children, Families and Foster Care: Analysis and Recommendations*, CHILD., FAMS., AND FOSTER CARE, Winter 2004, at 20, *available at* http://www.futureofchildren.org/information2827/information_show.htm?doc_id=209691 14. The relationship between AFDC eligibility, TANF and foster care is discussed in Catherine J. Ross & Naomi R. Cahn, *Subsidy for Caretaking in Families: Lessons from Foster Care*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 55, 59, 70 (2000).

[36] FINKELSTEIN ET AL., *supra* note 9, at 2 (*citing* Anne M. Geroski & Lissa Knauss, *Addressing the Needs of Foster Children with a School Counseling Program*, *in* ASCA PROF. SCH. COUNSELING 152-161 (2000)).

[37] FINKELSTEIN ET AL., *supra* note 9, at 13-14.

[38] Dylan Conger & Alison Rebeck, *How Children's Foster Care Experiences Affect Their Education* (Vera Institute of Justice, 2001) (*cited in* FINKELSTEIN ET AL., *supra* note 9, at 16).

[39] FINKELSTEIN ET AL., *supra* note 9, at 36.

[40] *Id.* at 16.

to frequent absences for bi-weekly doctor's appointments due to a heart problem, which he said had caused him to miss three tests.[41] Other reasons unique to status as a foster child include agency appointments[42] and court appearances which may involve encounters with biological parents, both of which generate anxiety.[43]

Unfortunately, both teachers and foster parents frequently deny that foster youth are likely to have a more difficult time than other children from disadvantaged backgrounds.[44] For teachers, this denial in part reflects the fact that they may not even know which of their students are currently in foster homes.[45]

Statutes in many jurisdictions protect the rights of foster children who miss school because of court appearances or activities pursuant to court order (which may include court-mandated medical and counseling appointments), providing that grades may not be lowered due to such excused absences.[46] But, in order to avail themselves of the statutory protection, young people would have to tell their classroom teachers about their lives; foster youth indicate that they do not trust teachers in the abstract to preserve their privacy. Foster children may go to great lengths to avoid disclosure of their legal status to peers, and do not always trust teachers to preserve their confidences.[47] One middle school student told researchers that she was "devastated" when a "stupid" fourth grade teacher told the class that she was a foster child; years later, some of her peers still remembered.[48] Lawyers and advocates need to work to ensure that children's confidences are preserved and that they have opportunities to make up academic work that they miss because of court appearances and other obligations related to their status in the child-welfare system.

The educational system's lack of responsiveness to the special needs of foster youth can be attributed, in part, to the fact that schools, like courts, know very little about the experiences of foster children. If they knew more, or cared more, about how young people experience their involvement with the dependency system, they might be less concerned about school absences occasioned by court dates. The time devoted to court appearances during school hours may be immaterial to school performance. Young people report that their anxiety about their circumstances and their worries about what will happen in court undermine their ability to concentrate in school regardless of whether their bodies are "present." The experience of the girl who reported that her grades

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41 *Id.*

42 *Id.* at 17, 37, 40 (agency workers were reluctant to identify appointments as keeping children out of school).

43 *Id.* at 17.

44 *Id.* at 31.

45 *Id.* at 32 ("For many staff, this tendency to view foster children as not much different from other students appeared to be a sign of frustration over the sad state of large numbers of children at their schools. [Other comments suggested] that the act of identifying foster children alone might contribute to their being labeled, or that focusing on foster children discounted the troubles of other youth.").

46 *See e.g.*, CAL. EDUC. CODE 49069.5(h) (West 2006).

47 FINKELSTEIN ET AL. *supra* note 9, at 21-22. *See also, e.g.*, Shaniqua Sockwell, *Why No One Knows I'm a Foster Child*, *in* THE HEART KNOWS SOMETHING DIFFERENT: TEENAGE VOICES FROM THE FOSTER CARE SYSTEM 125-127 (Al Desetta, ed., 1996).

48 FINKELSTEIN ET AL., *supra* note 9, at 22.

suffered because she "kept worrying about things outside of school, like foster care and going to courts" is likely very common.[49]

On the other hand, young people need to recognize that school is important, and adult reinforcement is a powerful tool. Where foster parents become engaged in the children's homework and education their involvement proves very significant, just as it does with biological parents, and not only in the narrow terms of school achievement.[50] In response to questions about what made them feel "cared about" one participant in the Washington Study reported: "my foster parents paid attention to my grades. They wanted progress reports from school about how I was doing, and they were willing to help me with my homework. They put me on a homework schedule . . . ."[51] Another was delighted when she received a present from her foster mother for making the Honor Roll at school.[52] Small things are simple, but often lacking in the lives of children in foster care.

Lawyers working with teens in the dependency system need to understand the context of their clients' lives if they hope to provide the holistic representation the Conference recommendations envision. The issue of the role of education in the lives of foster children, and the frequent abdication of other adults, underscores the importance of holistic representation by attorneys who work with foster youth. Because attorneys have access to records, they are ideally positioned to review school reports, to identify incipient crises, and to provide positive reinforcement for success. On the other hand, while school is the "job" of most young people and lawyers should strive to promote a positive educational experience for their clients, lawyers should also ensure that foster youth who want to appear in court have the opportunity to do so.

V. JUDGES SHOULD DEMAND THAT FOSTER TEENS APPEAR IN COURT

It is true that child advocates frequently look to lawyers to enforce the rights of young people. The Conference recommendations propose a "right" for children to participate in dependency proceedings, which I certainly endorse. But in this instance, we may not want to rely on lawyers alone to ensure that their clients in the dependency system make it to court and are listened to once they arrive.

A number of national organizations have concluded that youth are more likely to be heard in a unified family court system that provides "one family, one judge."[53] Such court structures, which I have long advocated, provide the best hope of a judge who knows and remembers the youth, and is aware of all of the related legal issues that affect a child's life, such as substance abuse or domestic violence issues in the family or the child's own involvement in the delinquency system.[54]

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[49] *Id.* at 15.
[50] *Id.* at 27.
[51] OMBUDSMAN, *supra* note 26, at 8.
[52] *Id.* at 6.
[53] *See* e.g., AMERICAN BAR ASSOCIATION, POLICY ON UNIFIED FAMILY COURTS, *available at* http://www.abanet.org/unifiedfamcrt/about.html (last visited June 5, 2006).
[54] Catherine J. Ross, *Unified Family Courts: Good Sense, Good Justice*, TRIAL, January 1999, at 30.

In addition to structural changes in court organization for jurisdictions which have not yet achieved them, I propose a role for judges in ensuring that foster youth appear in court, captured in the following supplement to the Conference recommendations: "Judges in dependency proceedings should ensure that children over the age of [eleven][55] are present at hearings that concern them or that they have knowingly waived their right to attend."

Judges and court administrators have it in their power to remove the frequent conflict between school attendance and participation in dependency proceedings described above. They should explore extending court hours into the evening or adding weekend time slots so that teenagers can attend court outside school hours.

Some may ask whether requiring judges to enforce a young person's right to appear at dependency hearings is insensitive to the many teens who report that they become anxious at the prospect of a court appearance, which may include potentially traumatic contact with biological parents and other adults in their lives.[56] To be sure, the prospect of appearing in court can be daunting for a teenager (or even an adult). But presumably the right to appear is not a court order to appear; a minor could execute an informed waiver.

Waivers themselves may raise a host of issues. These include whether and how the judge should oversee the waiver, and whether anyone in addition to the attorney would be in a position to advise the teen about the wisdom of waiving the right to appear. In other contexts, I have argued that teenagers need the privileged counsel of their parents in order to avail themselves of their rights in juvenile court.[57] In the dependency system, almost by definition, it may be an open the question whether parents and children share the same goals.

For the teenager who invokes the right to appear, an appearance may mean a number of different things. For a dependent teen, as for an adult client in a civil matter, an appearance in court might mean literally "appearing," that is, being present and observing. It may entail consulting and advising one's attorney.[58] It should offer the opportunity to talk either informally or as a sworn witness. How can it be more important not to miss a day of school than to miss the proceedings that will affect one's home life and future?

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[55] The precise age could vary by jurisdiction, consistent with the norms in each state, and could certainly be lower; eleven is used here because youth eleven and older are the focus of these comments.

[56] FINKELSTEIN ET AL., *supra* note 9, at 17.

[57] Catherine J. Ross, *Implementing Constitutional Rights for Juveniles: The Parent-Child Privilege in Context*, 14 STANFORD L. & POL'Y REV. 85 (2003).

[58] In an article prepared for the 1996 *Fordham Conference on Ethical Issues in the Legal Representation of Children*, I argued that lawyers should be appointed to pursue the civil claims of minors in a variety of circumstances, including issues that arise when children are in custody, and that those lawyers should "pursue 'the wishes and objectives of the child where the child is capable of making considered decisions in his [or her] own interest.'" Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 FORDHAM L. REV. 1571, 1615 (1996); *see generally id.* at 1600-17.

VI. Appearing May Not Suffice: Foster Youth Must Also Be Heard

It is not sufficient merely to give young people in the child welfare system a chance to appear in court. They need to be adequately prepared to participate in the process. Many foster youth report that even when they were included in the court process, they "did not know what to expect when they went to court, that they felt left out of the court process, and that the court did not take their opinions seriously."[59]

The Washington Study concluded that "what matters most" to young people in foster care is "feeling like my opinions matter."[60] "Success" to foster teens often means being "able to influence what is happening to them."[61] One interviewee explained that she had been very unhappy in her foster home and wanted to move. The caseworker seemed unresponsive. Then, the youth recalled, her counselor "let me write a letter to [my caseworker and his supervisor.] They used the letter in court and I got what I wanted: . . . I am happy in a new home."[62] This story makes several important points. First, the foster youth felt that she needed permission and encouragement to communicate her views formally. Second, while the letter served its purpose, and achieved the result the teen wanted, she should not have had to depend on her caseworker to decide whether to share her letter with the judge. She should have been at the hearing, and should have been allowed to speak.

Because young people generally have no right to appellate counsel in the dependency system, there are virtually no reported cases concerning the obligations of counsel to present the views of their clients or of the obligation of the trial court to listen to young people. In *In re Sherman*, however, an appellate court in Ohio recently considered both issues in the context of an appeal brought by a father whose parental rights had been terminated.[63] Ohio statutes provide that a child who is the subject of a proceeding to terminate parental rights is a party to the proceeding and is entitled to independent counsel, and thus would appear to satisfy some of the key recommendations developed at this Conference.[64] It turns out, however, that these statutory provisions may fail to provide a voice for teenagers at what is arguably the most important hearing of their lives.

Courts in Ohio have held that it is entirely in the discretion of the juvenile court whether to ascertain the opinion of the child-party directly through an in-camera interview or testimony or to rely on the representations of the child's

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[59] Sandra Bass, Margie K. Shields, & Richard Behrman, *Children, Families and Foster Care: Analysis and Recommendations*, Child., Fams., & Foster Care, Winter 2004, at 5, 23, *available at* http://www.futureofchildren.org/usr_doc/vol_14_no_1_no_photos.pdf (citing J. Knipe and K. Warren, Foster Youth Share Their ideas for Change. (1999).

[60] Ombudsman, *supra* note 26, at 10.

[61] *Id.*

[62] *Id.* at 11.

[63] *In re* Sherman, 832 N.E.2d 797, 800 (Ohio Ct. App. 2005).

[64] Ohio Rev. Code Ann. § 2151.352 (West 2006); *See also* 48 Ohio Jur. 3d Family Law § 1626 (West 2005) (discussing Juvenile Procedure Rules 2(Y)).

GAL.[65] The *Sherman* court held that where the trial judge had conducted in camera interviews of the children it was not reversible error for the judge to decline to interview the fifteen year-old a second time, when she reported that she had changed her mind about what she wanted. The court accepted the representation of the girl's attorney that she wanted to live with her father, and proceeded to terminate the father's rights.[66]

The appellate court did reverse, however, because the trial judge in *Sherman* failed to appoint separate counsel for the fifteen year-old when she changed her mind and broke ranks with her three siblings, creating a conflict of interest.[67] Applying a mixed model of representation, the attorney's closing statement advocated for the fifteen year-old's decision to live with her father, "but added that she did not feel that this was really what her client wanted."[68] Even though the father won his appeal, and the court reversed the termination, the appeal and resulting delay might not have been necessary if the judge had spoken with the girl. After hearing her, the judge might have been in a better position to determine what she really wanted, or might have accorded more weight to her views.[69] *Sherman* suggests that statutory reform alone may also not be enough to give foster youth the voice to which they are entitled. As with many rights, vigilant defense of a right to appear in dependency hearings will require contributions from many professionals beyond the attorneys who represent young people in the child welfare system.

VII. Conclusion

Lawyers, judges, court administrators, and school systems all have roles to play in ensuring that foster youth have a meaningful opportunity to participate in judicial proceedings that determine the course of their lives. The additional reforms suggested here are designed to enhance key Conference recommendations concerning the right of youth to appear at their own dependency hearings. As in so many areas, the key to translating the vision of a right for foster youth to be heard into reality lies not in the advancement of academic theory, or the statement of elevated principles, but in crafting a structure that can handle the logistics on the ground, including how to get teenagers both to school and to court.

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[65] *In re* Beresh, No. 2003CA00089, 2003 WL 22128799 (Ohio Ct. App. September 15, 2003) (holding judge's failure to interview the twelve and fourteen year-old subjects of a termination proceeding did not constitute an abuse of discretion).

[66] *Sherman*, 832 N.E.2d at 802.

[67] *Id.* at 801.

[68] *Id.* at 801 n.1.

[69] Elsewhere, I have argued that many children, particularly teenagers, would like to maintain a relationship with their biological parents where the relationship retains positive elements. *See* Catherine J. Ross, *A Delicate Balance: The Rights of Children and Mothers in Parental Termination Proceedings*, 33 Stud. in L. Pol. & Soc'y. 163 (2004), and Catherine J. Ross, *The Tyranny of Time: Vulnerable Children, "Bad" Mothers, and Statutory Deadlines in Parental Termination Proceedings*, 11 Va J of Soc Pol'y & L. 176 (2003). The Vera Study reported that half the teenagers they interviewed were in regular contact with their biological families. *See* Finkelstein et al., *supra* note 9, at 29.