

GIVING A VOICE TO THE VOICELESS: ENHANCING YOUTH PARTICIPATION IN COURT PROCEEDINGS

Miriam Aroni Krinsky & Jennifer Rodriguez*

I WAS ONLY SIX WHEN I WENT INTO FOSTER CARE. I REMEMBER VIVIDLY JUST SITTING OUTSIDE THE COURTHOUSE . . . MY BIRTH MOTHER CRYING. AND THEN SUDDENLY, I WAS LIVING SOMEWHERE ELSE, IN SOME HOUSE I DIDN'T KNOW. NO ONE TOLD ME ANYTHING. FOR FIVE YEARS, NO ONE TOLD ME ANYTHING.

LUIS, NOW 23¹

The confusion, frustration, and isolation from the court process that Luis, a former foster youth, described to the Pew Commission on Children in Foster Care are not unique. Courts play a critical, often life-changing role in the lives of children who enter the child welfare system—determining if children will enter foster care, how often they will be moved from placement to placement once they enter care, whether and when they will see siblings and other family members, and if and when they will exit the system. Yet the voices of far too many foster children and former foster youth are ignored in this process.

A 2005 survey conducted by the California Commission on the Future of the Courts found that the most critical factor in determining how people viewed the courts was not the end results, as might be expected, but rather the extent to which courts' decisions are made according to what are regarded as "fair procedures."² The Commission's findings, along with other research, define the key elements comprising fair procedures as: interpersonal respect, neutrality of decision-makers, and participation—the ability of litigants to express their own views as the legal process unfolds.³

This study underscores what many who seek to improve the legal process have consistently emphasized: It is often the process and the integrity of the

* Miriam Aroni Krinsky is Executive Director of Home At Last, a national partnership to encourage education and action on the court's recommendations of the Pew Commission on Children in Foster Care. She also serves as Executive Director of the Children's Law Center of Los Angeles, a nonprofit legal services organization that provides representation for more than 20,000 children in the Los Angeles dependency system. For more information on Home At Last, visit <http://fostercarehomeatlast.org>; for more information on the Children's Law Center, visit <http://www.clcla.org>.

Jennifer Rodriguez is a former foster youth and Legislative and Policy Coordinator for the California Youth Connection, a grassroots organization of foster youth who participate in policy development and legislative change to improve the foster care system. For more information on the California Youth Connection, <http://www.cal-youthconn.org>.

¹ GLORIA HOCHMAN, ET AL., FOSTER CARE: VOICES FROM THE INSIDE, 2 (2004), <http://pewfostercare.org/research/voices/voices-complete.pdf>.

² David B. Rottman, *What Californians Think About Their Courts: Highlights From a New Survey of the Public and Attorneys*, CAL. CTS. REV., Fall 2005, at 6.

³ *Id.* at 6-7.

path followed, and not the ultimate result, that determine our perceptions of the legal system and our willingness to have faith in judicial decision-making. In particular, the public places a high value on individuals' ability to participate in court proceedings and to have a voice in this process.

Too often, however, abused and neglected youth in the foster care system have only limited opportunities to interact and communicate in the court proceedings that so profoundly impact their lives. "No child enters or leaves foster care without a judge's decision," observed the Hon. Bill Frenzel, former Congressman (R-MN) and Chair of the national, nonpartisan Pew Commission on Children in Foster Care.⁴ Additionally, every significant decision in the child's life from the time of entry into care to the moment of the child's exit from the system is overseen by the court.

Foster youth need and deserve the opportunity to participate as partners with the court and other professionals in making decisions that will impact their lives. For foster youth, the ability to move on and accept the life path the court has crafted for them is an inherent part of their ability to enjoy a successful and stable adult life. Despite the lasting impact of decisions made by the court on their lives, foster youth in some jurisdictions do not participate at all in court proceedings, and, in other jurisdictions, have inadequate access to the legal process and its protections.

During the groundbreaking 1995 *Fordham Conference*, Bruce A. Green and Barnardine Dohrn characterized children as "the silent presence in courtrooms."⁵ Attendees at the 2006 *UNLV Conference* continued to focus their attention on ways to ensure that attorneys can better represent the wishes and interests of their "silent" minor clients in judicial and administrative proceedings.⁶

The ethical and practical considerations surrounding the development of models for representation of children are essential areas for study, discussion, and policy change, and *UNLV Conference* attendees spent many hours struggling with these issues. Yet an equally significant, and sadly less often mentioned, topic is the need for lawyers to enable and facilitate youth in expressing their *own* voice. Empowering individual children and creating procedural opportunities for their participation in the court hearings that have a profound impact on their lives should not be overlooked as our legal and judicial community strives to enhance the plight of the more than 500,000 children in our nation's foster care system.

Annette R. Appell aptly identified the need for children to be present themselves and express their own voice:

[T]he "child's voice" is contingent on which children are being given voice and for what purpose. The very notion of the child's voice, especially in larger policy contexts, is challenging because children speak with so many voices and often in the

⁴ Testimony of William Frenzel Chairman, Pew Comm. on Children in Foster Care, Federal Document Clearing House Congressional Testimony (Jul. 13, 2004).

⁵ Bruce A. Green & Barnardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *FORDHAM L. REV.* 1281, 1285 (1996).

⁶ Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham, January 12-14, 2006, William S. Boyd School of Law, University of Nevada, Las Vegas.

context of individual cases. Moreover, children do not necessarily speak the language of adults or the legal systems in which they are being given voice; thus their own voice is susceptible to interpretation and translation, i.e., distortion, by the adults—even their own lawyers.⁷

Opening remarks at the 2006 *UNLV Conference* similarly challenged attendees to amplify the child's voice and needs, to make sure the child's voice is heard, and his or her input respected, as part of the all-important juvenile court process. Yet, too often, we are quick to presume that *lawyers* are the only ones who can and should perform this function. This presumption and the possibility of distortion of a child's voice are further complicated by the widely acknowledged divergence in race, class, and culture between children and their lawyers. Too little attention is devoted to how our system can or should promote the ability of the child to speak for him or herself.

Attorneys build their careers on advocating for others. As a result, it seems counterintuitive to do otherwise. Yet, attorneys who represent youth need to redefine their role. They need to develop skills that will allow them to become interpreters and enablers, so that youth are able to understand the legal process and be supported in expressing their own voice as a part of that process. To achieve this goal, attorneys and judges will often have to change their customary way of conducting business and create a more youth-focused and child-friendly system for interacting with their clients.

Children in foster care have great needs and face daunting challenges. Professionals widely agree that these challenges and needs do not disappear when a child exits the foster care system. Former foster youth rarely have the resources to employ personally a lawyer to help them solve the problems they encounter. Given these realities, it is important that lawyers for children empower their clients by involving youth and teaching them the problem solving skills that define their profession. Engaging clients in this different way moves toward a model of actually changing lives and achieving justice, rather than only addressing immediate needs.

The Pew Commission on Children in Foster Care—composed of leading child welfare experts, including practitioners, advocates, academics, legislators and foster and adoptive parents—offered recommendations designed to reform the federal financing structure and court oversight of foster care. In its court recommendations, the Pew Commission stressed the critical value and importance of including youth in the legal process: “[J]udges need to hear from the people who will be most affected by their decisions—children, parents, siblings and other relatives, foster and adoptive parents.”⁸ Calling for comprehensive dependency court reforms, the Pew Commission recommended that courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings. “Children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key

⁷ Annette R. Appell, *Children's Voice and Justice: Lawyering for Children in the Twenty-First Century*, 6 Nev. L. J. 711 (2006).

⁸ THE PEW COMMISSION ON CHILDREN IN FOSTER CARE, *FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE* 35 (2004), <http://pewfoster.care.org/research/docs/FinalReport.pdf>.

parties."⁹ Foster youth and youth organizations similarly underscore the desire of youth to be part of decisions made about their life and to participate in the forums where those decisions are made.

Listen to us. Find out what our style is. Talk to other people that know us, if we say it's okay. Check with us about things. Remember the motto, 'Nothing About Me Without Me!' Don't make choices for us or make fun of us. Know that we have thoughts, feelings, and ideas just like you.¹⁰

All parts of the system should be held accountable for ensuring that this participation by youth becomes a routine part of the court and legal process.

The child welfare system should be required to involve foster youth as participants and equal partners in all decisions made about their lives. Youth should be involved in case plan development, case plan meetings, and given the option to attend court hearings. Foster youth should be allowed to offer a formal response to court reports, incident reports, and proposed permanency plans.¹¹

Dependency bench officers only have a small window of time to make life-altering decisions about children and families. In order to make meaningful decisions that will positively impact the lives of the youth before them, judges need to hear directly from the youth whose lives are at issue. Youth are in the best position to provide accurate and compelling insights into their wishes, needs, and progress. Moreover, when youth put a human face to the discussion of these issues and experiences, it forces all concerned to see the system through their eyes.

Just by having children attend the hearing, judges can glean vital information that would otherwise be lacking. Bench officers can observe first-hand the child's appearance, demeanor, and personal interaction with others, including parents, social workers, attorneys and caregivers, who are present. Judges have an opportunity to evaluate for themselves critically important nonverbal information that may help shape their ultimate decisions, and decision-making is informed by a one-on-one personal interaction that gives life to an otherwise sterile report and file.

Admittedly, creating a place for youth in the legal process is not an easy task. For children to participate meaningfully in court proceedings, lawyers and judges need to change the very way they communicate and conduct court proceedings. Children's attorneys and bench officers must strive to communicate with children on their own terms. Foster youth advocacy organizations have developed suggestions that can assist attorneys and court professionals with changing practice and preparing children to participate.¹²

Youth report that attorneys and judges, due to the press of a busy day and a heavy caseload, too often rush through information, talk rapidly, and rely on jargon that is unfamiliar and confusing to non-lawyers, and is that much more

⁹ *Id.* at 42. Additional information on the recommendations of the Pew Commission attached at Appendix A.

¹⁰ Sara Erstad-Landis, *What I Would Like to Say to Lawyers*, YOUTH LAW NEWS, Jan.-Feb., 1999, at 18.

¹¹ CALIFORNIA YOUTH CONNECTION, POLICY RECOMMENDATIONS TO FACILITATE FOSTER YOUTH PARTICIPATION IN COURT HEARINGS (2005), attached as Appendix B.

¹² See CALIFORNIA YOUTH CONNECTION, TIPS FOR ATTORNEYS ON PREPARING FOSTER YOUTH TO PARTICIPATE IN COURT (2005), reprinted in Appendix C.

e lan-
s their
y the

allenged
l's voice
juvenile
the only
the pos-
widely
nd their
uld pro-

result, it
it youth
them to
the legal
hat pro-
ge their
sed and

allenges.
is appear
have the
ms they
children
in solv-
ent way
e, rather

leading
gislators
reform
its court
l impor-
rom the
siblings
hensive
t courts
eaning-
ivers all
roceed-
om key

Twenty-

SAFETY,
pewfoster

incomprehensible to children. One youth opining on the court process requested that the court, "stop talking in acronyms."¹³ Another added, "I was 11 and remember being talked about using the reference 'the child' and not my name."¹⁴ For many children, the result of this faulty communication is to presume that they are to blame for what unfolds in court. Yet another youth poignantly recalled: "I was confused, scared, and thought everything was my fault."¹⁵

All involved in the court and legal process need to redouble their efforts to explain clearly to youth the intricate nature of the court proceedings that determine their future—before, during, and after the court hearing. Attorneys for children can play an invaluable role in "translating" and demystifying the court process and preparing youth for what will transpire before they walk through the courtroom doors.

It is therefore critically important for youth participation that attorneys representing youth meet with and engage their clients. The issues that arise in dependency court touch on the most sensitive areas of vulnerable children's lives, and strong feelings and reactions are to be expected. Lawyers who have developed a supportive relationship can assist youth in dealing with these feelings in a healthy manner.

Along with educating youth about their rights and the issues being addressed, attorneys have an obligation to provide youth with reasonable expectations about the legal services they are receiving. Youth should understand what the role of their attorney is, how often they will see their attorney, how to contact the attorney, and how long it customarily takes for their attorney to reply.

Prior to court hearings, it is imperative that the lawyer explain the purpose of the hearing, what issues may be discussed, what information from the youth may be helpful, and what issues are appropriate to be raised with the judge. This is an opportunity to review the court report and to allow the youth to add or respond to information contained in the report. Clients should be briefed, among other things, on courtroom etiquette, who might attend the hearing, how long the proceeding is expected to last, and how to request a private meeting with the judge.

It is also valuable to develop a system for training, encouraging, and mentoring youth in their ability to express themselves—both inside and outside of the courtroom. In California, recent legislation (Assembly Bill 408)¹⁶ mandates efforts to create a lifelong connection and adult anchor for children in foster care. This legislation also requires that children ten years of age or older receive notice of, and have the right to attend, their court proceedings. If a child is not present in court, the court must inquire as to whether notice to the child was proper. It is the obligation of the county child welfare department to ensure that the child is present in court, unless the child does not wish to appear

¹³ HOME AT LAST: MY VOICE, MY LIFE, MY FUTURE (forthcoming May 2006) (survey on youth participation in court), <http://www.fostercarehomeatlast.org>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Assemb. B. 408, 2003-04 Regular Session, ch. 813 (Cal. 2003).

or the child's whereabouts are unknown and the child's social worker has documentation to that effect.

California's Assembly Bill 408 demonstrates that laws and procedures can help achieve much of the system change necessary to provide for greater youth participation in court proceedings. As this bill recognizes, a critical ingredient of youth involvement in the court process must be providing youth with notice of court proceedings and committing as a matter of law to the presumptive rights of youth to be present at their own court proceeding, absent a judicial determination that presence in court would not be in the youth's best interest.

Before true system change can result, however, we must debunk the myths surrounding reasons children cannot or should not be brought to court.

The belief that the court process is "too complex" for youth to be capable of participating effectively can be overcome by having all involved endeavor to explain in simple terms what is taking place and preparing the youth beforehand for standard court protocols.

The concern that youth who come to court will be forced to miss school can also readily be addressed—court hearings can be set on days and times that minimize school disruption for youth. For dependency courts to be truly youth-focused, we may need to design more creative courtroom schedules to accommodate the youth we seek to serve. If we place a high value on youth's presence in court, we need to treat that time commitment with the same degree of seriousness currently associated with doctor, dentist, and other appointments that routinely result in time away from school.

The concern that information discussed in court may be "disturbing and upsetting" to youth is another argument often associated with the view that youth presence in court is ill advised. However, judges and attorneys should keep in mind that the circumstances pertinent to these cases deal with real life events that were personally experienced by the youth. They have already been exposed to—and *lived*—the very harsh details to be discussed in court. Indeed, youth often report that the ability to be present in court and privy to the decision making that will chart their future is exactly what they need to enable them to heal and move on—hearing difficult information in an appropriate setting, with support available and the opportunity to express their own views about their life's course, enables them to come to terms with and work through the abuse and neglect they have suffered.¹⁷

The presence of youth in court proceedings that affect them is invaluable, even in cases when the children are too young to express themselves. The child alone can give a face to what would otherwise be simply words on a paper. And their participation serves to bring their caregivers to court more often than would otherwise be the case and to provide direct evidence of ongoing physical development and well being of the child. While a picture may be worth a thousand words, nothing can substitute for personally evaluating the welfare of the child.

¹⁷ Jennifer Rodriguez, *Empowering Foster Youth: Inclusion in Court Hearings and Decision-Making*, PARTNERS: PROGRAMS & RESOURCES FOR CHILD. & FAMS., Winter 2003, at 2, http://www.casabr.org/Document_Library/Online_Docs/Inservice/inservice_6_05.pdf.

Youth who are under the jurisdiction of the dependency court system understandably feel frustrated and angry that they are excluded from decisions when their family relationships, their physical safety, their health, and their very home are at stake. One former foster youth, now an adult, asserted, "If I would have been allowed to attend a court hearing regarding my case, I don't think I would have been as scared or worried because I would have been able to see first hand what [was] happening [to] me and my family. I would have also felt less resentful towards the system because I would have felt like I had some say."¹⁸

We should take to heart the lament Luis expressed to members of the Pew Commission: "No one told me anything. For five years, no one told me anything."¹⁹ Youth like Luis feel—and indeed, are—voiceless and powerless when decisions that define how they will live the remainder of their lives are made by people who barely know them in courtrooms behind closed doors.

We owe it to Luis, and the thousands of other youth in our foster care system, to listen to their voice and strive to do better.

Our system can empower youth by providing these youth the opportunity to attend and actively participate in court proceedings that affect them. On the other hand, the system can continue to send the message, by excluding youth from their own court cases, that they are not valued or respected and are not considered to be a meaningful part of the process.

The entire legal community must endeavor to see that a more positive message to children and youth becomes the norm. We can give abused and neglected children a better chance to flourish by ensuring that their presence and participation is welcomed in court and in the judicial decisions that so profoundly impact their lives and futures.

¹⁸ HOME AT LAST: MY VOICE, MY LIFE, MY FUTURE, *supra* note 15, <http://www.fostercarehomeatlast.org>.

¹⁹ HOCHMAN, ET AL., *supra* note 3.