NOTES

LISTEN TO ME! EMPOWERING YOUTH AND COURTS THROUGH INCREASED YOUTH PARTICIPATION IN DEPENDENCY HEARINGS

Jaclyn Jean Jenkins*

Currently, there are more than half a million youth in foster care. Often, these youth are unaware of when, or if, legal hearings about their lives are taking place. This Note advocates for states to pass laws ensuring that youth receive notice of their hearings and for courts to conduct review hearings when youth are not present. Through the course of this Note, the benefits of youth participation are outlined, as are the reasons most often given for denying youth the opportunity to meaningfully participate. The Note concludes with suggestions to help courts more effectively engage youth and the benefits of doing so.

Keywords: *youth*; *foster youth*; *notice*; *participation*; *dependency hearing*; *therapeutic justice*; *voice*; *advocate*; *courts*; *best interests*

I. INTRODUCTION

> All I want for my birthday is a voice. And as I mature, I want to know one thing: How old do I have to be? Sixteen? Eighteen? Twenty-one? Elementary School? Junior high? High School? College? Old and wrinkled, my bones turning to dust as I crochet in my old rocking chair in the corner?
>
> -Krystin, age 12[1]

> Listen to me, since no one else will, and try to understand where I'm coming from. Maybe I am a child, but I'm not dumb; I know right from wrong. I need to know that you will make the right decision for me, so that I can live life the way it's supposed to be.
>
> -Antoinette, age 14[2]

Louis was 6 years old when he was placed into foster care. That one decision by the court created life-altering ramifications. Louis was separated from his mother and his brothers and sisters, put in a new home, a new school, and, essentially, a new life. Any one of these changes, individually, would have been traumatic.[3] For Louis, this trauma was magnified by the fact that he had no voice, or for that matter warning, that his life was going to so dramatically change. He reflected that, "I was only 6 when I went into foster care. I remember vividly just sitting outside of the courthouse . . . my birthmother crying. And then suddenly I was living somewhere else, in some house I didn't know. No one told me anything. For 5 years, no one told me anything."[4]

Correspondence: jenkinj@gmail.com

FAMILY COURT REVIEW, Vol. 46 No. 1, January 2008 163–179

Although Louis may have felt isolated in his silence, the truth is that he is far from alone. When Louis entered foster care, he joined more than half a million children who have also been removed from their homes.[5] And when decisions about Louis' life were made without his knowledge or input, he joined a large number of similarly situated youth who are denied one of the fundamental virtues of the American legal system: the right to be heard.[6]

The exclusion of youth's voices from court proceedings that have the capacity to fundamentally rearrange their lives has become an issue of major concern. The Pew Commission,[7] the American Bar Association,[8] the United Nations Convention on the Rights of the Child,[9] and numerous scholars and practitioners have all advocated that children should have a more substantial role in abuse and neglect, or dependency, hearings.[10] And still, youth are largely silenced and thus, remain silent. This Note addresses the need for a new conception of dependency hearings, one which places youth in the center of their hearings and their voices directly into the courtroom. It does so by providing measures to make sure that youths receive notice of their hearings and by establishing a system for review when youth are not present.

In order to assure that youth's voices are heard, states should adopt legislation establishing that youth's preferences will be taken into account and that youth will be afforded the right to attend dependency hearings. In tandem, dependency courts should adopt a rule further defining the statute. The court rule would encourage youth, starting at age 10, to attend dependency hearings if they wish to do so.[11]

In order to assure that there is compliance with this proposed rule, courts should be required to self-regulate by holding hearings when youth are absent from court proceedings to determine why the youth was not present. The court should hold a fact-finding hearing to determine if the youth received notice of the hearing and whether the youth's lack of participation is due to a lack of interest in the proceedings as opposed to a lack of awareness that the proceedings are occurring. This determination should be made on the record, to ensure the possibility of appeal and as a symbolic representation of the seriousness with which the courts treat youth participation. If the youth is not present because of lack of notice, the hearing should be halted and the judge should take appropriate action against whomever it is appropriate.[12]

It is important to note that this proposal has two parts: because of the nature of dependency hearings, youth encouraged to attend should be at least 10 years old. Additionally, courts should be encouraged to allow youth to use alternative means of expressing themselves to the court besides testifying, such as writing letters, sending voice or video recordings, or talking with judges in chambers. Youth should not, in any case, be forced to participate. However, in every case, they should be afforded the opportunity to do so to whatever degree they wish.

The first section of this Note provides statistics about foster care, delineating what a dependency hearing looks like and presents what children experience in a majority of dependency hearings. The second section briefly discusses the constitutional issues surrounding youth participation, such as whether they are constitutionally guaranteed a right to attend. The third section highlights the benefits of youth participation experienced by youth, while the fourth section highlights the benefits of youth participation for courts. The fifth section explores some of the justifications for not having youth participate in dependency proceedings and responds to these arguments. The sixth section explores what courts should do to allow youth to more fully participate in their hearings. The final section presents suggestions to courts and legislatures which would better encourage youth participation at dependency hearings.

II. THE FRAMEWORK

A. DEFINING THE SCOPE OF THIS NOTE

There are more than half a million children in foster care nationally.[13] Thus, an unlimited inquiry into foster care procedures in every state would be gargantuan in scope and, as a practical matter, impossible to handle. Therefore, this Note looks primarily at only three states: New York, California, and Oregon. New York and California serve as illuminating foils. Both states are large and together contain more than 20% of the foster children in the United States.[14] However, in both geography and dependency hearing procedure, the two states could not be more dissimilar. Oregon, smaller and less diverse demographically, serves as an informative point of comparison. If the degree to which states encourage youth to participate in dependency hearings through their statutes is conceptualized on a continuum, California would be placed at one end, New York would be on the other, and Oregon would fit somewhere in between.[15]

Further limiting this Note is the fact that it only examines dependency hearings. It does not, therefore, address the need for youth to voice their opinions on custody arrangements following a divorce.[16] Nor does it address the need or presence of children's attorneys, because children are not always given attorneys in dependency proceedings.[17] Even if youth are given an attorney, there is significant debate in the legal community as to what the proper role for children's attorneys is: whether it is to advocate for what is in the youth's best interests, as perceived by the attorney, or whether it is to act as a traditional lawyer for the youth.[18]

B. FOSTER CARE SYSTEMS AND DEPENDENCY PROCEEDINGS IN NEW YORK, CALIFORNIA, AND OREGON

In any of the three states looked at by this Note, or, for the most part, in any other state, the path to a dependency hearing is much the same. Generally, a case begins with an allegation of abuse or neglect filed against a child's parents, which leads to an investigation by a child welfare agency.[19] This allegation could be made by anyone from a mandated reporter, such as a teacher or doctor, to a concerned neighbor. If the agency determines that there is sufficient basis for the allegation, a petition is filed with the court responsible for hearing such matters. After this determination a number of hearings take place. The first of these hearings generally determines where the youth will be placed pending the next hearing, which determines the veracity of the statements alleged in the petition. Following this hearing, if the facts alleged are proven true, there is yet another hearing to determine where the youth will be placed. Following this placement hearing, periodic hearings are held to assess the progress and health of the youth.[20]

Although the way in which a case enters a dependency court is generally uniform, the size of the population of foster youth in the three states this Note focuses on is very different, as are the rules governing youth participation.[21] One way to assess a court system's willingness to accommodate (at least) or encourage (at best) youth participation in dependency hearings is to look to the state's notice statutes, as notice functions much like an invitation to the proceedings. California law provides that youth age 10 and older are to be afforded notice of their hearings.[22] Furthermore, if a youth age 10 or older is *not* at his or her hearing, the court is mandated to determine if the youth received notice and to question the parties who are present as to why the youth is not there.[23] Currently, New York has no statutory provisions as to whether children should be in attendance at their dependency

hearings, or if they should receive notice of those hearings.[24] In the middle of the continuum, Oregon does provide that children age 12 and older must receive notice of their hearings, but has no provisions about making sure that they actually attend.[25]

Other statutes hint at courts' willingness to encourage youth participation in dependency hearings. Oregon allows the court to order the youth's presence during the hearing, but this is a discretionary power.[26] California law provides that a youth age 10 or older be asked about people who matter to the youth to assist in the determination as to where the youth will be placed.[27]

Although the statutory framework differs between these three states, the reality in the courtroom is the same: that is, in all three states, children's voices are often unheard.[28] Even in California, the state that has the most inclusive rules of the three, many children are still not present at their hearings.[29] In all three states, children often do not receive notice of their hearings.[30] Because they are unaware of their hearings, children often are not present.[31] In cases where the youth *do* receive notice, they are often discouraged from attending by social workers or by the court proceedings themselves, which are made inaccessible through highly technical and unapproachable language coupled with esoteric procedures.[32] This sort of exclusion would be unacceptable in any other form of civil trial and is unthinkable in the context of a criminal trial. Yet, for children, the results of a dependency hearing are just as profound as are the results for defendants in either of the other two kinds of cases. As Bruce A. Green and Bernadine Dohrn point out, "[w]hat happens in court shapes children's lives."[33]

III. CONSTITUTIONAL CLAIMS

The idea that children totally lack constitutional protections has been rejected by the U.S. Supreme Court.[34] However, those rights are nowhere near as expansive as those enjoyed by adults.[35] The question that invariably comes up when discussing youth participation in dependency hearings is whether youth have a constitutional right to be present. The answer is, most likely, no.

While *In re Gault*[36] provided constitutional protections for youth, those protections were limited to delinquency hearings, where there was a liberty interest at stake.[37] Courts have held that there is no such interest at stake in a dependency hearing.[38] As was pointed out in the concurrence in *Smith v. Org. of Foster Families*:

> . . . I would reject . . . that "the trauma of separation from a familiar environment" or the "harmful consequences of a precipitous and perhaps improvident decision to remove a child from his foster family," . . . constitutes a "grievous loss" which therefore is protected by the Fourteenth Amendment. Not every loss, however "grievous," invokes the protection of the Due Process Clause. Its protections extend only to a deprivation by a State of life, liberty, or property.[39]

While it has answered, affirmatively, whether *parents* at risk of loosing their parental rights have procedural due process rights such as the right to receive notice and attend hearings,[40] the Supreme Court has not directly addressed whether children in foster care are entitled to similar procedural due process protections. As was reiterated repeatedly in *Gault*, the case that most directly addresses the issue of juvenile rights, constitutional protections for youth were not meant to be applied, "upon the totality of the relationship of

the juvenile and the state," were confined "to this case," and were "concerned only with a proceeding to determine whether a minor is 'delinquent' and which may result in commitment to a state institution."[41]

However, the issue need not be so narrowly defined. The issue at hand in *Gault* is really the denial of liberty (incarceration) without a fair trial.[42] There is an equally daunting potential loss of liberty at stake in a dependency hearing.[43] To believe otherwise ignores the ramifications of the decision on the youth. Severing ties to one's family, being forced to relocate, or being forced to remain in a home where one's safety is in danger all seem like fundamental liberty issues. Recognizing this, two lower courts have recently granted children in the midst of dependency hearings rights based upon reasoning that appears to echo the liberty interest pointed to in *Gault*.

In *Kenny A. ex rel. Winn v. Perdue*, the interests of children in Georgia to maintain family connections and to be safe were affirmed, when the court held that

> children have a fundamental interest at stake in n deprivation and TPR proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents.[44]

Similarly, a Baltimore court, extrapolating from the fact that children are provided attorneys in dependency cases, found that they are necessary to resolve the issues presented in a dependency hearing. The court concluded that the youth thus have independent standing as parties to request a hearing before their parent's rights are terminated, even if the parents have consented to the termination. The court also found that children have a liberty interest in the outcome of such hearings.[45]

Although both of these courts invoked the language of due process, there are problems in applying either form of analysis to other dependency cases. First, neither of these cases was decided by the Supreme Court, as both decisions were premised largely on state constitutions and legislation. More importantly, neither explicitly held that children have a constitutional right to attend their dependency hearings. Instead, both cases explicitly said that, in consideration of the particular facts of *that* case, the children involved had the right to actively participate in *their* hearings.[46]

The U.S. Supreme Court and the Massachusetts and Georgia state courts have left unanswered the question of whether children participating in dependency hearings have constitutionally protected procedural due process rights. However, logically, it seems that the justification for granting children in the midst of delinquency proceedings these rights could easily and logically be transferred to dependent youth, with the same justifications.[47] Nevertheless, because no court as of yet has held that dependent youth have the same rights as delinquent youth, the extent of the constitutional protections extended to dependent youth remains in question. Still, just because a right is not constitutionally guaranteed does not mean it should be denied. Whether or not the courts give a legal mandate allowing children to participate in their hearings, there still exists a moral mandate, and sound public policy reasons, for courts to do so.[48]

IV. BENEFITS TO CHILDREN WHO PARTICIPATE IN THEIR HEARINGS

While most would agree that courts could be made more approachable for youth, the question that remains is why they should do so. There are tremendous benefits that can

result for children who are active participants in their hearings. If the court hearing is viewed as something besides a process with the limited goal of adjudication, and instead seen as a tool for emotional healing, these benefits become even more pronounced. This is the goal of therapeutic justice.[49] Barbara Atwood describes therapeutic jurisprudence as "[t]he study of law as a therapeutic agent."[50] Within a therapeutic justice framework, the emphasis is on providing litigants a voice ("the ability to tell their story") and validation ("the feeling that the judge . . . has listened to them and has given serious consideration to their opinions and views").[51] Dependency proceedings have the capability to reap great benefits from such a conception of the law, and the children in those proceedings are the ones who benefit most.

When talking about these hearings, it is important to remember the youth who are involved. These are predominately minority children[52] who have been neglected.[53] Membership in these groups guarantees the presence of children in this system who are well aware of the sting of unfairness, the fear of not knowing what will happen tomorrow, and the crippling lack of control that accompanies a parent's bad decisions.[54] These sensations are familiar because they shape the life of the child before they enter the dependency court system and, sadly, become entrenched throughout the child's time within that system.

These perceptions can, however, be addressed within the very system that presently perpetuates them. For instance, if youth were more involved, the court process could be seen as a time of fairness, not justified "legal laryngitis."[55] The present system is one that has been characterized as presenting a "crowning insult" to youth: unfair practices are perpetuated for the child's own good or for his or her best interests.[56] It should not be surprising that fairness is such a pressing issue: studies have found that people are generally more concerned with procedural fairness then the actual result of a court case.[57]

Court proceedings can also be utilized as a time to combat the stifling fear experienced by youth who do not know what is happening in their life. Psychologists and sociologists have commented on the fatalism and insecurity experienced by foster youth.[58] These emotions make sense if one considers the life of the foster child before he or she enters foster care. These are children whose lives change at the whim of a parent, whose experience is shaped by impermanence. In self-defense, they learn, quickly, not to rely on continuity or warnings of impending change. When children enter the legal system through a charge of abuse or neglect against their parents, the courts, perhaps unthinkingly, perpetuate this mindset by excluding the youth from the process and then, from the perspective of the youth, arbitrarily moving them from home to home.[59] This is especially problematic when one considers how many times a child in the dependency system may be removed and placed in a different home in their lifetime.[60]

The exclusion of children from dependency hearings is also problematic when one considers the framework in which these decisions are being made. Before entering the legal system, the one constant in this child's life was his or her home, however dysfunctional it may have been. In one fell swoop, the court system has taken that away from the child and left him or her dangling, alone and scared.

The trauma experienced by children in dependency hearings is an issue of great concern. As previously stated, many judges consider the court hearing itself to be another instance in which the child experiences trauma, but this is not necessarily true. Whether or not a judge accedes to the wishes of the child, the proceedings themselves can still be helpful, as they can afford the youth the opportunity to make a sort of "psychological statement."[61]

The opportunity to formulate a view and share it with the judge is in itself a powerful thing, whether or not those wishes are granted.[62]

The dependency hearing can also be seen as a time to ward off the feelings of fear and helplessness that often accompany a child into the dependency system.[63] Even in a healthy parent–child relationship there is a power imbalance, with the child functioning as the party with the lesser degree of power.[64] In a family involved in the dependency system, however, that power imbalance is compounded by the circumstances that brought the youth into court. The court process can counteract that compounded sense of forced helplessness. Indeed, one of the great benefits of youth participation in dependency hearings "pertains to the greater sense of control which the child can now feel residing within him; he begins to feel perhaps for the first time, that she [*sic*] is in control of his own destiny."[65]

Not only can dependency hearings be utilized to redress past psychological damage, but they can also better the future of a child by presenting an opportunity to mold behaviors that can be used outside the courtroom and in life after foster care. Jill Chaifetz has identified "the fundamental lack of care and respect" shown to children in dependency proceedings as the "major reason" many of these youth "will never reach their full potential as contributing members of society."[66] This reinforces the idea that what happens in the dependency hearing stays with the youth involved in ways which are both profound and largely unintended.[67]

Equally unintended is the view of the legal system that results from an association shaped by procedural unfairness and reinforced helplessness. At that point the message being sent is not only about the legal process in dependency hearings, but the legal process as a whole: namely, that it is unfair, to be viewed with suspicion and perhaps fear.[68] Again, the legal process does not have to function this way. Instead, the dependency court could be utilized as a time during which both the youth and the court could model ideal behaviors.[69] The court can involve the youth in the proceedings, making the hearings, in both facial appearance and in actuality, more fair and honest.[70] The youth can be engaged in the proceedings, thus becoming more responsible for the course his or her life takes.[71] "[T]he more self-determination and responsibility accorded to minors, the greater the accountability."[72] Additionally, the greater role youth are allowed to play in the process, the more invested they are in the results, and the more likely that what follows from the hearing will be a successful outcome.[73]

As adults, citizens are lauded when they speak up assertively for their rights in court or outside of it; or when they take the time to participate in the decision-making processes that fundamentally affect their lives at the courthouse, the ballot box, or during everyday interactions with fellow citizens.[74] These are the exact behaviors that youth-attended dependency hearings can encourage. Thus, dependency courts have the unique opportunity to embed in youth the very behaviors that will serve them well throughout their lives.[75]

The dependency hearing can also make a participating youth's future better by making him or her face up to it. It is difficult to move into and embrace one's future, while simultaneously desperately clinging to one's past.[76] This diametric pull is, understandably, often experienced by foster youth who more than anything want to go home, but for whom that is the one event that can never occur. The current court system allows this pull to continue by distancing the youth from the decision-making process. Sometimes all that is needed for a youth to become aware that going home is not an option is to hear it from the judge's lips.[77] Sometimes it is seeing his or her parent show up drunk, or high, or not at all. In any case, the dependency hearing presents a valuable opportunity:

> Youth often report that 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.[78]

Suffice to say, if the youth is unable to work through his or her past, it becomes doubtful that he or she will be able to work toward his or her future.[79]

V. BENEFITS TO COURTS

Youths are not the only ones who benefit when courts encourage their participation in dependency hearings. Courts, too, will gain benefits from a regime that includes youth to a greater degree. The dependency court judge's job is not an easy one. In a very limited amount of time, these individuals are called upon to make life-altering decisions while contending with informational deficiencies as well as the anger and fear experienced by both for parents and youth.[80] The best way to limit both of these debilitating pressures is to restructure the court system to empower children's voices.

The idea that hearings which involve children to a heightened degree creates better outcomes centers around the argument that, by participating, youth are more invested in the process and are thus more willing to work with the court to achieve that end.[81] It also centers on the fact that a greater degree of youth participation allows the court to make more informed decisions. Inherently, more informed decisions are more effective decisions.[82] This is because "[e]ven the most skilled judges and attorneys with the best intentions cannot and should not be making life changing decisions and recommendations about a child they have never met or a family they know only as a case number."[83] In order to make a responsible decision, judges need to weigh every piece of evidence available to them. One of the best sources of this information is the child.[84]

Having the child present in the courtroom is one of the best, and easiest, ways of combating a situation where one party has more information than the others, or to another extreme, *no* parties having *any* information. This has been called "informational asymmetries."[85] Just by having youth in the courtroom, even if they never say a word, judges are given the opportunity to assess a youth's behavior and demeanor, as well as his or her emotional and physical state.[86] Such an assessment might be determinative in making decisions about the youth. At the very least, it can function as a source of supplemental information and assist judges in their decision-making process.[87] Even if the youth never says anything while in the courtroom that impacts the judge, his or her mere presence will do so.[88] The massive number of dependency cases that judges deal with every day makes knowing each file intimately an unreasonable expectation.[89] What can help a judge to remember the details of a file is to put a face to it, and the best way to do that is to have the judge see and listen to the youth. Having the youth in the courtroom, or bringing in the child's actual words, reinforces to the judge the idea that the child is a person, not simply a file.[90] This changes the whole focus of the discussion taking place in the courtroom and forces the judge to see things through the gaze of the child.[91]

It is important to point out, as well, that when youth are present in the courtroom, the gaze through which the judge views the proceedings becomes focused on the particular needs of *that* child.[92] This particularized gaze is important in two ways. First, like most

social groups, youth in foster care run the risk of being stereotyped based solely upon their presence in the dependency system. When this happens, what is good for one child becomes the standard for all children. This cookie-cutter mentality is counterproductive. Each child comes into dependency court needing something different, and the best way to assess that need is to hear from the individual child involved.[93]

Youth's needs may be individualized in different ways. One youth may want something entirely different than any number of his or her peers in the dependency system. A youth may also have different desires for his or her future than do his or her parents, either wanting to be reunified or removed.[94] Whether or not the judge adjudicates in the way the child wishes, it is important that the judge realize and recognize his or her wishes.[95]

VI. WHY ARE YOUTH EXCLUDED?

It is unproductive, and untrue, to say that youth are discouraged from participating in their hearings solely due to capriciousness on the part of attorneys or judges. The problem with this line of thinking is that it denies justifications for excluding youth that, while unsound, are ultimately well meant.[96] The main justifications for excluding youth from dependency hearings are: that the hearings are too traumatic for youth, that there is no need for youth to attend because they are already represented, that youth have nothing to contribute, and that having youth participate is administratively inconvenient.

A. DEPENDENCY HEARINGS AND TRAUMA

One of the main rationalizations for not involving youth in dependency hearings is a belief that the proceedings are too emotionally charged for youth and might further traumatize them.[97] There is a fair basis for this concern: dependency hearings are indeed emotionally intense.[98] Fundamentally, a court is evaluating how a family works and that sort of judgment cannot be made without inquiries that are inherently painful. Questions must be asked about parental misbehavior and the frequency of that misbehavior. Additionally, these proceedings are adversarial in nature, which means that defendants are defensive and prosecutors are aggressive.[99] As Jane Weinstein pointed out, "[t]he adversary system is not humane."[100] Even highly competent parents can come out of such a proceeding looking far less competent then they did walking in. Furthermore, the stakes are high: nothing less then the survival of a family is being decided.

The main concern for those who worry about the traumatic nature of dependency hearings does not center on those competent parents. The concern centers on the children of parents whose decisions are being questioned for good reason.[101] These children, to whatever degree, have already survived a bad situation. What good does it do to make them go over it again? And how healthy is it for them to see their parents being torn apart over the course of a trial?[102]

What this concern ignores is the fact that, in many cases, participation helps the youth's emotional recovery. Katrina, a foster youth, reported that she "wanted to go to court, but they wouldn't let me go because my guardian ad litem said that going to court might upset me. It was not being allowed to speak to the judge that upset me."[103] It is important to remember that the event that the youth would be asked to describe has already occurred. The youth has lived through, and to whatever degree survived, the real trauma.[104] Instead of furthering trauma, as has been suggested, youth participation in dependency hearings has

the capability to instead further healing.[105] The important thing to remember is that the youth has already been traumatized. What furthers their trauma is not inclusion in their hearings, but the rearrangement of their lives without any notice or the chance to speak their minds.[106] As Chief Judge Judith Kaye of New York recently pointed out,

> [i]t's incredible to me that we so long believed that the greater good was keeping children-even teenagers-out of court, so that they wouldn't miss school or be exposed to a trauma. What greater trauma could there be than cataclysmic change in their lives without their knowledge?[107]

B. DEPENDENCY HEARINGS AND VOICES FOR THE CHILD

Other opponents of youth having an active part in their hearings feel that the presence of the child is unnecessary because the youth's voice is already being heard through his or her attorney, social worker, or parents.[108] If one takes this view, the presence of the child could easily be seen as superfluous.[109]

In almost every dependency hearing, the standard by which the judge makes her decision is the best interests of the child. And in any dependency hearing there are a large number of people—the social worker, the state's attorney, and the child's parents, to name a few—arguing over what those best interests are.[110] The only one who can actually say what the youth wants, definitively, or who can provide the necessary information to determine what is in the youth's best interests, is the youth. It is also important to remember that all these parties who are supposed to speak for the youth have their own viewpoints that might override how convincingly, if at all, they relay the child's wishes.[111] It is particularly counterintuitive that a parent who has been charged with abuse or neglect would make it a priority to speak and act in the best interests of his or her child. The parent who severely abuses his or her child, emotionally, physically, or sexually, is not likely to change or confess these behaviors to a court, even though this might be in the best interests of the child. The parent may, in fact, be committing the abuse because he or she believes it is in the best interests of his or her child. Likewise, the parent actively engaged in criminal activity is not going to want social services involved in his or her life, even if that is what would provide badly needed assistance for his or her child. For instance, a mother with continuing substance abuse problems may testify that her child should be returned to her care, even if the child has settled well into a foster home and the mother has made no changes to her lifestyle.[112] In short, if ever there is a situation in which there could be a conflict of interest, the relationship between a parent accused of abuse or neglect and the child who was abused or neglected seems paramount.

Social workers and attorneys may also have a conflict.[113] If the child wants to return home and the welfare agency has decided that releasing the child would be inappropriate, the social worker has to choose between presenting the child's view assertively, heeding the wishes of his or her employer and doing so less assertively than if the child's thinking aligned with the agency's, or presenting the youth's views and discussing them with the court in a fair and reasonable manner.[114] Attorneys following a best-interests model of representations fall into the same trap. If a youth wants to return home, and the home is unsafe, the attorney advocating for the best interest of his or her client is bound to argue against the youth returning home, even if that is what the youth wants.[115] Even if the child's attorney does present the child's view, and does so aggressively, the fact remains that the most forceful expression of that view would come from the person most affected: the child.[116]

C. DEPENDENCY HEARINGS AND CHILDREN'S JUDGMENT

An additional argument against youth being at their dependency hearings is that the youth's presence is unnecessary because youths lack the judgment to be able to contribute anything of significance to the proceedings.[117] Studies have shown that children as young as 6 years of age have the capability to reason and understand.[118] Certainly from age 6, and at ages even younger than that, children are capable of having and sharing their view of what happened in the past and what they would like to see happen in the future.[119] This is especially true for foster children, who, by necessity, have had to grow up more quickly then their peers. As Trudy Festinger pointed out, "If a kid is old enough to be transferred around like a ping-pong ball he's old enough to decide where he's happy . . . children in foster care grow up very quickly."[120]

D. DEPENDENCY HEARINGS AND ADMINISTRATIVE INCONVENIENCE

A final point in opposition to having youth take a more active part in dependency hearings is that involving youth to a greater degree is a hassle and slows down the entire hearing process.[121] In order for youth to participate meaningfully in dependency hearings, adjustments must be made to the court system.[122] These adjustments might involve relatively minor things, such as refraining from using acronyms and highly technical legal language, or might demand more profound changes, such as slowing down the proceedings to allow the youth time to process the information at hand or scheduling the hearings in the evening so that the youth does not have to miss school.[123] In any case, whether relatively minimal or major, the presence of the youth's voice in the courtroom means more work for the courts.[124] It is true that some of the current structures and procedures would need to be adjusted. It is also true that these changes might not be very convenient for adult participants.[125] Then again, for youth in the system, neither is foster care.

VII. REFIGURING JUSTICE

Obviously, in order for youth to participate more fully in dependency hearings, the current structure must be adjusted to allow them a space in the courtroom. There are a number of changes courts and legislatures might consider making, and several things that are mandatory, for this change to occur. Most importantly, legislatures should adopt notice statutes like those enacted in California. If youth are not informed of their hearings, they cannot attend. It should also be mandatory for all involved, foster parents, case workers, and most importantly children's attorneys, to adequately prepare their clients for their court date.[126] This means explaining what the proceedings are about, what will happen, and appropriate courtroom behavior.[127]

As important as it is that attorneys adequately prepare their clients for their hearings ahead of time, it is equally, if not more important, that courts modify their procedures to prepare themselves for the youth. The proceedings must become more youth friendly. Judges and attorneys must utilize legalese and acronyms less and conversational English more. Phrases such as summary judgment, jurisdiction, and dispositional order are often thrown into courtroom conversations, sometimes without any further context. To *anyone* not familiar with the legal system, this esoteric language serves as an almost impermeable barrier to significant participation.[128] Almost as intimidating as the legal language used in

these proceedings are the procedures themselves. Rules of evidence and for questioning witnesses are very strange to those uninitiated to the legal process. While it is perhaps impossible, or unrealistic, to expect courtrooms to simplify these procedures, it is certainly reasonable to request that judges explain what is going on to youth who are present.[129]

Judges should also utilize the youth.[130] Youth represent one of the most valuable sources of information in any dependency case.[131] Judges should ask youth if there are inaccuracies in reports and if their attorney is honestly and fully advocating for them.[132] This would have an additional benefit: it would function as an on-site performance evaluation for attorneys.[133]

Courts should also look toward making changes that, while not so important as to rise to the level of mandatory changes, would vastly increase the ability of youth to participate in and feel comfortable at their hearings. Courts might consider changing the time at which they hold their sessions.[134] Holding hearings during school hours, when the hearings are about children who are supposed to be in school, is counterproductive. Courts might consider starting and ending court at a later time to allow children to attend both court and school.[135] Additionally, courts might distribute manuals that describe the court process to children in easy-to-understand language, which would make the proceedings more approachable.[136] Courts might have special trainings for judges that handle juvenile dockets that educate them on how to deal with youth in dependency hearings. They might also establish youth advisory boards to inform them of the needs of the youth in their courtrooms and how the judges are doing in meeting those needs. Courts might also display artwork created by youth, have books or games in waiting areas, or in the very least, colorful pictures on the wall to make the courthouse less intimidating for the youth. This list, while hardly exhaustive, is illustrative of the types of changes that are needed, at a bare minimum, to fully engage youth in dependency hearings.[137]

VIII. CONCLUSION

There are many reasons why youth should be present at their dependency hearings: they stand to gain from the process, both emotionally and conceptually; courts stand to benefit from being able to sift through all the information available to arrive at a decision; and attorneys are held more accountable. The most important reason, however, that youth should be afforded the right to attend their hearings and give voice to their desires in regard to placement is both simpler and more profound: it is what is fair to these children. In a world in which, to these youth, right and wrong appear negligible and authority figures arouse fear and distrust, not faith, a system that, even unintentionally, perpetuates unfairness through procedure undermines itself. If in no other place, youth should at least be able to count on the courts to give them fairness and justice. We should listen to youth, not because it is the most efficient thing to do or even because it is the most logical. We should listen, quite simply, because it is the *right* thing to do. As one attorney has said: "We're making decisions about their lives—how can they not be a part of that?"[138]

NOTES

* This Note would not have been possible without the help and support of many people, especially the following persons to whom I am particularly grateful. First, I would like to thank Miriam Krinsky, who, to me, serves as an

illustration of the best of the legal profession: she is both a tireless advocate for youth and a skillful attorney. She was generous in sharing both her time and experience with me and was a great source of help and inspiration both during the course of writing this Note and after. I would similarly like to extend my gratitude to Professor Andrew Schepard for his continual support and enthusiasm for this project, as well as to Lynda Madera and Melissa Lombreglia for their painstaking feedback and support during the course of writing this Note. I would also like to recognize Elizabeth Clawson and Erin Cook Thompson for their patience and encouragement during the writing process. Finally, I would like to thank my family for their love and support during law school and throughout all my endeavors. I would like to specifically thank my sister, Nichole, my most faithful fan. Most importantly, I would like to thank my Aunt Patti who was my voice when I had none. She taught me how to speak for myself and gave me the encouragement and courage to speak for others. Writing this Note is one of the many things I could not have done without her.

1. *Thoughts to the Judge*, *in* My Voice, My Life, My Future/Mi Voz, Mi Vida, Mi Futuro, 10 (Home At Last ed., 2006).

2. *To the Judge*, *in* My Voice, My Life, My Future/Mi Voz, Mi Vida, Mi Futuro, 13 (Home At Last ed., 2006).

3. David Fashnel & Eugene B. Shinn, Children in Foster Care: A Longitudinal Investigation 11 (1978).

4. Gloria Hochman et al., The Pew Commission on Children in Foster Care, Voices From the Inside 4 (2004).

5. Alfred Perez et al., *Demographics of Children in Foster Care*, The Pew Commission on Children in Foster Care 1 (2003), *available at* http://pewfostercare.org/research/docs/Demographics0903.pdf (last visited August 28, 2007).

6. Sherry Shink, *Justice for Our Children: Justice For a Change*, 82 Denv. U. L. Rev. 629, 639 (2005) (characterizing this denial as discrimination).

7. Hochman et al., *supra* note 4, at 9–11.

8. The American Bar Association, *American Bar Association Standards of Practice For Lawyers Representing a Child in Abuse and Neglect Cases* 11 (1996) *available at* http://www.abanet.org/child/repstandwhole.pdf (last visited August 28, 2007). *See also Recommendations From the ABA Youth at Risk Initiative*, 45 Fam. Ct. Rev. 366 (2007).

9. Howard A. Davidson, *The Child's Right to be Heard in Judicial Proceedings*, 18 Pepp. L. Rev. 255 (1991).

10. *See*, *e.g.*, Leonard P. Edwards & Inger J. Sagatun, *Domestic Violence, Child Abuse, and the Law: Who Speaks for the Child*? 2 U. Chi. L. Sch. Roundtable 67 (1995); Henry H. Foster, Jr. & Doris Jonas Freed, *A Bill of Rights for Children*, 19 Fam. L.Q. 343 (1985); Bruce A. Green & Bernadine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 Fordham L. Rev. 1281 (1996); Jill Chaifetz, *Listening to Foster Children in Accordance With the Law: The Failure to Serve Children in State Care*, 25 N.Y.U. Rev. L. & Soc. Change 1 (1999).

11. Although this Note will only focus on youth age 10 or older, I fervently believe that children, at any age, as long as they are capable of expressing an opinion, should be allowed and encouraged to do so and that this information would be highly valuable to the court and for the child.

12. Such a regulatory scheme is not unheard of. *See* Cal. Welf. & Inst. Code § 349 (West 2007).

13. Perez et al., *supra* note 5, at 1.

14. *See* Child Welfare League of America (CWLA), *New York's Children 2006* (2006), *available at* http://ndas.cwla.org/data_stats/states/Fact_Sheets/NewYork.pdf (last visited August 28, 2007); CWLA, *California's Children 2006* (2006), *available at* http://ndas.cwla.org/data_stats/states/Fact_Sheets/California.pdf (last visited August 28, 2007).

15. To compare, see, e.g., Or. Rev. Stat. § 419B.839 (West 2005); Cal.Welf. & Inst. Code § 291(a)(4) (West 2007).

16. For articles that do, see, e.g., Barbara A. Atwood, *The Child's Voice in Custody Litigation: An Empirical Survey and Suggestions For Reform*, 45 Ariz. L. Rev. 629 (2003); Randy Frances Kandel, *Just Ask the Kid! Towards a Rule of Children's Choice in Custody Determinations*, 49 U. Miami L. Rev. 299 (1994).

17. Maerril Sobie, *The Child Client: Representing Children in Child Protective Proceedings*, 22 Touro L. R. 745, 755 (2006).

18. *See*, *e.g.*, Martin Guggenheim, Special Issue, *How Children's Lawyers Serve State Interests*, 6 Nev. L.J. 805, 823 (2006); David R. Kanter, *Coming to Praise, Not to Bury, The New ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 14 Geo. J. Legal Ethics 103 (2000); Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 Fordham L. Rev. 1507, 1564–70 (1996); Robert A. Solomon, *Staying in Role: Representing Children in*

Dependency and Neglect Cases, 70 CONN. B. J. 258, 262 (1996); Emily Bus, *Your're My What? The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 FORDHAM L. REV. 1699, 1700–1711 (1996).

19. CAL. WELF. & INST. CODE § 366.21 (2007); NY FAM. CT. ACT § 1089 (McKinney 2007).

20. HOCHMAN ET AL., *supra* note 4, at 6.

21. CWLA, *supra* note 4; *see also* CWLA, *Oregon's Children 2006* (2006), *available at* http://ndas.cwla.org/data_stats/states/Fact_Sheets/Oregon.pdf (last visited August 28, 2007). As of September 30, 2003 there were 37,067 children in foster care in New York, 97,261 children in foster care in California, and 9,381 children in foster care in Oregon.

22. CAL. WELF. & INST. CODE § 294(3) (West 2007) (providing that notice of the hearing shall be given to the child, if the child is 10 years of age or older).

23. CAL. WELF. & INST. CODE § 349 (West 2007) ("A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Sections 290.1 and 290.2, is entitled to be present at the hearing. The minor and any person who is entitled to that notice has the right to be represented at the hearing by counsel of his or her own choice. If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing.").

24. Although New York State currently has no such provision, legislation will go into effect on December 31, 2007 which will require family court judges to consult with children at all permanency hearings. This law mandates that judges consult with children only during permanency hearings, the proceeding that takes place towards the end of the child's relationship with the court. Additionally, the new law has no provisions for when children are not consulted. 2007 Sess. Law News of N.Y. Legis. Memo Ch. 327 (McKinneys). Currently, in New York City, judges have been advised through an internal memo that children should be encouraged to attend their hearings, although it gives no methods of ensuring that this occurs. It is important to keep in mind, however, that this memo is limited to the city and, in any case, does not bear the regulatory strength of a statute. *See* Memorandum from Judge Joseph Lauria to Judges, JHO's, and Referees. RE: Court Appearance of Subject Children (Feb. 25, 2004) (on file with *Family Court Review*).

25. OR. REV. STAT. § 419B.839.

26. OR. REV. STAT. § 419B.473 (West 2007).

27. CAL. WELF. AND INST. CODE § 366.26(4)(A) (West 2007) ("A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.").

28. HOCHMAN ET AL., *supra* note 4, at 4–5. "More than 1 in 4 foster youth respondents say that they never attended their court hearings."

29. *Id.*

30. *See* HOCHMAN ET AL., *supra* note 4, at 12 (41% of youth surveyed said they did not attend their hearings because "No one told me the dates of the hearings" and 39% did not attend because "No one told me I was allowed to go.").

31. *Id*.

32. *Id*. 14% of youth responding to the survey said that they did not attend their hearings because "My social worker told me not to."

33. Green & Dohrn, *supra* note 10, at 1284.

34. *See*, *e.g.*, *In re* Gault, 387 U.S. 1 (1967); Tinker v. Des Moines Indep. Comty. Sch. Dist., 393 U.S. 503 (1969); *In re* Winship, 397 U.S. 358 (1970); Morse v. Frederick,127 S. Ct. 2618 (2007).

35. *Id*.

36. *Gault*, 387 U.S. at 1.

37. *Id*.

38. Smith v. Org. of Foster Families, 431 U.S. 816, 858 (1977).

39. *Id*. at 858 (Stewart, J., concurring).

40. *See*, *e.g.*, Stanley v. Illinois, 405 U.S. 645 (1972).

41. *Gault*, 387 U.S. at 1.

42. *Id*.

43. Barbara Ann Atwood, *Representing Children: The Ongoing Search For Clear and Workable Standards*, 19 J. AM. ACAD. MATRIMONIAL L. 187, 188 (2005); Martin Guggenheim, *The Right To Be Represented But Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76, 90–91 (1984).

44. Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353, 1360 (N.D. GA. 2005).

45. *In re* Adoption/Guardianship No. T97036005, 746 A.2d. 379, 387 (Md. 2000).

46. *Id*.

47. Gail Chang Bohr, *Public Interest Law: Improving Access to Justice: Children's Access to Justice*, 28 Wm. Mitchell L. Rev. 229, 238–9 (2001) (children should be granted party status to assure they get due process).

48. Currently 28 states explicitly say that children may attend hearings. Those states are: AL, AK, AZ, CA, CO, CT, DE, DC, MD, MI, MN, NB, NV, NJ, NC, ND, OH, OR, RI, SC, TX, UT, VT, VA, WA, WV, WI, and WY. Of these states, two allow youth to attend if they are 10 or older (OR and SC), seven allow youth to attend if they are 12 years old or older (AZ, NC, VT, VA, WA, WV, WI), one if they are 14 years old or older (NE), one if the youth is 17 years old or older (AL) and one where the age is unspecified, but the youth must be "of appropriate age and intellectual capacity" (RI). Of these states, only three (CA, CT, and TX) explicitly state that a youth *must* be at their hearing. In 22 states, the presence of youth at dependency hearings is not mentioned. Those states are: AR, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, MO, MS, MT, NM, OK, NY, PA, SD, and TN. *See* Child Welfare Information Gateway, *Court Hearings for the Permanent Placement of Children: Summary of State Laws* (2006), *available at* http://www.childwelfare.gov/systemwide/laws_policies/statutes/planningall.pdf (last visited August 28, 2007).

49. Bruce J. Winick, *Special Series: Problem Solving Courts and Therapeutic Jurisdprudence: Therapuetic Jurisprudence and Problem Solving Courts*, 30 Fordham Urb. L.J. 1055, 1063 (2003).

50. Atwood, *supra* note 16, at 660.

51. Bernard P. Perlmutter, *George's Story: Voice and Transformation Through the Teaching and Practice of Therapeutic Jurisprudence in a Law School Advocacy Clinic*, 17 St. Thomas L. Rev. 561, 595 (2005).

52. CWLA, *supra* note 14.

53. *Id.*

54. Fashnel & Shinn, *supra* note 3, at 455.

55. Kandel, *supra* note 16, at 301.

56. Foster & Freed, *supra* note 10, at 375.

57. *See* Perlmutter, *supra* note 51, at 561; Winick, *supra* note 49, at 1089.

58. Fashnel & Shinn, *supra* note 3, at 15.

59. Carylyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 St. Thomas L. Rev. 623, 655 (2005).

60. *See* Miriam Aroni Krinsky, *The Effect of Youth Presence in Dependency Hearings*, Juv. & Fam. Just. Today, Fall 2006, at 18.

61. *Id.*

62. *Id.*

63. Miriam Krinsky & Jennifer Rodriguez, *Giving a Voice to the Voiceless—Enhancing Youth Participation in Court Proceedings*, 6 Nev. L.J. 1302, 1307 (2006); Practising Law Institute, *Decision-Making In Foster Care: The Child as the Primary Source of Data*, 158 PLI/Crim 73, 112–113 (1991).

64. Steven J. Wolin & Sybil Wolin, The Resilient Self: How Survivors of Troubled Families Rise Above Adversity 22 (1st ed., 1993).

65. Practising Law Institute, *supra* note 63, at 112–113.

66. Chaifetz, *supra* note 10, at 10.

67. *Id.*

68. Shink, *supra* note 6, at 639.

69. Foster & Freed, *supra* note 10, at 343.

70. Janet Gilbert et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 Ala. L. Rev. 1153, 1205 (2001).

71. Winick, *supra* note 49, at 1072.

72. Gilbert, *supra* note 70, at 1205.

73. Practising Law Institute, *supra* note 63, at 112.

74. Atwood, *supra* note 16, at 660.

75. *Id.*

76. Krinsky & Rodriguez, *supra* note 63, at 1307.

77. *Id.*

78. *Id.*

79. Rosalind Ekman Ladd, Children's Rights Re-vishioned; Philosophical Readings 180 (1st ed., 1996).

80. Krinsky, *supra* note 60, at 16.

81. Practising Law Institute, *supra* note 63, at 112.

82. Edwards & Sagatun, *supra* note 10, at 69.

83. Edith Matthai, *Report: Creating a Better Future For Our Most Vulnerable Children*, 5 (2005), *available at* http://pewfostercare.org/press/files/ABAPewResolutionReport.pdf (last visited August 28, 2007).

84. Krinsky & Rodriguez, *supra* note 63, at 1306.
85. *Id.*, at 1305.
86. *Id*.
87. *Id*.
88. Krinsky, *supra* note 60, at 16.
89. *See* Hon. Leonard Edwards, *William H. Rehnquist Award Address*, 43 FAM. CT. REV. 544, 546 (2005). Judge Edwards concluded that each day, our nation's juvenile court judges hear approximately 30,800 cases. This figure includes dependency and delinquency cases. Judge Edwards concluded that each day, our nation's juvenile court judges hear approximately 30,800 cases. This figure includes both dependency and delinquency cases.
90. The American Bar Association, *supra* note 8, at Comment to D-5.
91. Krinsky & Rodriguez, *supra* note 63, at 1305.
92. Edwards & Sagatun, *supra* note 10, at 64.
93. Matthai, *supra* note 83, at 5.
94. Foster & Freed, *supra* note 10, at 356.
95. *Id.*
96. Judge William G. Jones, *Making Youth a Meaningful Part of the Court Process*, JUV. & FAM. JUST. TODAY, Fall 2006, at 20.
97. *Id*.; Edwards & Sagatun, *supra* note 10, at 67.
98. Jones, *supra* note *96*; Edwards & Sagatun, *supra* note 10, at 67.
99. Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 82–83 (1997).
100. *Id.* at 83.
101. Jones, *supra* note 96, at 20.
102. Edwards & Sagatun, *supra* note 10, at 86.
103. Salisbury, *supra* note 59, at 656.
104. Jones, *supra* note 96, at 20; Krinsky & Rodriguez, *supra* note 63, at 1307.
105. Jones, *supra* note 96, at 20; Krinsky & Rodriguez, *supra* note 63, at 1307.
106. Jones, *supra* note 96, at 20; Krinsky & Rodriguez, *supra* note 63, at 1307; Salisbury, *supra* note 59, at 654 (quoting a criminal defendant who pointed out that "to be voiceless was the greatest pain of all.").
107. Hon. Judith S. Kaye, *Seizing the Opportunity to Make Good on Our Promises to At-Risk Youth*, 45 FAM. CT. REV. 361, 363 (2007).
108. Edwards & Sagatun, *supra* note 10, at 82.
109. *Id.*; Smith v. Org. of Foster Families, 431 U.S. at 852.
110. Edwards & Sagatun, *supra* note 10, at 72.
111. Guggenheim, *supra* note 43, at 823.
112. *See In re* Grimes, 2007 WL 2780990 (Mich. App. 2007).
113. *Id.*
114. Edwards & Sagatun, *supra* note 10, at 67; Donald N. Danquette, *Legal Representation For Children In Protection Proceedings: Two Distinct Lawyer Roles Are Required*, 34 FAM. L.Q. 441, 446 (2000); Gugenheim, *supra* note 16, at 823.
115. *Id.*
116. Matthai, *surpa* note 83, at 1.
117. Ferdinand Shoeman, *Childhood Competence and Autonomy*, 12 J. LEGAL STUD. 267, 269 (1983).
118. Kandel, *supra* note 16, at 366.
119. *Id.*; Katherine Hunt Federle, *Looking Ahead: An Empowerment Perspective on the Rights of Children*, 68 TEMP. L. REV. 1585, 1600 (1995).
120. Perlmutter, *supra* note 51, at 561.
121. Krinsky & Rodriguez, *supra* note 63, at 618.
122. *Id.*
123. Jones, *supra* note 96, at 20.
124. Edwards & Sagatun, *supra* note 10, at 72.
125. Krinsky, *supra* note 60, at 18.
126. Krinsky & Rodriguez, *supra* note 63, at 1306.
127. *Id*. at Appendix C.
128. Krinsky, *supra* note 60, at 3.
129. Jones, *supra* note 96, at 20.
130. *Id.*

131. Practising Law Institute, *supra* note 63, at 75–76.

132. For more suggestions, see, e.g., Jones, *supra* note 96, at 20; Sue Badeau & Madelyn Freundlich, *Hearing the Voices of Young Children and Children With Disabilities in Court*, JUV. & FAM. JUST. TODAY, Fall 2006, at 19.

133. This might also cause tension in the courtroom between the youth and his or her attorney. However, that tension would be present, anyway. The only difference is that the court would be aware of its cause, and the youth's opinion would at least be heard by the court.

134. Krinsky & Rodriguez, *supra* note 63, at 1307.

135. HOCHMAN ET AL., *supra* note 4 (21% of children surveyed said they did not attend their hearing because "I didn't want to miss school").

136. For an example of this, see THERESA HUGHES ET AL., TIMMY'S STORY; EXPLAINING THE CHILD WELFARE SYSTEM TO OUR YOUTH (2006) (this is a brochure, in book form, published by St. John's University School of Law which explains for children, in simple terms, the dependency hearing process).

137. For more suggestions, see Badeau & Freundlich, *supra* note 131, at 19; Krinsky & Rodriguez, *supra* note 63, at Appendixes B and C.

138. Home At Last, *My Voice, My Life, My Future; Foster Youth Participation in Court: A National Survey*, 9 (2005).

Jaclyn Jean Jenkins is the Managing Editor of Notes and Comments for volume 46 of Family Court Review. *She graduated cum laude from Whitman College with a Bachelor of Arts degree in History, with honors, and a minor in English. At Hofstra, she is a 2008 Child and Family Advocacy Fellow. She has assisted in implementing a new Streetlaw program at Hofstra aimed at Youth in Transition, and has helped plan and execute two major conferences while in law school. During the summer of 2007, Jaclyn interned with the Umatilla County District Attorney's office.*