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“LETTING KIDS BE KIDS”: YOUTH VOICE AND ACTIVISM TO REFORM FOSTER CARE AND PROMOTE “NORMALCY”☆

Bernard P. Perlmutter

ABSTRACT

In this chapter, I examine stories that foster care youth tell to legislatures, courts, policymakers, and the public to influence policy decisions. The stories told by these children are analogized to victim truth testimony, analyzed as a therapeutic, procedural, and developmental process, and examined as a catalyst for systemic accountability and change. Youth stories take different forms and appear in different media: testimony in legislatures, courts, research surveys or studies; opinion editorials and interviews in newspapers or blog posts; digital stories on YouTube; and artistic expression. Lawyers often serve as conduits for youth storytelling, translating their clients' stories to the public.

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Organized advocacy by youth also informs and animates policy development. One recent example fosters youth organizing to promote "normalcy" in child welfare practices in Florida, and in related federal legislation.

**Keywords:** Foster care; youth voice; storytelling; normalcy; child welfare

The remarks and suggestions made by foster care graduates contained a recurrent theme – the importance of consultation with the young people themselves. They felt like pawns – subject to the many powers of others. They felt disregarded, that it did not matter what they wanted or had to say, because too often they were never asked. Whether it was a decision about a foster home, about changes in placement, about visiting arrangements with kin, or about their goals in life, they felt they should have been heard.

– Festinger (1983, p. 296)

**“I DON’T HAVE NOBODY RIGHT NOW”**

(Testimony of former Florida foster child Natasha Minzie)

In February 2005, before the start of the Florida legislative session, the State Senate’s Children and Families Committee convened a hearing to evaluate how the Florida Department of Children and Family’s independent living program was working to assist teens leaving foster care. The Committee learned that the program was over budget, riddled with problems, and failing to prepare many foster children to live on their own.

A representative from the State’s Auditor General’s Office reported on a comprehensive study of all current and former foster youth ages 13–23 (Auditor General Report, 2005). The Auditor General found that only one in five pursued education or vocational training after high school (Auditor General Report, 2005, p. 4). Nearly half had been suspended or expelled from school in the past year (Auditor General Report, 2005, pp. 4, 6). There were dramatically higher rates of homelessness, arrests, and reliance on welfare than among their non-foster care peers (Chapman, 2005). The teens had attended life skills training in less than a quarter of randomly audited cases (Auditor General Report, 2005, p. 6). Despite the Florida law mandate that caseworkers meet with foster children ages 13–17 to make
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sure they are prepared for life on their own, half of the audited cases lacked evidence that a caseworker had developed a transitional plan for the teens (Auditor General Report, 2005, p. 6; Chapman, 2005). The Chair of the Committee called these failures “tragic” (Chapman, 2005).

Of the five individuals who testified before the Committee that day, only one was a former foster care client. Natasha Minzie, a 20-year-old graduate of the foster care system, and a client of mine at the Children & Youth Law Clinic, shared her story with the members of the Senate Children and Families Committee. Natasha recounted her experiences during and after foster care and her recommendations for fixing the system that had tragically failed her and her peers.

In her written comments, Natasha prepared to talk about her experiences after leaving state care, some of which had previously been reported in the media (O'Matz, 2004, p. 1B). She also planned to advocate for several specific measures to reform the independent living program for former foster youth. These included reinstatement of extended foster care as an option for former foster youth enrolled in school ages 18–23, continuation of juvenile court jurisdiction past age 18, expanded Medicaid coverage for all former foster youth through age 21, enhanced job, school, housing, and independent living training to better prepare all youth aging out of foster care for independence. Her testimony was covered by several news media outlets, and it was broadcast live on the state legislature’s web stream (Chapman, 2005, p. 13A; Levick & Pokempner, 2005, p. 13A). It was intended to convey to the legislature and public the experiences of one client of the system and to serve as a catalyst for some of the reforms under consideration in the 2005 session.

But what most moved the legislators that day was Natasha’s personal story, which she told with great power and emotion. She told the senators that by the time she was a little girl, she had lost nearly all of her relatives. Her sister died when Natasha was nine. Her brother drowned in a pool at a foster home when he was two. Her mother was dead. Her father was gone. Caseworkers had never paid Natasha much attention or taught her how to live on her own. She was 20 years old, living in an apartment rented to her by a church and struggling to get through cosmetology school without any support from her family or the state. Then she stopped speaking, went off script, and quietly said, “I don’t have nobody right now,” breaking into tears at the microphone. “I am basically by myself” (Chapman, 2005, p. 13A).

Natasha’s testimony riveted the audience and brought several senators to tears. As I watched, what struck me was that the value of her appearance that morning had less to do with her specific recommendations than
with the act of giving testimony. In fact, Natasha had departed from the prepared remarks that she, a law student, and I had collaborated on before she traveled to Tallahassee. Her brief silence and the ensuing extemporized narrative were more about her personal pain and loss than about the specific policy recommendations that she had planned to articulate that day to the Children and Families Committee.

TRUTH AND RECONCILIATION

Yet, women’s “silence” can be recognized as meaningful. To do so requires carefully probing the cadences of silences, the gaps between fragile words, in order to hear what it is that women say ... the specific aim of the Commission, assumes, perhaps patronizingly, that the world is knowable only through words and that to have no voice is to be without language, unable to communicate. The testimonies reported here suggest otherwise. (Ross, 2003, p. 50)

Nathasha’s unplanned departure from her script illustrates one way in which survivors of the foster care system make their mark on policy development. Giving youth like Natasha the opportunity to tell their stories through both speech and silence bears a striking similarity to the Truth and Reconciliation Commission testimonies of women who have survived systemic abuse in societies transitioning out of armed conflict or political and social repression.

Elaine Scarry has written about the experience of victims of war and torture when testifying about the inexpressible and unspeakable character of the pain they endured. She investigates a corpus of survivor testimony about physical pain and finds it originating in “pre-linguistic states of crying, whimpering and inarticulate screeching, which all form part of the bodily expressions that are framed outside language” (Scarry, 1985). These expressions arise in a state “anterior to language, to the sounds and cries before language is learned” (Scarry, 1985, p. 5). Seen within this heuristic framework, when one moves out of “pre-language” and “projects the facts of sentience into speech” this projection makes the “fact of the person’s suffering ... knowable to a second person” (Scarry, 1985, p. 7). Examining the testimonial expression of women victims in transitional societies, Fionnuala Ni Aoláin and Catherine Turner observe that

The most powerful images of transitional justice have often come from the truth telling processes that have sought to capture and tell the story of a society’s previous experiences through words that up until then were unspeakable or unacknowledged. (Ni Aoláin & Turner, 2007, p. 274)
They see women's acts of delivering their testimony as "having strong cathartic resonance as well as serving the need for some kind of legal accountability" (Ni Aoláin & Turner, 2007, p. 274).

A common feature of women's truth testimony "is a persistent inability to articulate — a 'block' on the expressive or verbal word" (Ni Aoláin & Turner, 2007, p. 276). Just as meaningful as the words spoken by truth witnesses are the "public ... silences [that] are a persistent feature of women's testimonial presentations in truth telling contexts." The authors urge us to clearly understand that those silences should not be read as non-statements about the experiences of women. The problem is one of how we mark the significance of communication (in law as well as in narrative forms) and what weight those listening give to both the verbal expression and silence. (Ni Aoláin & Turner, 2007, p. 276)

For many youth, particularly (but not only) young women who have suffered violence and trauma in foster care, an analogous tension between expression and silence is present when they testify about their experiences of systemic neglect and abuse, in courtrooms or before legislative bodies or in other public tribunals. When children are called upon to testify, they reach deep inside a childhood of dark and unpleasant secret memories and give expression to them. Giving youth opportunities to describe the traumas they have endured at the hands of those assigned to protect them, and giving them a chance to pause between the words that speak to the public ensures an authentic youth voice. "The words of those most knowledgeable about the failures of the policies and practices we have created and most eloquent about the costs of leaving those failures unaddressed — the youth themselves" constitute testimonial truths of the policy failures (Liebmann & Maddox, 2010, p. 255).

The testimonial silences of foster youth echo the information blackouts surrounding them. A study by the Pew Commission on Children in Foster Care found that many children in care expressed "bewilderment ... at being removed from their families and sent to live elsewhere with no explanation — or at least, none they could understand" (Voices from the Inside, 2004, p. 9). In their testimony to the Pew Commission, "they sounded a common, painful theme: their voices were lost in a system that does not always speak or listen enough to those it most affects" (Voices from the Inside, 2004, p. 9). Children are participants in cases but are often told nothing about why they were taken from their homes, what is happening in the present, and where they're going to live the next day. It is as though they inhabit the lacunae of a vast bureaucratic apparatus of the state that houses and shelters them rather than providing them homes with families who give
them meaning, value, and place. As one child told her Pew Commission interlocutors:

I would feel like I was just being passed around and not really knowing what was going on. No one explained anything to me. I didn’t even know what rights I had … if I had any. No one told me what the meaning of foster care was. No one told me why I had been taken away from my mom. I knew there were bad things going on. But no one really explained it to me. (Voices from the Inside, 2004, p. 9)

In addition to the information blackout by case managers speaking or listening to them as fully vested participants and rights holders in their cases, the youth found the language, rules, timetables, jargon, and acronyms of foster care impenetrable and incomprehensible, furthering their exclusion from the process. Children’s participation, like truth and reconciliation testimony, is thus marked by both verbal staging in a public setting and by public silence in the policy discussion.

Giving voice to their brutal experiences in this crucial life and legal transition process—of leaving foster care and entering adulthood—resembles transitional justice testimony in which victims at the point of societal change tell their stories to hold their abusers accountable. But as much as these personal expressions of pain and loss bring them catharsis and healing, foster children often lack capacity and language to voice a reform agenda or to articulate concrete remedies for harms suffered in an abusive system:

In foster care, teens learn that the way to obtain more attention is to demonstrate being more victimized, traumatized, or potentially self-destructive than the other teens in care. Children who have spent years in the system are terribly good at relating the horror of the situations that they have lived through, yet they have had no experience articulating the skills, strengths, or value they can bring to an employer, college, family, or friendship. (Krebs & Pitcoff, 2004, p. 359)²

Tali Gal identifies several ways to bring the child victim inclusively into decision-making processes (Gal, 2011). Examining psychosocial literature, the needs of victimized children, and international due process standards, she develops eight “heuristics” to encourage greater victim participation:

- First, she urges decision-makers to treat child holistically, instead of treating isolated problems.
- Second, she says to tailor the process to enable the child to participate in the most comfortable setting.
- Third, we need to consider the child as a partner in the process.
- Fourth, the importance of respecting the child’s wish not to participate and at the opposite end of the continuum, to promote the child’s full and equal participation.
- Fifth, to “liberate children’s voices,” allowing the voice to be the child’s own, and faithfully decipher the messages.
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- Sixth, to “let go” and allow the child an opportunity to take calculated risks in the process.
- Seventh, to regard the child’s participation as a “deliberative, empowering, restorative process” rather than an instrument for adult decision-making.
- Eighth, to give children opportunities for “empowerment advocacy” in the process.

(Gal, 2011; Gal & Duramy, 2015, pp. 457–458)

These strategies give the victim back some of the control that the system takes away from them (Gal & Duramy, 2015). This restorative process has particular resonance for child victim participation in child welfare policy decision-making.

“HOMELESS AND HOPELESS”

Terry, a former foster youth, testified to the United States Senate in 1999 to support federal legislation to assist older foster youth: “As she views it, she was abandoned twice. First, by an abusive father who couldn’t even care for her and then by the foster care system. ‘At age 18,’ she told the senators, ‘I was homeless and hopeless’”. (Kellam, 1999)

The foster care system is designed to serve as a short-term way to protect children who are alleged to have been abused or neglected by their families, and to strengthen families when children are at risk of abuse or neglect (E.G., Fla. Stat. 39.001). States are required to provide services to families, which range from preventive and family preservation services to reunification services after the state has removed the child from the home and placed her in foster or institutional care (Fla. Stat. 39.001(b), (f), (g), & (h)). If the conditions that give rise to the child’s removal from natural parents are not been ameliorated, removal can ultimately lead to the termination of parental rights and adoption (Fla. Stat. 39.001 (f) & (h)).

In 2014 there were more than 415,000 children in foster care (AFCARS Report 2015, p. 1), although some estimates place the population as high as 650,000 (Children’s Rights Works, 2016). Most children enter into care because of parental neglect. “Neglect is the most common form of child maltreatment. Three times as many children are victims of neglect (63.2 %) as are victims of physical abuse (18.9 %)” (CDF Fact Sheet 2005). According to one key survey, 60 percent of children who had been in care for one year were there because of neglect (National Survey 2003). Significantly, a growing number leave foster care each year, “aging out” or “emancipating” without achieving permanency with families. In 2012, more than 23,000 youth aged out of the system while still in a temporary living situation (Children Exiting Foster Care). The percentage of these children
has risen from 7 percent in 2000 to 10 percent in 2012 (Children Exiting Foster Care).

Although this is a data-driven system, "[c]hildren's stories enliven the data, depicting out-of-home placement as troubling and frightening for many children, marked by residential instability and emotional upheaval, and rife with inadequate care and privation of material goods" (Fraidin, 2010, p. 26). The data and policy analysis support the children's anecdotal observations, which are "diverse and mundane, and give a flavor of ordinary slings-and-arrows experienced by children in foster care" (Fraidin, 2010, p. 26). Many policy initiatives respond to different "grand narratives" of child welfare, such as a single publicized case of serious child abuse spurring a round of new child removals, or sometimes policies that go in the other direction for other reasons. "The grand narrative of child welfare is blight and poison and savagery, failed children and parents" which can sometimes be rebutted "by telling counter-stories of strengths and successes" (Fraidin, 2012, p. 109).

Many of the narratives that emanate from the research show that children fare very poorly in foster care. Children routinely shuffle through a maze of foster homes, shelters, group homes, and residential treatment centers (Fostering the Future 2004). Many spend years drifting through multiple placements and languishing in group homes and institutions (Gordon, 1999). They also experience random transfers through multiple school placements, as they endure one move after another through different shelter and group home placements (Stewart, 2012). In one study on permanence and well-being for children in foster care, children were found to average three different foster care placements: "One young man told us that, as a child growing up in foster care, he checked every day to see if his belongings had been packed in anticipation of another move" (Fostering the Future 2004, p. 9).

In addition to the "turbulence and uncertainty" triggered by frequent, unpredictable moves from one housing situation to another (Fostering the Future 2004, p. 9), children experience separation from their siblings (Hegar, 1988; Schwartz, 2001). The state confines some foster care youth to high-security therapeutic facilities designed for children with acute mental health disorders, and many are prescribed psychotropic medications, which exacerbate rather than ameliorate their conditions (Perlmutter & Salisbury, 2001). Others suffer different forms of institutional neglect, physical and even sexual abuse while in care (Huntington, 2006, p. 662). Many children languish in care far longer than the statutory minimums allowed by federal law (Huntington, 2006, p. 660). Studies show that children fare very poorly
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in foster care and can often safely return to families, if the state provides adequate family preservation services (Fraidin, 2010, 2012).

Children aging out of foster care tend to experience poorer outcomes than parented children, including low educational achievement, low wages, high rates of pregnancy, relatively high rates of homelessness, and other ill effects of their negligent care while in state custody (Courtney Testimony 2007). Their experiences also create dependencies on social workers, foster parents and courts that impair their ability to make decisions about their lives after they leave the system. “The desire of the system players to maintain control is understandable. Social workers and court officers are acutely aware that their primary legal responsibility is the safety and protection of the minor, as opposed to the minor’s empowerment” (Shirk & Stangler, 2004, pp. 13—14).

But the failure to cultivate independent living skills violates key best practice principles of foster care and child welfare policy in general. The system should provide children with meaningful opportunities to participate in decisions that affect their lives so that they are better prepared to achieve self-sufficiency after they exit the system (Propp et al., 2003). “Involving youth in their own care, training and emancipation process will help to combat the powerlessness and learned helplessness many feel after years in the system” (Propp et al., 2003, p. 265).

Recent study of Australian children in out-of-home care, based on interviews with the children, found that they felt disconnected and powerless within the system as a result of the frequent changes of caseworkers while they were in care, which inhibited their ability to develop meaningful and trusting relationships with adults in their lives after they left care (Bessell, 2015). When given chances to develop supportive relationships with these adults, and to have their views “listened to, taken seriously, and part of the ultimate decision ... children and young people were describing relationships within which respect and inclusive decision-making are everyday practice” (Bessell, 2015, p. 199).

This finding supports empirical research demonstrating that children build “social capital” when given a chance to invest in “relationships with others through processes of trust and reciprocity” (Social Capital 2012). Greater youth participation in court can be a prime mechanism for overcoming the feelings of powerlessness and learned helplessness that are so pervasive among children in care, and building social capital (Green & Dohrn, 1996; Green & Appell, 2006; Pitchal, 2008).

Youth engagement in case planning, being listened to by decision-makers and judges, developing supportive relationships with adults as a
routine part of their experience in care, enhances their chances to leave the system with adult supporters, mentors, teachers, coaches, and collaborators. Serving as voices and faces of their collective experiences in care also engages them in planning for their futures, which enhances their chances of success as adults.

HOLDING STATES ACCOUNTABLE


Many courts have found that the harms experienced by children in the foster care system violate the Constitution. Class action and individual civil rights litigation against child welfare systems in New Mexico, Alabama, Utah, Tennessee, Missouri, Kansas, and New Jersey “have demonstrated or are now demonstrating measurable systemic improvements and better outcomes for children and their families,” despite the high costs of challenging and defending these conditions:

Initially, these class action cases were built on constitutional civil rights protections for individuals in state custody. Later suits have added statutory claims based on both federal child welfare legislation and applicable state law. The relief sought in these lawsuits is often broad and prescriptive. Many states have spent decades in the courts, diverting staff and other resources to the defense of class action lawsuits, sometimes at the expense of applying those resources to the delivery and enhancement of core services for at-risk children and families. (Class Action Litigation 2012, p. vi)

In one particularly egregious case, a federal court found state and county officials liable for a young child who was rendered comatose by being “willfully struck, shaken, thrown down, beaten and otherwise severely abused by the foster mother” (*Taylor v. Ledbetter* 1987, p. 792). The court held that the child was entitled to substantive due process protection under the Fourteenth Amendment:

In the foster home setting, recent events lead us to believe that the risk of harm to children is high. We believe the risk of harm is great enough to bring foster children under the umbrella of protection afforded by the fourteenth amendment. Children in foster homes, unlike children in public schools, are isolated; no persons outside the home setting are present to witness and report mistreatment. The children are helpless. Without the investigation, supervision, and constant contact required by statute, a child placed in a foster home is at the mercy of the foster parents. (*Taylor v. Ledbetter* 1987, p. 797)

Through individual section 1983 civil rights litigation such as this, and class action litigation seeking broad and prescriptive relief, lawyers have
enforced the substantive due process rights of children in state foster care custody to receive minimally adequate safety, permanency, and well-being protections, “producing measurable results in reforming large child welfare systems, on which so many fragile lives are dependent” (Lowry & Bartosz, 2007, p. 210). Through these efforts lawyers for children have made “public child welfare systems accountable for achieving their mission and effectively carrying out their mandated responsibilities for children and families” (Class Action Litigation 2012, p. vi).

One national civil rights watchdog, Children's Rights, has filed more than 16 class actions and multiple individual section 1983 actions against state systems in the country and many local child welfare agencies over the past 20 years (Children’s Rights, Foster Care Reform 2016; Lowry & Bartosz, 2007). Children’s Rights has succeeded in reforming endemic failures in their child welfare systems, developing long-term solutions, and negotiating court-enforceable plans and decrees that transform the way agencies treat children in their care. As a result, more sibling groups in Tennessee are placed together in foster homes, in Connecticut the number of institutionalized children under age 12 has decreased by nearly 90 percent, and in Atlanta, more children are being placed with family members rather than foster care strangers (Children’s Rights Works, 2016, p. 6).

Just as important as systemic litigation, Children’s Rights has published first-hand accounts by former foster children about what it means to be a child in state care. Through its Fostering the Future public awareness campaign, blogs posts by children on the organization’s website capture their faces and words telling the public about their many harsh and occasionally positive experiences. The children deliver sound bites about the conditions they endured, such as “I wish caseworkers were better trained”; “I have a lot of emotional scars”; “I was never involved in family outings”; “I was picked on and bullied in every placement”; “I felt that I was alone in the world”; “I lived in 14 different homes in 15 years”; “I was hell-bent on finding a way out”; “Leaving foster care was a huge sigh of relief” (Children’s Rights 2016, Fostering the Future). These personal testimonials illustrate some key policy understandings about children's experiences in foster care.

**VOICES AND FACES**

We are normal kids in abnormal circumstances. (Testimony of former foster youth from Maine)
Children's testimony also comes as the voices and faces of policy advocacy driven by adults promoting legislative reform. Incorporating youth experience into policy research, culled from face-to-face interviews and focus group survey questionnaires, is one way that youth voice informs research and promotes reform. For example, a decade ago the Jim Casey Youth Opportunities Initiative issued a study on youth emancipating from foster care, finding that youth suffered many harmful long-term consequences from their time in care (Aging Out and On Their Own 2007). The study was based on focus group surveys of 54 children in care and youth formerly in care, review of empirical findings from other research studies, and interviews with the children, stakeholders, and policymakers.

The policy analysis in the report was punctuated with quotes from the youth who contributed views, experiences, and insights to the report. Photos of many of the youth participants appeared throughout the report. One former foster youth from Maine provided a moving sound bite to convey the foster care experience: “We are normal kids in abnormal circumstances.” The report expounded on his point:

Young people in foster care are much like any other youth: they go to school, enjoy hanging out with their friends, use cell phone and instant messenger on the Internet, and look to the future with a mixture of optimism and anxiety. What is different for most of these youth, however, is the absence of a stable foundation from which they can spring into adulthood — they lack a permanent family of their own to help guide them into the future. (Aging Out and On Their Own 2007, p. 8)

The well-packaged report influenced passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351), through which the federal government gave states greater financial incentives to connect youth in care with family members, mentors, and adults, even when they were unable to find permanent families.

Although the youth were voluntary participants and their views informed the campaign, they did not initiate the legislative effort (Aging Out and On Their Own 2007, p. 19). The forces driving the initiative were professional policymakers. The strategic use of children's voices and faces helped to garner congressional and public support for the legislation through the Kids Are Waiting initiative.

Recruitment of children in this effort raises an important question about their role in law and policy reform. By doing the bidding of the “adults” who formulated the policy and who engineered the broader strategy to achieve the goals of the policymakers and bill sponsors, was the children' participation meaningful or merely tokenistic?
Many youth accept their role as “the face” of their peers in adult-driven advocacy for public policy reforms. A report of Irish youth participation in public policy found:

Many young people involved in the study felt their role in public decision-making was to “be the face” of children and young people, either in general or of a particular group such as young people in care or in conflict with the law. By sharing their experiences, or representing those of their peers, young people felt that they were exposing adults in positions of power to the effect of their policymaking. (Marshall et al., 2015, p. 366)

However, other surveyed youth were not so certain that “being the faces” of their peer group was a true participatory act. A few of the youth experienced “feeling discounted and ignored by adult decision makers, which many young people were working to overcome through their involvement in public decision-making processes” (Marshall et al., 2015, p. 367). Tension between meaningful participation and tokenistic marginalization marks much of the discussion surrounding youth engagement in public policy.

FACE TO FACE: VIOLENCE AND THE WORD

I don’t think you can ever go back and undo the trauma of being raped by your caregiver, of being beaten by your peers and feeling like you couldn’t talk about it and you didn’t have any hope. (Testimony of former Texas foster child Kristopher Sharp)

For many former foster children, providing legislative or courtroom testimony allows them to play a direct role in initiating and achieving policy reform. Removed from their families and placed in institutions or the homes of strangers, foster children are frequently at the mercy of adults whose neglect and maltreatment of the children often go unnoticed, unreported, and unseen. Speaking “face to face” with legislators allows them to claim control over their lives.

The public expression of these unpleasant truths is, at one level, cathartic, and at another empowering. Research on “youth engagement” suggests that involving youth in case planning, and encouraging them to advocate for themselves, promote positive therapeutic and dignitary values, and enhance personal development as they transition from foster care to adulthood. In accordance with this principle, which is both intuitive and supported by research, federal child welfare independent living law requires states to:

[E]nsure that adolescents participating in the program ... participate directly in designing their own program activities that prepare them for independent living and that the
adolescents accept personal responsibility for living up to their part of the program.
(Foster Care Independence Act. § 677((b)(3)(H))

In the Jim Casey Youth Initiative focus groups, a pervasive feeling expressed by the youth was “that those in charge of their lives devalued their opinions and desires and had low expectations for their success” (Shirk & Stangler, 2004, p. 260). “The advice [the youth] gave was virtually unanimous: ‘Nothing about us without us.’ As we all know from our own life experiences, when we have a role in shaping our lives and futures, then our odds of succeeding rise” (Shirk & Stangler, 2004, p. 260). Researchers on court-involved youth in the juvenile justice system similarly found that encouraging youth to voice their opinions enhances their ability to make decisions, take self-guided actions, assess their short- and long-term interests, develop plans that serve those interests, act on those interests, and take responsibility for their actions (Zimring, 1982).

Extrapolating these findings to youth policy advocacy suggests that giving youth opportunities for “face-to-face” engagement in legislative and similar processes strengthens their decision-making competencies, building their self-confidence, and giving them experiences for “expressing their views in front of audiences or in adult-centered situations” (Marshall et al., 2015).

**Face to Face in the Legislature**

Kristopher Sharp, a survivor of violence and abuse in the Texas foster care system, told his story of being abused and silenced, first at a state legislative hearing and later in a federal courtroom. He described systematic abuse to both his body and psyche. He explained why he was silenced from revealing the mistreatment, especially to those charged with protecting him from abuse.

In July 2014, Kristopher testified before the State House Select Committee on Child Protection. He was one of two survivors of Texas foster care who addressed the committee members in that hearing. Both explained to the committee that they were speaking just for themselves about their experiences. They were seated side by side at a table, unaccompanied by any family members, adults, organizational aides, or other supporters. The five committee members were seated above them on a dais. The grainy video recording captured them from behind.

Kristopher was the first to address the committee. He spoke in a quiet, unemotional voice, giving the committee an account of how he had spent
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the latter half of his childhood in foster care, from age 11 to 18, when he aged out of the system. During his eight years in care, he lived in 26 different homes and attended 25 different schools. He came from Amarillo, in the Panhandle, and was moved around the state, to different residential treatment centers. In one of those treatment facilities, in Denton, Texas, designed to provide “therapeutic services” he was repeatedly molested by a caregiver and by his peers.

He described the facility as a “sanctuary for abuse.” Restraints were used to punish him, and he still has scars on his arms from the carpet burns that were inflicted on him during the restraint process. He felt like he couldn’t report the abuse, and his caseworker only came to see him for a few minutes once a year. He didn’t feel comfortable revealing the abuse to his peers in his group therapy sessions. He was never given a copy of the Texas foster children’s Bill of Rights, and if he had been, he would not have understood it or known how to use it to enforce his rights. Children in the facility were cut off from the outside world.

At the close of Kristopher’s six minutes of testimony, he recommended that the legislature authorize the creation of an independent ombudsman’s office to investigate claims of abuse from children living in foster care residential facilities. The committee chair asked him three questions: You never reported your abuse? How long were you in the Denton facility? Are there any other questions from the committee? Seeing that there were none, she politely thanked Kristopher for his testimony. A year later, the Texas legislature passed a bill to create an ombudsman to independently investigate complaints about maltreatment reported by Texas foster youth.6

*Face to Face in the Courtroom*

In December 2015, a federal district court judge in a class action lawsuit declared that Texas had violated the constitutional rights of its 28,000 foster children. The judge found that the state had exposed foster children to unreasonable risks of harm in a system where children “often age out of care more damaged than when they entered” (*M.D. v Abbott*, Memorandum Opinion 2015, p. 255).

In finding the Texas foster care system unconstitutional, the judge relied on testimony given by Kristopher Sharp in court. His testimony, along with that of four other children, supported the court’s evidentiary finding that Texas had an “inadequate array” of services to equip youth with “basic life skills,” resulting in great personal challenges for “many of the 1300 children
who age out of care every year leave[ing] the system far from their home communities" (M.D. v Abbott, Memorandum Opinion 2015, p. 225).

Kristopher expounded on his earlier testimony to the Texas legislature. He detailed acts of institutional abuse that he experienced, and the abuse of others that he witnessed. He described being administered powerful psychotropic medications (later determined to be unnecessary). And he testified about his final months in care and his leaving the system with no hope and no future.

The court characterized Kristopher's experience as "the most tragic consequence" of the state's failures to serve the needs of older foster youth (M.D. v Abbott, Memorandum Opinion 2015, p. 225). As described by the court, Kristopher's final days in foster care were unbearable, as were his first months out of care:

When one of his congregate care facilities in Houston was closing, the only available placement — in the entire State — was in the Panhandle where he had previously been abused. Sharp told the Court, "I decided that I would rather leave the system and just try to make it on my own so I packed some things up and I left." He spent the next six months homeless in Houston, 600 miles away from his home community of Dumas, Texas, "living on top of a shopping strip," making money by donating blood and prostitution. When he went to donate blood a third time, "they told me I couldn't do it because I was HIV positive." (M.D. v Abbott, Memorandum Opinion 2015, pp. 225–226)

The court found that the state's role in the brutal violence that Kristopher endured constituted a violation of the right to be free from harm while in state custody guaranteed by the Fourteenth Amendment:

Sharp was sexually abused by one of the caregivers at that RTC [residential treatment center], as well as by another foster child. Although he wanted to report the abuse, Sharp was unable to because the abusive caregiver was generally present when Sharp was on the phone with his caseworker. Sharp also felt that no one would believe him or do anything about the abuse even if he had managed to report it. Sharp was under that impression because of his lack of trust or relationship with any of his caseworkers. Sharp testified that during that time he felt like he did not have anyone who cared about him and that he would have been better off dead because he "knew that [the abuse was] going to keep happening." Sharp testified, "I don't think you can ever go back and undo the trauma of being raped by your caregiver, of being beaten by your peers and feeling like you couldn't talk about it and you didn't have any hope." (M.D. v Abbott, Memorandum Opinion 2015, p. 225)

Kristopher's testimony exemplifies two strategies often used by advocates of child welfare system reform. One is using testimony in the judicial fact-finding process. The other is using testimony in the legislative arena, as a means to enact a specific measure to reform one or more aspects of harm in the system. Both forms of action rely on the testimony of youth to
identify and help the judicial trier of fact or legislative fact-finders document the harms inflicted on them and to develop informed solutions to remedy unlawful practices in systems of care.\(^7\)

Kristopher was able to defy the odds and go to college and dedicate himself to working with foster children to fix the system. Although the prime venues for Kristopher to tell his story were the state legislature and a federal court, he understood that a wider audience needed to hear from him. In addition to his formal witness testimony, he made deft, strategic use of the media to tell the public what had happened to him during his time in state custody, and in the aftermath of his discharge from care.\(^8\)

**Face to Face with Interpretive Violence**

Kristopher’s testimony gives voice and meaning to Robert Cover’s insight regarding the relationship between legal interpretation and violence:

> Legal interpretation takes place in a field of pain and death ... Legal interpretive acts signal and occasion the imposition of violence upon others ... Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence. (Cover, 1986, p. 1601)

Cover’s investigations “invite us to imagine and construct a jurisprudence of violence, and to theorize about law by attending to its pain-imposing, death-dealing acts” (Sarat & Kearns, 1992, p. 10). The child welfare system experienced by Kristopher and many of his peers was “a field of pain and death.” His testimonial narratives provoke questions about how a legal system charged with protecting children could inflict such staggering violence upon vulnerable child victims.

Martha Minow sees this as a fundamental paradox at the heart of child welfare: “Judges do violence when they leave in place a neglectful system for providing substitute care when parents fail, and expose dependent children to physical and emotional damage” (Minow, 1987, p. 1898). The systematic silencing of victims of violence, preventing or stymying them from blowing the whistle on abusive treatment by caregivers, makes this paradox even more pain imposing for the victims.

Confidentiality laws, which are designed to ensure that abuse and neglect proceedings protect victims’ privacy interests, further dissuade children from telling their stories to the public and media. Critics of this routine silencing or
suppressing of the stories of children under the pretext of “protecting” children’s privacy point to examples such as a “local child welfare agency [that] forbade a reporter from maintaining communication with a youth who had shared information about the child’s life in state custody” (Fraidin, 2010, p. 33). The remedy that Kristopher proposed — the creation of an independent ombudsman — aimed to give victims a voice and gives them back some control over this condition of being speechless and powerless.

Benefits of Face-to-Face Engagement

A benefit of “face-to-face” engagement is that it gives the youth a chance to be listened to and taken seriously (Marshall et al., 2015). In a survey of Irish youth, those given the opportunity to express their views directly to public policymakers experienced a greater sense of engagement: “Physical and social indicators of being listened to, such as when adults kept eye contact, asked relevant follow-up questions, and subsequently took action (or explained why action was not possible at that time), were identified by young people as vital in the process of engagement” (Marshall et al., 2015, pp. 368–369). The survey urged the formulation of a series of youth-engagement strategies to promote youth-oriented values and expectations in the policy process:

- First, establishing conditions of transparency from policy makers about the expected outcomes of youth participation in public policy;
- Second, ensuring the youths’ voluntary rather than coerced participation in the policy-making process;
- Third, fostering respect for the children’s capacity to contribute to the decision-making processes, asking questions and engaging the youth in a conversation that values their viewpoints and perspectives;
- Fourth, giving children the chance to deliver testimony that is relevant to their life experiences, unique outlooks and personal perspectives;
- Fifth, framing methods for hearing the views of children in settings that are “friendly” to children, ensuring that they are able to freely express their views at times and in places that accommodate their ages, abilities, circumstances and interests;
- Sixth, being accountable to youth participants, making sure to establish personal connections to the children who engage in the process and taking action in response to the child’s face-to-face engagement with the adults. (Marshall et al., 2015, pp. 374–376)

Each strategy involves youth being heard in forums where decisions are made about their lives, and having their views validated by listeners. These youth have historically experienced systematic and deliberate exclusion by the decision-makers in the foster care system:
They felt like pawns — subject to the many powers of others. They felt disregarded, that it did not matter what they wanted or had to say, because too often they were never asked. (Festinger, 1983, p. 296)

This exclusion and marginalization persists as a common experience for children in care. Children have been called “the silent presence in the courtroom” (Green & Dohrn, 1996, p. 1285); “their ability to form ideas about policy ... easily discounted, and ... more vulnerable to be subordinated even by their own attorneys” (Appell, 2006, p. 698); and “irrelevant ... to the conduct of the proceeding ... affirmatively disregarded most of the time by the court personnel in the room” (Buss, 2015, p. 312).

Children are silenced by state actors — judges, case workers, guardians, foster parents, their own lawyers — and by the enervating effects of grinding bureaucratic forces, leading to childhood deficits and poor transitions to adulthood. Many seasoned observers of the foster care system, and the courts that oversee it, have noted that the way children’s views are disregarded, discounted, and treated as irrelevant is just the tip of the iceberg in the decision-making bureaucracies that isolate and silence them:

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. (Krinsky & Rodriguez, 2006, p. 1303)

As the Irish youth study on engagement in public policy concludes about this systematic silencing: “Without follow-up action on the part of the decision-makers, however, young people described becoming frustrated and cynical about further face-to-face engagement” (Marshall et al., 2015, p. 369). This cynicism can be overcome by ensuring that their voices are heard, that their messages are validated by the adult decision-makers, and that their participation is voluntary.

**VOICE AND VALIDATION AS THERAPEUTIC AND PROCEDURAL JUSTICE**

There are essentially three core components to such a therapeutic experience, which can be called “the three Vs”: namely, a sense of voice, validation, and voluntary participation. (Ronner, 2002, p. 94)
Therapeutic jurisprudence and procedural justice have much to offer those interested in the empowerment of foster care youth in the policy arena. Therapeutic jurisprudence uses the tools of the behavioral sciences, and sees the law and the way in which it is applied by various legal actors, including judges, attorneys, social workers, and guardians ad litem, as having inevitable consequences for the psychological well-being of clients. According to Bruce Winick:

It suggests that these consequences should be taken into account in reforming law, when consistent with other important normative values, to make the law less antitherapeutic and more therapeutic. It is a mental health approach to law, suggesting the need for the legal system to be sensitive to the law's impact on psychological health of clients and others involved in the legal system, and for judges, lawyers and other actors in the legal system to perform their roles with an awareness of basic principles of psychology. (Winick, 1999a, p. 1039)

This approach to children's treatment in the legal system traces its origins to the U.S. Supreme Court's jurisprudence on the due process rights of juveniles, culminating in In re Gault, which defined a juvenile's fundamental rights in a delinquency proceeding to include notice of charges, right to counsel, confrontation of witness and privilege against self-incrimination, a transcript of proceedings and to appellate review in all juvenile court proceedings (In re Gault 1967, p. 11).

Underlying the Court's holding in In re Gault that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (In re Gault, 1967, p. 13) was the view that "the appearance as well the actuality of fairness, impartiality and orderliness may be a more impressive and more therapeutic attitude so far as the juvenile is concerned" (In Re Gault, p. 26). The importance of this insight, gleaned from research in criminology, sociology, and public policy, cannot be underestimated. It represents the "procedural justice" policy underpinning of the due process analysis in the opinion and is notable for recognizing the importance of the child's perception of the fundamental unfairness of an arbitrary court proceeding, seeing the proceeding through the child's eyes, and empathizing with the child's feelings of powerlessness vis-à-vis the entire court process (In Re Gault, p. 38).

In addition to demonstrating an awareness of the psychology of procedural justice, the opinion's focus on the child's feelings and perceptions of fairness as the defining sources of the child's amenability to rehabilitation augurs the approach of therapeutic jurisprudence, which considers the therapeutic or anti-therapeutic consequences on litigants of court proceedings and processes.
Youth Voice and Activism

Therapeutic jurisprudence has wide application to promoting the psychological well-being of children in the child welfare and juvenile justice systems, while also recognizing important legal and due process rights and norms. Its scholarship spans a broad spectrum, ranging from children's psychiatric commitment (Perlmutter & Salisbury, 2001; Winick & Lerner-Wren, 2002), to juvenile justice (Ronner, 2002), family systems (Brooks, 1999), mental disability (Costello, 2002), family-focused juvenile justice (Gilbert et al., 2001), mental health confidentiality (Katner, 2004), and lawyer-child client relationships (Henning, 2007), cumulatively evidencing "an impressive body of scholarship examining therapeutic jurisprudence and how the law affects our children" (Stephani, 2002, p. 18).

Beyond its influence on scholarship, therapeutic jurisprudence has influenced legal proceedings and enlightened how courts process cases involving families and children. For example, in the Florida, the state's Supreme Court has relied on these principles in refashioning practices in the state's family courts, juvenile courts, criminal courts, civil courts, problem-solving courts, and in other contexts of legal process beyond the adjudicatory processes of the court system. Therapeutic jurisprudence precepts are at the foundation of the Court's reconceptualization of the state's "unified family courts." The Court has formally adopted "therapeutic justice" as a primary goal of these courts, "embracing methods of resolving disputes that do not cause additional harm to the children and families who are required to interact with the judicial system" (In re Report of the Family Court Steering Committee 2001, pp. 519–520).

Therapeutic jurisprudence also has informed the Florida Supreme Court's review of practices in delinquency courts, especially those treating children in unnecessarily humiliating and degrading ways. The Court abolished the practice of video-conference arraignments, citing their "deleterious therapeutic consequences for juveniles" (Amendment to Florida Rule of Juvenile Procedure, Fla. R. Juv. P. 8.100(a) 2001). It abolished long-standing practices of shackling children to furniture and to each other in delinquency courtrooms, calling the practice of indiscriminate shackling "repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously acknowledged" (In re Amendments to the Florida Rules of Juvenile Procedure 2009, p. 556; Perlmutter, 2007).

Therapeutic jurisprudence has played an instrumental role in reviewing anti-therapeutic practices in dependency courts. The Florida Supreme Court relied on therapeutic jurisprudence theory to require the juvenile court to afford a foster child a "meaningful right to be heard" before placement in a
locked psychiatric facility (M.W. v. Davis 2001, pp. 108–109) (Pariente, J.). In that decision, the Court noted the psychological benefits to the child of being afforded procedural protections, including a hearing and representation by counsel. The Court expressly applied the principles of therapeutic jurisprudence in its proposal and later adoption of a rule of juvenile procedure requiring the court to consider the child’s views before ordering the child into residential treatment (Amendment to Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350 2001, 2003).

The Court has acknowledged the therapeutic benefits to a child of being heard in dependency court hearings on the administration of psychotropic medications (In re Amendments to the Rules of Juvenile Procedure, 2007). A state appellate court, in a case of first impression, upheld a child’s invocation of the psychotherapist-patient evidentiary privilege to prevent her guardian ad litem from gaining access to her therapist’s records. Relying on therapeutic jurisprudence, it saw that a child’s ability to restrict a guardian’s access to those records strengthens the child’s confidential relationship with her therapist and fosters therapeutic benefits for the child (S.C. v. GAL, 2003; Perlmutter, 2011).

A kindred body of research, the psychology of procedural justice, similarly finds that enhancing youth participation improves the young person’s perceptions of the fairness and integrity of the court process. Procedural justice examines how individuals feel the legal system has treated them. If they believe that they have been treated with fairness, respect, and dignity, the experience has positive therapeutic consequences for them. This literature demonstrates the psychological value of giving people the opportunity to participate in hearings they perceive to be fair (Lind & Tyler, 1988; Lind, Walker, Kurtz, Musante, & Thibaut, 1980; Tyler, 1992, 2006). Hearings can serve an important participatory or dignitary value that has been shown to have a significant impact on the attitudes of individuals who participate in them.

Procedural justice research search suggests that people are more satisfied with and comply more with the outcome of legal proceedings when they perceive those proceedings to be fair and have an opportunity to participate in them. The process or dignitary value of hearings is important to litigants (Winick, 1999b). People who feel they have been treated fairly at a hearing — dealt with in good faith and with respect and dignity — experience greater litigant satisfaction than those who feel they were treated unfairly, with disrespect, and in bad faith (Winick, 1999b).

People highly value “voice,” the ability to tell their story, and “validation,” the feeling that what they have had to say was taken seriously by the
judge or other decision-maker (Winick, 1999b). Even when the result of a hearing is adverse, people treated fairly, in good faith, and with respect are more satisfied with the result and comply more readily with the outcome of the hearing (Winick, 1999b). Moreover, they perceive the result as less coercive than when these conditions are violated, and even feel that they have voluntarily chosen the course that is judicially imposed (Winick, 1999b). Such feelings of voluntariness, rather than coercion, tend to produce more effective behavior on their part (Winick, 1999b). For many litigants, these process values are more important than winning (Tyler, 1992; Winick, 1999b, 1997). These values have unique application to children's court experiences and can influence the developmental effects of court processes on the child (Birckhead, 2009; Buss, 2015).

Therapeutic and procedural justice values recognize the process or dignitary value of giving children voice in public policy processes and validating the child's testimony. And they confirm the value of encouraging children to express their voice in a manner that goes outside the conventions of personal expression associated with traditional forms of testimony in the legislative or judicial process. In her examination of the child developmental and socialization processes at stake in juvenile court proceedings, Emily Buss has observed that the norms of speech are not always the same for youth when they speak in the courtroom. They may express themselves differently than what we ordinarily expect to hear from adult litigants or witnesses. This is partly due to the fact that speech acts by children are uniquely their own:

Many judges, concerned that young people be given a "voice," will pause during the brief hearing and offer an opportunity for the young person to speak ... If he does speak, the phrase "giving voice" is apt, as things proceed much as if the judge had invited the young person to sing an aria. (Buss, 2015, p. 314)

**TRAPPED: VOICE AS ART**

Being locked up makes you feel like there's no hope. The unit you live on is your life. Here there is no such thing as McDonald's or Wet 'n Wild. When staff don't know what to do or are just tied up, they tie you to a bed and stick a needle in your ass to shoot you up with drugs. You feel powerless, like you're being raped all over again. (Testimony of Florida foster child locked up in a psychiatric facility, 2002)

Foster children do not only express their experiences through legislative and court testimony or as voices and faces in policy reports or studies prepared by adults. Another medium is artistic expression. One of our child advocacy clinic's most significant law reform efforts was a multi-year
Florida Supreme Court appeal and subsequent rule proceeding through which we sought greater due process protections for foster children facing involuntary commitment in locked psychiatric facilities. In three appearances before the Florida Supreme Court, we relied on therapeutic jurisprudence-grounded arguments, bolstered by social science research, to demonstrate that affording foster children a precommitment hearing at which they could be represented by counsel would further their therapeutic interests at these facilities. The Florida Supreme Court agreed with, and ultimately adopted, this argument (*Amendment to Rules of Juvenile Procedure 2003; M.W. v. Davis 2001*). In an effort to study the therapeutic benefits of giving foster children facing involuntary civil commitment a voice in this process, we established the Voice Project, supported by our county's Department of Cultural Affairs. The Voice Project was a collaborative project with children confined in psychiatric hospitals. Participants included the late Bruce Winick, Professor of Law, Psychiatry and Behavioral Sciences at the University of Miami, and Xavier Cortada, an artist (and lawyer) in Miami.

The artist and law clinic students interviewed children locked up in two residential hospitals. Together they created two collaborative paintings capturing the children's individual stories and concerns. While creating the art, the children shared accounts of sexual abuse by family members and then revictimization in locked psychiatric facilities. The first painting, “Trapped,” features the crouched figures of two girls wrapped together, their eyes closed, a large finger pointing at them from the upper left-hand corner of the canvas, four spears or needles closing in on them from the top. A photocopy of Trapped was attached to comments submitted to the Florida Supreme Court during its deliberations on the proposed rule of juvenile procedure. The painting and its 2003 companion piece can be viewed at http://cortada.com/2002/Trapped/about.

Some children produced hand-written poems, others wrote letters, and a few issued short manifestos, all of which were wrapped into the canvas. One of my clients, “Maria,” contributed a montage of cartoon-like images: a caged tiger, a girl tightly bound in four-point mechanical restraints on a bed or gurney, a needle used to give her anti-psychotic medications, and a bearded crimson Satanic figure with horns and a pitchfork, presumably meant to symbolize the male staff in her facility who restrained her and injected psychotropic drugs when she acted out.

The second art piece was produced after the Florida Supreme Court in 2003 adopted a new procedural rule requiring precommitment hearings and counsel for these children. In bright and cheerful colors, with a group of
children embracing each other underneath a light bulb hanging from the center of the canvas, the painting depicts the children's sanguine visual expressions and written testimony. The celebratory images and words reflect the children's appreciation of the Court's acknowledgment of their due process rights, giving them a "meaningful right to be heard" in a pre-commitment hearing represented by a lawyer.

Both canvases were first exhibited in the state capitol building and later in the Florida Supreme Court rotunda. Now they are on permanent display in our offices. The public showings of the canvases, which incorporated the children's words and art, were designed to give children a chance to express to the legislature, the Court, and a larger public audience their experiences of confinement in psychiatric hospitals.

Many of the children's poetic, epistolary, and artistic expressions, especially those contributed by the female participants, convey the trauma of being sexually abused, the re-traumatization of being locked up through forced psychiatric treatment, and the further re-traumatization of being silenced in the legal system that controlled their psychiatric commitment and every aspect of their lives. These experiences were summed up by one of the participants, a resident of an inpatient hospital, whose manifesto ends with this chilling statement:

When staff don't know what to do or are just tied up, they tie you to a bed and stick a needle in your ass to shoot you up with drugs. You feel powerless, like you're being raped all over again.

The Voice Project demonstrates the benefit of victims writing about their traumatic experiences, bringing their stories of private sexual violence into public discourse. Therapists in the programs told our students about the psychological insights gained by some of the girls who shared their experiences (Salisbury, 2007, pp. 625–627). As Bruce Winick observed in his reconceptualization of domestic violence cases through a therapeutic jurisprudence lens, victims of violence gain benefit from writing about their experiences:

[People suffering a variety of traumas including war-trauma, natural disasters, or being victims of crime or accidental injury gain significant psychological benefits from telling their stories to others, particularly if in writing. (Winick, 2000, p. 64)]

The non-written, visual imagery contributed by other participants in this exercise illustrates how other children tell their stories, particularly those who are not adept at putting into words what they have experienced and may lack the capacity to give a narrative account of historical events. As linguist Anne Graffam Walker explains, not all adolescents are "necessarily
good at narrative skills” and many “do not understand time as both a historical concept and a day-to-day concept” (Walker, 1999, pp. 4–5). These adolescents, particularly those who are undereducated, under-parented, and unattached, may “have the communications skills of younger children” (Walker, 1999, p. 5). Like my client Maria, they are able to make their unique and valuable contributions to public policy discourse through alternative forms of self-expression, including art.

YOUTH ORGANIZING FOR A CHANGE

The question is, “Is youth-led community organizing simply a junior version of adult community organizing?” (Delgado & Staples, 2008, p. 68)

In addition to children delivering testimony to legislative bodies or courts in person, as inanimate faces and words in reports or studies, or as artistic collaborators with advocates and other allies, children have coalesced into organizations animating policy development at the state and federal policy levels. Their group participation in policy advocacy has achieved results for children affected by these reforms, and has instilled an ethos of civic engagement and positive youth identity. This advocacy has influenced state and federal policy in significant ways, in collaboration with adult-driven advocacy organizations committed to child welfare reform.

When the youth organizers join forces with adults, the relationships are complex. It is not always clear how much the adults in the room consider their youth allies to be autonomous, competent, and self-determining agents, or simply their younger subordinates. Some adults give only lip service to the children’s voices in the process of mobilizing for change. Frequently, youth organizations are housed within, or under the aegis of, nonprofits managed and directed by adults. Children may or may not serve on the governing boards of these nongovernmental organizations, even though the adults give lip service to the children’s voice in the process of mobilizing for change.

Irrespective of the power dynamics, the collaborations between youth organizers and their allies have produced tangible results. For example, the federal Foster Care Independence Act of 1999 (Pub. L. No. 106-169) and the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Pub. L. No. 113-183) were the products of collaborations between youth and adult organizations. Both relied on the lived experiences of survivors of foster care, who through their testimony before legislative tribunals,
their role as agency advisors, and collaborative and organized advocacy efforts, helped to initiate and shape foster care policy reforms that have sought to improve those experiences.

**Youth Participation in Independent Living Policy**

For three decades, the federal government has funded transitional services for youth aging out of foster care in recognition of the challenges faced by foster youth as they transition into adulthood (Pub. L. No. 99-272 1986). In 1999, Congress estimated that "about 20,000 adolescents leave the Nation's foster care system each year because they have reached 18 years of age and are expected to support themselves" (H.R. 3443 1999). The harsh reality was that many of these youth were not independent upon turning 18.

Congress amended the federal program through the Foster Care Independence Act of 1999, resulting in the creation of the John H. Chafee Foster Care Independence Program (Pub. L. No. 106-169). The Chafee Program increased funding and gave greater flexibility to the states to help youth make the transition from foster care to self-sufficiency (Benedetto, 2005; Guinn, 2000). Detailed data and research analysis informing recommendations were submitted to Congress by the U.S. Department of Health and Human Services, nongovernmental organizations such as the American Public Human Services Association, Child Welfare League of America, Orphan Foundation of America, private corporations such as United Parcel Service, and representatives of state child welfare agencies (Hearings on Challenges Confronting Children Aging Out of Foster Care 1999). The Chafee Program significantly increased federal funding for transitional services for foster youth, expanded the types of services, and raised the age cut-off for youth to receive services. Testimony in support of the Chafee Program included statistics showing that within two to four years of leaving foster care, only one-half of young adults had completed high school; fewer than half were employed; one-fourth had been homeless at least one night; 30 percent lacked access to medical care; 60 percent of women give birth; and less than one-fifth were completely self-sufficient (Statement of Carol Williams 1999). These sobering statistics were all the more significant because states had already been receiving federal funding to assist foster youth with transitional services. Clearly, the programs as administered by the states prior to the passage of the federal legislation were not enabling foster youth to achieve independence as adults, and were in need of serious reform.
In the congressional deliberations over the legislation, stories told by survivors of foster care proved to be just as persuasive as the data and testimony from the government policy experts, nongovernmental policy analysts, and private sector representatives. Youth testimony was integral to the passage of the law. Included in the list of congressional witnesses in a hearing before the House Ways and Means Committee were two former foster children: Reggie Rollins, a college student and member of the Connecticut Youth Advisory Board; and Shauntee Miller, a student at a hair salon studio, speaking on behalf of New Pathways Independent Plus Program in Baltimore (Hearings on Challenges Confronting Children Aging Out of Foster Care 1999, pp. 19–22, 23–24).

Perhaps the most moving survivor testimony was that of Terry Harrak, whose prepared statement before Congress put a human face on foster care in America (Health Needs of Children in Foster Care: Hearing on S. 1327 1999). She told a harrowing chronicle of how she came into care, and what happened when she left. The final summation of this chronicle reads in one account: “Terry was forced to worry about how she was going to eat and where she was going to live. The foster care system failed her” (Sapp, 2008, p. 2862).

Terry’s story deeply influenced the bill that was ultimately signed into law by President Clinton on December 14, 1999. She was hailed as the bill’s “chief activist ... a woman whose own experiences served as the motivating testimony that ensured this bill’s passage” (The Human Face of Foster Care 2001, pp. 25–26). Terry’s story has been told and re-told numerous times (English & Grasso, 2000, p. 217; Sapp, 2008, pp. 2861–2862).

Terry’s testimony also helped to shape the form and substance of the legislation. In addition to influencing the law substantively, it spurred the creation (or re-creation) of advisory committees of current and former foster youth. This was both a symbolic and practical acknowledgment of the need of legislators and policymakers to pay attention to the expertise of youth like Terry Harrak in formulating policy.

Youth “development and engagement” in the design and implementation of independent living services and programs became a new watchword in child welfare practice (Chafee Frequently Asked Questions 2005, pp. 36–39). All states receiving Chafee Act funding dutifully (albeit inconsistently) complied with this requirement by establishing – or re-establishing – youth advisory boards to institutionalize the role of children’s voices as critical components of state policy formulation. However, while “[s]ome states have engaged in intensive efforts to support and promote active youth advisory board or youth-run organizations, ... others have minimal youth involvement” (Chafee Frequently Asked Questions 2005, p. 36).
Youth Voice and Activism

Youth Involvement and Cooption on Florida’s Road to Independence

Florida lawmakers, like their counterparts in Congress, have for years acknowledged that “[t]he traditional foster care system fails to meet the needs of children in the legal custody of the department” ( Fla. Stat. 409.1673(1)(a)1 2003). In 1994, the Florida legislature found that the special needs of older foster children were not being met by the Department of Children and Families (Fla. Stat. 409.1673). In enacting the Road to Independence Act nearly a decade later, the Florida legislature relied on findings, reports, and studies documenting the serious unmet needs of older foster youth in the state and nationally. The reports noted that, in 2002, more than half of the teens in Florida’s foster care program were receiving no training in independent living skills before being discharged from foster care (Shirk & Stangler, 2004, pp. 84–86). These studies corroborated the Florida legislature’s long-standing awareness of the grave problems facing foster care youth and the systemic failure to serve their needs for housing, health care, independent living skills training, and post-secondary education.

Despite passage of the Road to Independence Act, the situation of youth aging out of care got worse after 2002. The most significant change wrought by the new legislation was its elimination of a provision in Florida law that had previously allowed youth enrolled in secondary and post-secondary school to remain in foster care through the age of 23 (Marbin Miller, 2003a, 2003b; Editorial, 2003c). The new law also replaced the previous state entitlement of extended foster care with a patchwork of cash monthly subsidies — or “scholarships” — for youth enrolled in school, along with gap-filler “aftercare” and “transitional” benefits, all of which were allotted on a funds-available basis (Fla. Stat. 409.1451(5)(b)5.c. 2004).

Virtually from the day it was signed into law by Governor Jeb Bush, the Road to Independence Act was criticized by advocates, editorial writers, and youth themselves for eliminating the safety net of extended foster care for youth over 18, and for imposing onerous eligibility requirements, which led many to disparage the governor and rename the law the “Road to Homelessness Act.” Many of our clients were contacted by newspapers, and several were quoted in the numerous in-depth investigative stories that examined the deficiencies of this law. In the flood of news stories that appeared in the aftermath of the Act’s passage, reporters gave youth a chance to express their views to the public — giving them

According to the sponsors of the legislation, some of the controversial provisions of the Act were responses to testimony from members of the State’s Youth Advisory Board, who advocated for changes in the way foster care benefits were dispensed to youth aging out of care. Because the Board consists of youth hand-picked by the Department, some within the child welfare community questioned whether the youth advisors were merely token participants who had been coopted by legislators and other inside players in the state’s Department of Children and Families. Advocates saw the need for the formation of “outsider” grassroots coalitions to speak as the independent voices of youth in the foster care system and thus make the law and the independent living program more responsive to the actual needs of foster care youth.

Youth Grassroots Organizing

Florida Youth SHINE (an acronym for “Striving High for Independence and Empowerment”) was formed. FYS, as it is now known, was founded by students and faculty in our clinic in 2005. In forming FYS, we were motivated to put into practice the theories of clinical legal and critical race scholars such as Gerald López. Our goal was to encourage social justice lawyers to shed paternalistic practices and collaborate with marginalized client communities (Alfieri, 1994, 2007; Cole, 1995; Ellmann, 1992; López, 1992, 2004; Trubek, 1996; White, 1994). The plea to lawyers was to build alliances with communities; reject “regnant” strategies that subordinate client identities and interests; forge “rebellious” group advocacy to promote solidarity with individuals and groups in impoverished communities.

Our collaboration with FYS to reform the Road to Independence Act grew out of a realization that the best way to achieve systemic, long-lasting results was through a client community organizational efforts. This approach rejects traditional paternalistic, domineering lawyer images of low-income clients—immigrants, children, single mothers, elders, disabled, sweat shop workers—as dependent, helpless, and passive. Instead it sees clients as capable of achieving meaningful participation and full citizenship in their communities through collective mobilization. Law school clinics are seen as classrooms and laboratories for bringing lawyers together with
community organizers and clients in a collective enterprise of mobilization by client communities:

We choose to focus our teaching of interdisciplinary practice on the interface between lawyers, organizers, and clients .... [O]rganizers are professionals whose very self-definition is grounded in strengthening the collective goals of groups of poor people. Public interest lawyers should learn how to work with them, first, to mobilize the resources necessary to carry out our clients' interests and, second to see legal cases through multiple frames of references. (Ashar, 2008, pp. 401–402)

FYS organizing also grew out of our review of sociological and social policy literature finding that youth activism and civic engagement promote positive citizenship ideals and practices. A wide-ranging encyclopedic literature in the sociology and political science of youth activism supports what we originally intuited: that incorporating these practices in the organizing efforts of FYS would inculcate positive civic values and beliefs in the organization's participants (Sherrod, 2006). We saw positive youth development as attributes of a citizenship ethos that we hoped to instill in our client collaborators. As a university-based child advocacy clinic, we also saw opportunities to engage in inter-disciplinary evaluation of how youth activism could help prevent risky adolescent behaviors, improve youth experiences in and out of care, and cultivate resiliency.13

The first membership group of FYS strove to give the youth a central leadership role. The youth identified four “pillars” to the organization’s initial mission: (1) youth organizing and leadership development, (2) public policy advocacy, (3) legal advocacy, and (4) community education and mobilization. FYS was later “adopted” by a statewide advocacy organization, Florida’s Children First or FCF, which now serves as its parent organization. For the past decade, FCF and FYS have worked closely together to initiate and promote significant policy across the state and nation. Today, FYS has 12 chapters of 400 current and former foster youth, ages 14–23, from across the state.

An additional impetus for this community-driven organizing was the successful activity of pioneer grassroots organizations such as California Youth Connection (CYC). CYC, an advocacy and youth leadership organization founded in 1988 for current and former foster youth, describes its mission and vision as follows:

Mission:

California Youth Connection (CYC) is a youth-led organization that develops leaders who empower each other and their communities to transform the foster care system through legislative and policy change.
Vision:

Foster youth will be equal partners in contributing to all policies and decisions made in their lives. All youth in foster care will have their needs met and the support to grow into healthy and vibrant adults. (CYC Mission & Vision)

CYC was founded on the premise that foster care youth had historically been left out of the child welfare policy arena and never had the opportunity to speak out about their experiences in care (Rodriguez, 2005). Policymakers had not talked directly to those meant to benefit from child welfare services. CYC quickly established itself as a stakeholder and player in California foster care policy development.

By the time FYS was being formed, CYC already had an impressive track record (Rodriguez, 2005). FYS sought to emulate the CYC model, which gives members leadership and advocacy training opportunities to build capacity to work on legislation, sit on policy committees, speak to the press, and train others about their experiences in care and recommendations for change in policy and practice. CYC uses community education as an important tool in foster youth organizing to promote greater awareness of the many challenges surrounding youth transitioning out of care (Mandelbaum, 2010).

Like CYC, FYS is a peer-led organization, but unlike CYC, FYS is not a free-standing youth organization. It does not have nonprofit tax status. It is "parented" by Florida's Children First, underwritten by corporate and state funding procured by FCF that supports its advocacy in the Florida legislature. This legislative activity includes an annual trip to Tallahassee to meet with legislators and executive branch officials. Adult mentors serve each chapter and coach the youth in their legislative advocacy and organizing, including an annual "Children's Week" trip to the state capital (Kinnally, 2013). A full-time adult staff member, employed by FCF, oversees and guides the youth.

In examining its relationship with the FYS membership, FCF's staff and board members were mindful of the CYC experience in California. CYC participants are taught to see themselves as spokespeople for other youth in care who may choose to not join a group. As they decide what issues to address either locally or at the state level, CYC members reach out to their nonmember foster peers to complete surveys and learn about their experiences in care. In doing so, youth receive the data necessary to effectively advocate on behalf of all foster youth. The youth also develop skills of use to them in other contexts. The CYC model places youth in the front seat,
driving decision-making and wielding actual authority and responsibility with respect to governance.

This model is consistent with “youth activist” social policy research confirming that “[y]outh engagements empowers young people to have a voice in decisions that affect them. Getting youth to participate in activities and decisions that adults ultimately control is not true engagement” (Engaging Youth in Community 2007). This research supports the idea that “young people should have actual authority and responsibility, as well as opportunities to develop the skills to make sound decisions” (Engaging Youth in Community 2007). The lesson is that “programs, community organizations, and policymakers, [should work] as partners with youth, instead of making decisions for them or only providing services to them” (Engaging Youth in Community 2007). If the partnerships faithfully adhere to this model of youth activism, “[y]oung people become agents of change instead of targets to be changed” (Engaging Youth in Community 2007).

In CYC’s application of this theory, adult supporters are trained and certified by CYC to empower foster youth to become effective leaders. The “supporter,” often a former foster youth, receives training on empowerment, the legislative and policy process, and youth development practices, so they may participate in a supportive and constructive way within the organization. CYC found this essential to the overall success of the model and the youth empowerment that it promotes. In line with social policy scholarship, CYC saw that it is much too easy for adults to dominate, rather than empower, the youth (CYC Values).

This organizing premise leads to the question of what power the FYS youth in fact exercise in the organization through which they pursue their social change advocacy in collaboration with the adults. In their study of youth-led community organizing, Delgado and Staples posit four different models of youth social change organization:

- Adult-led with youth participation, in which youth are actively involved in change efforts as participants but not as equals in power sharing;
- Adult-led with youth as limited partners, in which youth decision-making power is dictated by adults who are always the leaders;
- Youth-adult collaborative partnerships, in which power is shared equally between youth and adults;
- Youth-led with adult allies, in which youth are the leaders and adults play supportive roles as needed and defined by the youth. (Delgado & Staples, 2008, p. 68)

FYS falls in the interstices between the second and third organizational models in this continuum. CYC is situated closer to the fourth tier, in that it appears to be more authentically “youth-led,” although it too concedes
to adults supportive (and occasionally even leadership) roles, as needed and defined by the youth. Both espouse an understanding that “the core role of adult allies is to help young people visualize their roles as activists in their communities and beyond” (Tolman et al., 2006, p. 47). Adults are central to creating opportunities for youth to participate in governance, organizing, advocacy, leadership development, and service (Tolman et al., 2006, p. 46). Notwithstanding how the organizations are structured in terms of adult-youth power conflicts or power-sharing dynamics, they agree on one point: youth storytelling is central to their missions.

Youth Organizing as Client Storytelling

Although adults exert varying degrees of influence and control in CYC and FYS, both groups give youth a leadership role in telling their stories to legislators and the public at-large. Adults mentor and guide youth in their organizational forms and public testimony. For example, in celebration of its 10-year anniversary in 2016, FYS youth created a series of 10 digital stories about their experiences growing up in care. The Center for Digital Story Telling (www.storycenter.org) assisted them.

The youth wrote scripts and provided voiceovers for each video story. The videos contained vivid visual representations of the houses some of the youth grew up in, illustrated with family photos and other documentary memorabilia of their stolen childhoods. Some children chose the music to accompany their videos, and a few performed their own music. Each three- or four-minute story was carefully crafted to relate a particular theme: “giving a voice to youth changes lives”; “ripping brothers and sisters apart is another form of abuse”; “children are not baggage”; “too many children in care move place to place, home to home, school to school”; “psychotropic medication does not cure the trauma of abuse”; “children need the love of a family — all of their family in order to grow up happy and whole”; “give a youth who has experienced abuse the chance to advocate; you will change the system and heal the youth.” The simplicity and poignancy of the videos effectively convey a moral tale of both suffering and resiliency.¹⁵

The stories are potent exhibits of the lives of children in care. The videos transcend the political and legal narratives of policy conversations and convey the reality of life in foster care through language, sound, and image, enabling political and legal audiences to better understand foster care youth. Digital storytelling also widens the youth’s audience, using a
new medium of expression and new technology to convey the message, allowing these millennials to have their message heard not just by courts, policymakers, and other professional child welfare stakeholders but by a wide swath of the public randomly tuning into and watching YouTube.

**Lawyer "Uses" of Client Stories**

Strategic use of new media formats extend and revitalize long-practiced traditions of client storytelling by civil rights advocates. Client stories have long been regarded by advocates as ways to influence court decision-making and promote policy reform (Alfieri, 2001; Amsterdam, 1994; Eastman, 1995). Organizing clients to engage in collective action, through legislative advocacy, litigation, and media outreach are also established strategies for confronting powerful forces arrayed against poor clients (White, 1988).

Clinical legal scholar Binny Miller argues in her examination of the ethical dimensions of client storytelling that the stories told by the client enliven the legal narratives propounded by the lawyer:

> Stories can show us how law works in the world and provide a context for understanding legal problems in the larger society. Stories can change the legal status quo by challenging its assumptions and creating a new way of looking at the world. Stories are better than traditional methods of legal analysis for understanding legal issues in context, and stories demonstrate that standards that seem neutral in the abstract are rarely so in practice. Stories can build bridges across gaps of race, class, gender, sexual orientation, and other differences. Circulating the stories and perspectives of the "other" can open the eyes of the majority to those perspectives. They can also make possible coalitions across oppressed groups and social change. Personal experience almost always makes a concept more powerful than abstractions. Stories are lively and engaging in ways that doctrine often is not. (Miller 2000, p. 20)

While celebrating the use by lawyers of client stories to convey legal messages, Miller cautions that collaborative lawyering theorists may unwittingly blur "the boundaries of ownership and control over the story" (Miller, 2000, p. 39). She lauds the collaborative lawyer for seeking to expand political power for disadvantaged clients, respecting client autonomy and experience, but she also sees the risk that lawyers will tell the client story differently than the way the client would want her story told.

Lawyers and clients sometimes diverge on how to present a case. In such situations, the lawyer's representation — or re-presentation — of the
client in court is an "autonomous creation unconnected to the client's own words" (Cunningham, 1989, p. 2461). The lawyer translates the client's experiences into the language of law and translates the language of law for the client (Cunningham, 1989). As a "translator" of the client's story, the lawyer must capture "the elusive sense of two persons speaking with one voice" (Cunningham, 1989, p. 2483). Often, the lawyer's translation involves betrayal of the client voice (Cunningham, 1989).

Sometimes the client's framing of her story turns out to be more effective than the lawyer's (White, 1990). Differences between the lawyer's story of the case and the client's version may emerge during the court hearing or after-the-fact when the lawyer presents the story in a subsequent public forum. Miller explores whether the lawyer has "appropriated" or even "misappropriated" the client's story to support the theory of the case being litigated or otherwise advocated and recited in a public tribunal. She asks: "The hard question is what to do when the lawyer and client would tell a different story about a case, or when the client wants no story told" (Miller, 2000, p. 44).

This question hits close to home. At the start of this essay, I began with the story of one of my clients who testified before a Florida Senate committee. As I tried to capture Natasha Minzie's experience, I wrestled with how my reconstruction of it might differ from Natasha's. I relied on contemporaneous news reports, government studies, notes that I jotted down a decade ago while observing the hearing, and my fading recollections of the event. I wondered if I had recreated the story to fit my own narrative of client speech and silence, truth and reconciliation, and violence and healing. I asked if I was being true to Natasha's life experience and feelings, whether the many differences that separate us have made it impossible for me to tell her story honestly, and whether my re-telling thus traduces her message and deprives her voice of its authenticity.

Miller observes that lawyers who work with impoverished and marginalized clients see themselves as helping professionals and healers. They view their re-telling of client stories as a way to address and examine the pain and loss experienced by their clients. Like doctors who tend to patients with complex medical needs and then present their case studies to the public, lawyers may inadvertently silence or "steal" the true voice of the client or patient. Miller quotes William Carlos Williams in his book, Doctor Stories, "I would learn so much from my rounds, or making home visits. At times I felt like a thief because I heard words, lines, saw people and places — and used it all in my writing" (Miller, 2000, p. 48).
"LETTING KIDS BE KIDS": ENVISIONING NORMALCY

A young woman began by thanking the committee for allowing her voice to be heard. She said when you think of normalcy, you think of what everyone else is doing. When I think of normalcy, I think of going back and forth to court for orders to allow me to do things like going to a basketball game or spending the night. (Testimony of Florida State Senator Nancy Detert – House Ways and Means Committee May 2013)

A recent successful Florida legislative initiative for foster care reform illustrates the ethical conundrum sometimes faced by lawyers who make strategic use of client stories. This initiative involved legislators, lawyers, guardians ad litem, and other advocates whose interests were aligned with those of organized foster children and former foster children. But the groups diverged in perspective because of differences in political, cultural, social, and personal identities and life experiences. Moreover, differences existed between the organized cohort of youth and those children who were the intended beneficiaries of this initiative but who didn't have a chance to tell their stories. These competing stories, and the corresponding or resulting narratives, appear in the Florida legislature’s 2013 enactment of a right to “normalcy” for children and adolescents growing up in foster care, followed by a similar federal enactment in 2014.16

The “Libertarian” Narrative of Normalcy

On April 11, 2013, Florida Governor Rick Scott signed into law HB 215/SB 164, officially known as “The Quality Parenting for Children in Foster Care Act,” but more generally known as a law intended to “let kids be kids” (Gov. Rick Scott 2013). He signed the legislation and it was slated to take effect on July 1, 2013. In announcing the signing of the “Normalcy Bill,” the governor boasted about his commitment to Florida families and touted the law as a way to “help foster families and group homes become an even stronger family setting” (Gov. Rick Scott 2013). Tellingly, he also praised the legislation for conforming to his ideological approach to governance by reducing unnecessary government regulation in the lives of Floridians. The governor’s press announcement noted that the bill “reduces rules and regulations that currently limit the activity of children in foster care” (Gov. Rick Scott 2013). The governor’s description of what he saw as the law’s primary goal conformed to the “libertarian” narrative that he had long espoused as a public official and politician (Gov. Rick Scott 2011).
The narrative calls for policies aimed at reducing "burdensome regulations" and returning government to its core mission by minimizing interference in the lives of citizens as much as possible (Gov. Rick Scott 2011). In signing this bill and heralding its passage, the governor sent a message that he was reducing unnecessary child welfare regulation by limiting and streamlining its involvement in foster care families and homes. The governor made this a central plank in his celebration of the law's intended benefits to foster children and their caregivers.

The "Tort Reform" Narrative of Normalcy

A second narrative, suggested by the formal title of the legislation ("The Quality Parenting for Children in Foster Care Act"), enabled caregivers to "use a reasonable and prudent parent standard in determining whether to give permission for a child in out-of-home care to participate in extracurricular, enrichment, and social activities" (Fla. Stat. 409.145 2015). The law gave six factors that the caregiver must consider to meet the reasonable and prudent norm: age and maturity level of the child; potential risk and appropriateness of the activity; best interests of the child; importance of encouraging developmental growth; giving the child family-like living experience; and the child's behavioral history and ability to safely participate in activity (Fla. Stat. 409.145 2015).

The law relieved caregivers from liability "for harm caused to a child in care who participates in an activity approved by the caregiver provided that the caregiver acted as a reasonable and prudent parent." The chief sponsor of the bill in the Florida Senate saw the legislation as a corrective to child safety measures previously enacted that, in effect, "bubble wrapped" children, depriving them of the rites of passage in childhood. The bill analysis agreed, pointing out that:

The foster care system, which has historically been focused on safety and concerned about liability, often creates huge barriers to the normalcy of a child's experiences growing up, causing children in care to miss out on many rites of passage common to their peers. (Florida Senate Bill Analysis 2013)

By limiting their exposure to negligence or other potential tort liabilities, this measure insulated "reasonable and prudent" caregivers from lawsuits for injuries resulting from a child's participation in age-appropriate activity. This story also satisfied another long-running policy goal of the conservative Florida legislature, namely to reduce the number of personal injury
lawsuits filed against the state and other actors by individuals harmed by agents of the state acting in their official capacities.

The "Child Well-Being" Narrative of Normalcy

A third narrative was more widely shared as the foundational rationale for the passage of the law and was at the heart of the bill drafted by the sponsors and ultimately signed by the governor. The premise was that children in out-of-home care have the right to participate in "age appropriate" extracurricular, enrichment, and social activities and to empower caregivers to decide when children can participate in activities without obtaining prior approval of case managers or the court (Fla. Stat. 409.145(3)(b)1 and 409.145(3)(b)2 2015).

The law focused on the quotidian aspects of childhood that foster children are often deprived of, such as joining a club or participating in sports that many middle-class kids do in our culture. It made them feel abnormal to need a court order, fingerprints and a home study to have a sleepover at a friend’s house, or go on a band trip out of town. It sought to replace stolen and traumatic childhoods, filled with loss, unsafe homes and frequent maltreatment, with a childhood of “normalcy” that included the mundane features of the lives of children who live in intact families in safe conditions with loving parents, free from micromanagement of their private family lives by courts and case managers.

By legislating “normalcy,” the law made certain assumptions about what a “normal” childhood experience in our culture looks like: giving teens in care more unregulated opportunities to participate in sports, teams, and clubs, sign up for extracurricular activities, do volunteer and community service work, spend time with peers, have sleepovers at friends’ houses, take trips, work part-time, and learn to drive. All of these opportunities were seen as ways to give them a semblance of “normalcy” equivalent to what their classmates and friends not in the system normally enjoy.

This narrative was a long-standing priority in the state’s child welfare community and was supported by many sound, research-based findings about how achieving normalcy helps to promote the well-being of children in care. Research on child development pertinent to the conditions of children growing up in foster care shows that giving these children access to the same kinds of routine teenage experiences that parents give to their own children encourages several goals that are essential to the “typical” adolescent’s development and growth.
First, the performance of routines that stimulate neurological and physiological processes in the adolescent brain's prefrontal cortex helps the adolescent's brain to mature and develop. This neuro-chemical activity strengthens the teenage brain's capacity for reasoning, executive functioning, decision-making, and impulse control (The Adolescent Brain). Second, normalcy activity, such as learning to drive or working a part-time job, gives adolescents opportunities to experiment, take risks, practice decision-making skills, and develop healthy social relationships (Pokempner et al., 2015). Permitting a foster care teenager to learn how to drive a car and get a driver's license means taking some risks. But it is important to teach foster care teenagers how to drive safely (CS/HB 977), and having a driver's license promotes the teenager's independence and autonomy (Winick & Perez, 2010). Moreover, learning to drive allows teenagers to build trust and reciprocity with adults and peers and leads to the acquisition of "social capital" (Social Capital 2012). Finally, research shows that engaging in normal teen activities helps children develop social networks and other webs of support that improve their resiliency and competency in many areas essential to healthy and productive adult lives (Pokempner et al., 2015).

As early as 2005, the Secretary of the Department of Children and Families had voiced support for her agency's efforts to help foster children achieve normalcy. After giving some credit to the State Youth Advisory Board, identified as "a leadership group comprised of current and former foster children," she wrote in her directive to agency and community-based care staff:

Many children who are growing up in foster care confront barriers that do not allow them to enjoy normal age-appropriate activities that many of their peers take for granted such as overnight stays, extracurricular activities, dating, and driving automobiles. Many barriers to these activities are created by administration and staff who are attempting to ensure safety. These obstacles can cause children to exhibit inappropriate behavior out of frustration and may cause dangerous behaviors such as running away from their placement. This memorandum provides department administration and staff, community-based care providers, foster parents, group home staff, advocates and children in foster care, guidance in allowing teens in foster care to be provided a normal living environment. (Hadi Memorandum 2005)

A series of guidelines instructed case managers, agency licensing, recruitment and placement staff, independent living staff, supervisors, administrators, foster parents, home staff, and contracted service providers on ways for children in care "to experience ... the same opportunities as other children in the most normal, healthy and safe method possible" (Hadi Memorandum 2005).18
Some agency workers responded to the directive by largely disregarding it. Despite concerted efforts to implement the Secretary's guidelines, including the presentation of an elaborate "Normalcy Training Curriculum," the plea by the Secretary to remove administrative and other barriers to normalcy went largely unheeded (Normalcy Training 2008). Responding to this bureaucratic impasse, the training curriculum lamented that "mandated Normalcy Plans were not being developed for the youth and most licensed caregivers and providers were unaware of the guidelines and need for our youth to have opportunities for 'normal' age-appropriate experiences" (Normalcy Training 2008). The bureaucratic stalemate prompted "outsider" organized youth in FYS to discuss other potential administrative, political and advocacy strategies for achieving normalcy. Coalescing and collaborating at the grassroots and statewide levels, they discussed among themselves and with their adult supporters how to get to normalcy.

The "Organized Youth" Narrative of Normalcy

Because the child welfare frontline failed to heed the call for youth normalcy, discussion about how to achieve this goal entered a new phase. FYS took a leadership role in discussions about how to implement normalcy in Florida. According to an account written by FCF and FYS participants, a more "child-centered" discussion ensued (Spudeas et al., 2013).19

In their local and state chapter meetings, FYS members shared their experiences growing up in foster care. During these conversations, they came to the realization that their lives were very different than their "normal" peers growing up in families with parents. FYS members agreed that they needed to address the disparity between the way foster children were prevented from having "normal" experiences and activities that most parents would not think twice about letting their own children have. What FYS members wanted was simply what children and teens in the general population have — the right to join a sports team, learn to drive, and live like young people (Spudeas et al., 2013).

Under the aegis of their parent organization, FYS members discussed whether barriers to normalcy could be remedied by enforcing existing administrative rules (Fla. Admin. Code r. 65C-13.029 2008) and existing statutes, or whether the solution was to press for new administrative rules or new legislation. They concluded that the enactment of new legislation codifying standards for achieving normalcy for foster children, and lifting
liability for caregivers, would be the most appropriate way to change existing practices.

The youth joined forces with the statewide Guardian ad Litem program, which took the lead in initiating this legislative effort, and the Department of Children and Families, which gave its support (Guardian ad Litem 2014). In partnership with these allies, FYS drafted legislative language, found sponsors in the Florida legislature, and proceeded to educate the legislature about their experiences growing up in care. FYS youth met legislators in their offices and in committee hearings, telling them about their personal disappointments of “not being able to ... experience normal activities, rites of passage, and milestones” (Spudeas et al., 2013).

Examples included a youth who needed to have a friend’s parents fingerprinted and submit to background checks before she could hang out at her home. Another youth, a high school athlete, testified about how he was prevented from going to a state championship football game with his team because his case worker hadn’t scheduled a court hearing in time to obtain the judge’s permission to travel (an oversight that, fortunately for the youth and his team, was quickly corrected).

Others talked about difficulties getting permission for the most simple, ordinary activities, such as getting a haircut, sleeping over at a friend’s house, being able to ride a bike, getting a driver’s license, going to high school homecoming, playing in “Pop Warner” football. All of these activities were, for the most part, forbidden to them because of the overprotectiveness of the bureaucracy and the fears of exposing the bureaucrats and caregivers to liability.

What is striking about how the youth presented themselves to the Senate Children and Families and Elder Affairs Committee was that they came across as polite, respectful, well-behaved, well-coached by their adult supporters, and articulate. They each gave personal examples of how they felt like “outcasts” compared to their peers. One young person told the committee that he felt like the words “foster child” were branded on his forehead.

During the public comment portion of the hearing, the youth legislative “talking points” closely matched those of their adult supporters from the guardian ad litem and foster care programs. Their words in the individual stories were their own but their collective, organized narrative was virtually identical to the adult “child well-being” narrative. It could be that their testimony genuinely reflected the views of this self-selected cohort. It could also be that this process was tokenistic.
The testimony from the organized youth, consisting of stories that reinforced and reified the normalcy narrative of their adult supporters, helped persuade the Florida legislature to enact the legislation. It passed unanimously in March 2013. Congress then, inspired by Florida, passed legislation that now binds all states to promote normalcy in their child welfare practices. 

Growing Up Absurd: Voices Not Heard

In the legislative deliberations on normalcy, youth participants spoke about their inability to do "typical" things during their teenage years. But other children did not have their "abnormal" experiences described or considered. Some may have emotional or behavioral problems, push boundaries, and defy authority. They may test limits and try the patience of their caregivers, just like oppositional youth in family home environments. The difference is that they are under the jurisdiction of the court and the court sometimes functions as a "parent by court order," with contempt powers, and the authority to escalate adolescent aggravations into jailable offenses, to keep wayward youth in line. Had these children spoken to the legislature, they might have described their experiences differently.

One client of our clinic, "Ernest," was an example of someone with an atypical story. Ernest was a 15-year-old dependent youth with a lifelong history of emotional and behavioral difficulty. He came under the jurisdiction of the court a few years ago after allegations that his mother had subjected him to abuse and neglect. Ernest had a lot of problems adjusting to his foster care life. His response to conflict was largely to escape from it. He ran away from his placements several times, which resulted in court "pick-up" orders to bring him back into care. He ran away because he did not feel safe in his group home and the case management agency could not change his placement. He always ran to places he felt safe, such as his case manager's office or his grandmother's home. He once spent the night in the airport's car rental center.

Out of frustration, DCF had him assessed three times to determine his suitability for residential placement in a locked mental health facility. None of the assessments found Ernest suitable for residential placement. One of the assessments recommended that his case management agency "explore substance abuse treatment services" based on his self-disclosed use of alcohol and medications.
Similarly frustrated with Ernest’s problem behaviors, the judge assigned to his case ordered him to submit to “voluntary” substance abuse treatment. Ernest refused to go. The judge threatened to hold him in contempt if he did not obey the court’s order to “voluntarily submit” to secure residential substance abuse treatment. The judge also ordered Ernest to submit to “daily/random” drug testing, even though the state had not filed a petition alleging that he met the legal criteria to be drug tested. Lastly, the judge ordered Ernest to abstain from using drugs and to refrain from leaving his foster care placement without permission.

The conflicts between the judge and Ernest are ones that many parents have with children exhibiting troubling behaviors, such as drug use or running away. The difference was that the judge was not Ernest’s parent and did not act like one. The judge’s order for Ernest to perform a “voluntary” action is inherently contradictory. It illustrates an absurd situation that children under the authority of the court sometimes experience, an experience that makes their lives abnormal compared to youth who live with parents. Ordering a child not to use drugs under penalty of contempt exceeds the court’s authority. Foster children can be found delinquent for possession of drugs or alcohol, and they can be involuntarily assessed or ordered into involuntary treatment under statute. But there is no basis under law to order a foster youth to refrain from drug use under penalty of contempt.

Similarly, ordering a child not to leave his foster home without permission or to not run away is beyond the court’s power or authority. Foster children are subject to the same curfew laws as any other child. Like all youth, if a foster youth absconds from home or is truant from school, he is subject to being returned by law enforcement. Ordering a child to never leave his foster home without permission is the equivalent of house arrest or home detention of a delinquent youth and is therefore not authorized by statute unless the court provides the youth with due process.

All of the orders issued by Ernest’s judge violated a fundamental principle of Florida’s child welfare law – that the foster care system should make every effort to promote the normalcy of foster children. This principle is important both when a foster youth wants to attend the prom and when he pushes boundaries and defies parental authority. The state as his legal custodian has an obligation and duty to “protect, nurture, guide, and discipline” the youth in its care (Fla. Stat. 39.01(34) 2015). However, the state also has the obligation “[t]o secure for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline
Youth Voice and Activism

*as nearly as possible equivalent to that which should have been given by parent*” (Fla. Stat. 39.001(1)(i) 2015) (emphasis added).

Parenting requires a significant amount of patience, guidance, and frustration tolerance from adults. Judges cannot “parent” children under their jurisdiction by court order. This is the antithesis of normalcy for a child in foster care, even for a child who exhibits defiant and disobedient behavior. The trial judge’s orders commanding him to fall in line were quickly overturned by the district court of appeal, holding that the lower tribunal had departed from the essential requirements of Florida law (*E.G. v Dep’t of Children & Families* 2016). They teach us several lessons — beyond legal doctrine — about the limits of judicial authority in managing the difficult, rebellious child whose behavior frustrates and antagonizes the court.

First, as therapeutic jurisprudence teaches, the judge’s order, with its absurd requirement that Ernest “voluntarily” submit to residential substance abuse treatment, may have provoked more anti-therapeutic behavior by reducing Ernest’s willingness to comply with treatment provided by mental health professionals in any setting, outpatient or residential. Substance abuse treatment was coerced on him by the judge through threats, negative pressure, and deception. By not trusting him to choose substance abuse treatment on a truly “voluntary” basis, the judge minimized his sense of voice and inclusion. Instead, the judge issued a convoluted command ordering him to “voluntarily submit” to treatment. As Bruce Winick has observed about coercion and mental health treatment:

> Whenever possible, clinicians should use persuasion, education, negotiation, and inducement, in preference to coercion, threats, negative pressure, and deception ... clinicians should act toward their patients in ways that minimize the sense of coercion and maximize the patient's sense of voice and inclusion and the patient's appreciation that treatment imposed is benevolently motivated and administered in good faith. (Winick, 1997, p. 1167)

Unfortunately, these strategies were not utilized by the judge, with predictably anti-therapeutic results for Ernest.

Second, as the psychology of procedural justice teaches, the judge in Ernest’s case may have induced less respect for the authority of court and spurred more disobedience. The orders issued by the court did not reflect the legitimate reasons why Ernest had run from his unsafe foster placements to places where he felt safe. Through the arbitrary exercise of contempt authority, threatening to jail him if he did not follow the court’s commands, the court deprived him of the opportunity to participate in
a hearing that he perceived to be fair and made him feel that what he had to say was not taken seriously. Tom Tyler has written that:

One important element in feeling that procedures are fair is a belief on the part of those involved that they had an opportunity to take part in the decision-making process. This includes having an opportunity to present their arguments, listened to, and having their views considered by the authorities. (Tyler, 2006, p. 163)

The judge in this case deprived Ernest of a chance to explain himself to the court, giving his experiences or perspective little respect or validation. This, in turn, contributed to his reciprocal lack of respect and obedience for the dictates of the court.

Third, principles of transference and counter-transference from psychoanalytic theory teach that judges — especially juvenile court judges — should not project their personal negative feelings as parents onto the children who appear before them. These feelings may originate in their unresolved, intimate relations with their own children, and projecting them onto the troubled children who appear in their courtrooms is inappropriate for an impartial judicial officer. As Winick describes this psychological process in problem-solving courts:

Counter-transference occurs when the judge transfers feelings onto the individual that stem from the judge’s own prior relationships. The judge should be sensitive to the possibility of transference on the part of the individual, and should seek to induce positive transference and avoid negative transference when possible. (Winick, 2003, pp. 1069–1070)

By issuing blanket commands to obey his dictates, and disregarding fundamental principles of due process, good faith and fair treatment, the judge inappropriately assumed the role of parental disciplinarian, inducing negative transference onto the troubled child who appeared before him, with predictable negative results.

Fourth, “twelve-step” recovery traditions teach that a parent or family member of a loved one with a substance use disorder cannot control the addictive behavior of the family member. The first tenet of this tradition states: “We admitted we were powerless over drugs and other people’s lives — that our lives had become unmanageable” (Families Anonymous 2012, p. vi) (emphasis in original). The judge’s attempt to exert his power and authority to dissuade Ernest from using drugs, by trying to force him to “voluntarily submit” to residential substance use treatment, reflected his unawareness of this first principle in drug recovery.

Ernest’s story, as translated into a legal case by his lawyer and ultimately vindicated by an appellate court, ultimately countered the judge’s attempts to “parent” and control him through judicial authority.
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The Untold Version of Abnormal

In addition to teaching several lessons about the consequences of judicial overreach over the child in this particular case, Ernest's story illustrates an alternative account of normalcy that differed from that voiced by the organized youth to the Florida Senate Children and Families Committee. The legislature heard from a parade of well-behaved, well-spoken, and polite children. Their testimony and repartee with committee members during the public comment portion of the Senate hearing focused almost entirely on the barriers experienced by youth to participating in normal activities like clubs or sports.

In one revealing exchange, a youth described the difficulties that he had in getting permission to travel with his high school teammates to a state championship football game. Eventually he got permission, went with his team, and they won the game 21-20, thanks to his place-kicking prowess. His testimony led to good-natured banter with two male committee members about "bad officiating" and "good place-kicking." It was just the kind of conversation that a father might have with his son in the living room right after the big game. This paternal or avuncular back-and-forth with a son or nephew is an experience that not many boys in foster care have on a day-to-day basis with their caregivers, and the conversation in the committee chamber revealed an important intangible benefit that encouraging normalcy may eventually lead to in the lives of the beneficiaries of the law.

But another kind of conversation did not take place in the committee hearing. The members did not have a chance to engage with other children who do not participate in sports or join clubs. They may be loners or non-joiners. They may have different interests or have a different gender expression or sexual orientation from their foster care peers. They may be outliers even among the self-identified outcasts in the foster care system.

"Ernest" identifies as gay and "gender non-conforming," and he probably would have shared a different story with the legislators. LGBTQ youth are overrepresented in the foster care system, yet they often experience greater abuse and harassment (including physical harassment and violence) in the system, which is largely underreported. They often do not feel welcome or safe in care. They experience "multiple disrupted placements compounding the trauma associated with leaving their families of origin" (Child Welfare Information Gateway 2013). Their post-emancipation outcomes are worse than other foster youth experience, with higher rates of "homelessness, [which] in turn increases the youth's risk of substance abuse, risky sexual behavior, victimization, and contact with the criminal
justice system” (Child Welfare Information Gateway 2013). Ernest’s gender identity and sexual orientation suggest another subtext underneath the story of his runaway and substance use behaviors.

The committee did not hear the voices of these and other children who may behave differently toward parents, adults and caregivers, or whose sexual orientation marks them for abuse and harassment. Had these children participated in the hearing process, the legislature might have been given a different perspective about their abnormal treatment by the foster care system, and perhaps crafted a different, more nuanced “reasonable and prudent parent” standard attentive to their needs as well.

For all of the many good things that it accomplishes, normalcy legislation enshrines a middle-class, “patriarchal” vision of “letting kids be kids.” It does not reflect alternative forms of normalcy for those kids who may be difficult to raise, disobedient, behaviorally disordered, or who exhibit a different sexual orientation or gender identity. Children in care like Ernest are entitled to be protected, nurtured, guided, and disciplined by the state the same way that different or difficult children who have parents are nurtured, guided, and disciplined (Solomon, 2012). These children’s voices were not heard by the legislature in envisioning normalcy.

**CONCLUSION – POWERLESS AND SPEECHLESS?**

Liberals should see children as a natural constituency. Children are one of the ultimate powerless groups, unable by definition to speak for themselves, demonstrate on the streets, vote, take political office, or do the other things that various adult groups do to protect their rights and interests. (Bartholet, 2016, p. 732)

This makes a child lose hope, which is how I felt for a long time. (Testimony of former Florida foster child “Karina”)

Throughout this essay, I have tried to argue through case examples that children are not completely powerless or unable to speak for themselves. After being treated as passive recipients of adult efforts to “save” them, children are empowered when their stories are told and they become witnesses, catalysts, and activists for systems change. The cases are examples of children, who despite having fewer legal and constitutional rights by virtue of their legal incapacity and diminished status, nonetheless challenge the power exercised over them by adults and the state, by speaking out and being heard.
Telling their stories empowers them to counter this authority. As children's rights activist and lawyer Bernardine Dohrn urges, when these children speak out we should:

Attend to their own description of their problems and their ideas for solutions. Children are not just deficits who need assessment and "services." They are brilliant and practical, and can most often describe what is happening to them with accuracy and insight. (Dohrn, 1995, p. 65)

Child empowerment theorists like Katherine Hunt Federle argue that we have to come to terms with the fact that "[b]ecause children are powerless, they do not expect adults to treat them with respect or to listen to their opinions" (Federle, 1996, p. 1695). Instead of allowing children to submit to adults as "passive and subordinate beings who must follow the instructions of an older and wiser adult" (Federle, 1996), these theorists urge lawyers to facilitate children's capacities to make choices and decisions for their own good, even though some of those decisions may be detrimental to their interests, at least as adults see them. This, in turn, gives them the tools they need to overcome paternalistic control and dominance by adults (Federle, 1995).

But political realists and legal pragmatists understand that children's voices, even when they are unified and organized as part of a chorus for social change, may not be not as far-reaching or strong as they could be. Children may not be able to direct their lawyers in the same way that adults do. They may be "less articulate and less able to understand and say what they mean." But lawyers have a special obligation to "oppose essentialized and idealized views of children and instead hear, and find meaning in, each child's voice" (Appell, 2006, p. 695).

The power and eloquence of one child's voice to affect policy through the child's lived experiences in foster care is captured in a statement by one of our clinic's clients, "Karina," in a proceeding before the Florida Supreme Court on a proposed rule of juvenile court governing commitment of dependent children to psychiatric facilities. During oral argument before the Supreme Court, Karina was allotted the first minute of the argument for rule proponents. This one "forgotten" child's testimony encapsulates the full-bodied meaning of giving children voice to influence policy. It demonstrates how this act, in and of itself, gives the child hope that is often lost in the foster care system. Her testimony captivated the attention of the justices and it was the defining and most persuasive argument to the court:

I was placed in several treatment facilities over the years I was in foster care ... I wish I would have had a lawyer during all the years I was kept in locked facilities. I think it would have made a big difference. I don't think that I would have been abused like
I was if I would have had a lawyer. I don’t think I would have even been in locked facilities as long as I was if I would have had a lawyer. If I hadn’t finally gotten a lawyer, DCF would have kept me in a locked facility until I turned 18, and I never would have learned to live outside of a facility …

I think it’s very important for a foster child to have a hearing before DCF sends them to a facility so they can talk to the judge. After I got my attorney, she made sure that I got a hearing and that I went to court. I was able to speak to the judge, and my lawyer told the judge why I shouldn’t be placed in a facility. The judge said that I didn’t need to be put in another facility … Also, I think it’s very important for every foster child in a facility to have a lawyer. If a child doesn’t have a lawyer, then there’s no one to stand up for what the child wants. This makes a child lose hope, which is how I felt for a long time.

NOTES

1. See, for example, one such account recently reported in a local newspaper:

In a hushed courtroom in Miami’s gleaming new downtown Children’s Courthouse, a teenage foster child inventoried the traumas she had endured at the hands of those who were assigned to protect her. She had been starved and beaten, molested and forced to fight during her two years in foster homes and group care. As a runaway, she was trafficked into prostitution. (Marbin Miller, 2015)

2. Although the testimonial narratives of women and children in these two contexts share some similarities, there is a key difference between truth testimonies of women who bear witness to their “private” abuse in transitional society processes and those of children who were removed from caregivers and consigned to the state, on the threshold of achieving a place in the polity. One commentator has pointed out that the premises of feminist and child-centered jurisprudence are distinct. This suggests that the witness truth testimonies by women and children point the accusatory finger at different kinds of wrongful acts and actors:

In contrast to feminist jurisprudence, which asks political questions regarding the law’s construction of women as private and dependent … child-centered jurisprudence addresses what rights children have or should have vis-à-vis the state or their caregivers … (Appell, 2009, p. 724)


4. In describing the research methodology and ethical guidelines that were followed by the project investigators, the report’s authors carefully noted how the youth were selected for participation in the focus group process:

Youth were provided dinner and a monetary compensation for their voluntary participation in the research. Consent forms were obtained for minors and assent forms were obtained for all participants (in additions to written assent, participants were
verbally told of their rights as research participants). Participants were told they would receive copies of the final report, and were guaranteed anonymity and confidentiality except in the situation where they may be presently at risk. (Aging Out and On Their Own, 2007, p. 19)


6. SB 830 (establishing an independent, full-time ombudsman to specifically monitor and field complaints from foster youth about the Department of Family and Protective Services). See Bedard (2015).


7. A third form of foster care policy development involves youth organizing and mobilization to bring about systems change and improvement (see discussion later). Public interest advocacy involves multiple forms of action, including litigation, submission of amicus curiae briefs, legislative testimony and direct contact with policymakers, and forming coalitions among public interest lobbies (Trupin, 2016; Wanemaker, 2002–2003).

Multiple forms of reform advocacy in the child welfare system, specifically aimed at achieving changes in the systems of care for older foster youth, have reaped particular benefits for pursuing reform of independent living programs:

Possible solutions include foster youths’ participation in the planning of Independent Living Programs, legislation imposing regulations and reorganization of the system, and litigation in court. Without reform of the ILP system, the system will continue to treat California’s foster youths unfairly and inequitably (Junn & Rodriguez, 2002, p. 207).


10. Earlier personal accounts of previous generations of foster children leaving the system are equally moving, see, e.g., Maloney, 1986, pp. 971–972: “This scenario – foster children being discharged out of their homes and onto the street – is replayed with intolerable frequency.”


12. The Road to Independence Act called for the creation of an “Independent Living Services Advisory Council” comprised of representatives from state programs such as the Departments of Children and Families and Health, private
community-based care agencies, guardians ad litem, foster parents, and the “Youth Advisory Board,” in addition to actual clients: “recipients of Road-to-Independence funding.” Fla. Stat. 409.1451(7)(c) (2004) (emphasis added). There is no information available about how many actual clients of the program were in fact chosen to serve on this advisory council or what type of input they gave in the policy-making process.

13. We did not have an opportunity to engage in formal evaluation of the FYS youth organizing efforts. But our colleagues at Florida’s Children First, which later “adopted” and now serves as the parent organization for the statewide FYS and its 12 local chapters, are interested in assessing how the organization helps its participants.

14. I have served on the board of this organization since its founding in 2002. I have used as source materials various grant proposals as well as published and community education documents prepared by FCF, many of which were adapted from materials produced and published by CYC, as part of the parent organization’s (FCF’s) goal of helping FYS advance its organizing efforts across the state and build organizational capacity.

15. The 10 digital stories can be accessed on the Florida’s Children First website, http://www.floridaschildrenfirst.org/

16. For an excellent overview and analysis of the legislation, prepared by the Juvenile Law Center, see Pokempner et al. (2015) and Letting Kids be Kids: The Strengthening Families Act, http://jlc.org/blog/letting-kids-be-kids-strengthening-families-act. Both of these overviews have been very helpful to me in preparing the following section.

17. Of course, as the U.S. Supreme Court has held, foster care family life and relationships by their very nature invite, indeed demand, a significant measure of state regulation and oversight. Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 845 (1977) (“But there are also important distinctions between the foster family and the natural family. First, unlike the earlier cases recognizing a right to family privacy, the State here seeks to interfere, not with a relationship having its origins entirely apart from the power of the State, but rather with a foster family which has its source in state law and contractual arrangements.”).

18. These included age-appropriate social activities, employment, reasonable curfews, travel with other youth or adults, access to the telephone, extracurricular activities, training in food management, money management consumer awareness, personal hygiene, housekeeping and personal belongings, job-seeking, interpersonal relationship-building, training in drug and alcohol abuse, teen sexuality, runaway prevention, health services, legal issues and rights, community resources, etc. In short, a lengthy catalogue of the kinds of activities and responsibilities that are taught and learned in a “normal” parent-child home setting.

19. I have relied on the account by Christina Spudeas, Robin Rosenberg, and Cowart, Letting Kids Be Kids: A Legislative Victory in Florida, in describing the FYS processes in the normalcy legislative effort.


At a hearing on the federal bill before a House Subcommittee on Human Resources, the members heard testimony from a Florida State Senator, the DCF Secretary, a policy analyst from the Jim Casey Youth Opportunities Initiatives, and voices from the two constituencies most affected by the legislation: the president of the National Foster Parent Association and a Foster Youth Fellow with Kidsave and former foster child Talitha James. Testimony of Florida State Senator Nancy Detert — House Ways and Means Committee May 2013.

The Act promotes a uniform well-being and a normalcy standard for youth in foster care. It directs state child welfare agencies, private contract providers, and judges to facilitate age-appropriate experiences for these youth and take other steps to support normalcy and promote permanency. The Act requires states to take steps to ensure that children most likely to remain in foster care through age 18 engage in age- or developmentally appropriate activities, and institute the reasonable and prudent parental standard for foster parents and caregivers. For analysis surrounding implementation of this law, see Children’s Defense Fund, Child Welfare League of America, First Focus, Generations United Foster Family-Based Treatment Association, Voices for Adoption (2015). Implementing the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183) To Benefit Children and Youth. Retrieved from http://www.childrensdefense.org/library/data/implementing-the-preventing.pdf. Accessed on May 27, 2016.

22. I thank my clinic colleague Robert Latham, and his client “Ernest,” for giving me permission to tell his story, and for permission to borrow from some of the legal arguments in the briefs submitted by his lawyer on Ernest’s behalf in the Florida Third District Court of Appeal.

23. One reason that U.S. foster children have limited voice and efficacy in effectuating change is due to the fact that they are not fully vested rights holders under international human rights law. The United Nations Convention on the Rights of the Child, with its nearly universal acceptance, has been instrumental in shifting the perception of children from passive objects of protection to active subjects with the power to assert individual rights.

Article 12 of the CRC has been a rallying cry to promote children and young people’s human rights to be involved in decisions affecting them. Not only does this provision vest in children the right to help shape decisions that affect their individual well-being, for example in matters affecting health care and schooling, it has also been a way for groups of children to participate in decisions made about local, national, and international laws related to juvenile justice or child welfare systems.

The examples of Irish and Australian children participating in public decision-making reveal how children in those nations that have signed and ratified the treaty enjoy participatory rights at multiple levels of public governance. By contrast, U.S. children have very limited, largely unwritten, unclear, inconsistent ad hoc rights to be heard in public decisions, and the examples in this essay of Natasha Minzie, Kristopher Sharp, “Ernest” and “Karina” are the exception rather than the rule.
24. “Karina’s” Comments, Appendix to University of Miami School of Law Children & Youth Law Clinic Comments, in In Re Fla. R. Juv. P. 8.350 (filed February 15, 2002) (emphasis added). See In Re Fla. R. Juv. P. 8.350, 804 So. 2d 1206, 1209 (Fla. 2001), 842 So. 2d 763 (Fla. 2003). Karina and her sister were plaintiffs in a class action lawsuit seeking declaratory and injunctive relief relating to the state’s foster care system, in which they were identified as “Two Forgotten Children.” Undereducated Foster of Florida et al. v. Florida Senate et al. 700 So. 2d 66 (Fla. 1st DCA 1997).

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REFERENCES

Amendment to Florida Rule of Juvenile Procedure, Fla. R. Juv. P. 8.100(a), 796 So.2d 470 (Fla. 2001).


E.G. v. Department of Children and Families, 193 So. 3d 78 (Fla. 3d DCA 2016).


Editorial. (2003a). Bleak Future for Young Adults, *Sun-Sentinel (Fl. Laud.).*, July 7, p. 20A.


Families Anonymous, Today a better way, The twelve steps of families anonymous (2012).


Florida Statute § 39.001 2015.

Florida Statute § 39.001(b), (f), (g), & (h) 2015.

Florida Statute § 39.001 (f) & (h) 2015.

Florida Statute § 39.01(34) 2015.

Florida Statute § 39.001(1)(i) 2015.

Florida Statute § 409.145 2015.

Florida Statute § 409.145(3)(b)1 and 409.145(3)(b)2 2015.


Florida Statute § 409.1451(7)(c) 2004.

Florida Statute § 409.1673(1)(a)1. 2003.


In re Amendments to the Florida Rules of Juvenile Procedure, 26 So. 3d 552 (2009).


In re Gault, 387 U.S. 1 (1967).

In re Report of the Family Court Steering Committee, 794 So.2d 518 (Fla. 2001).


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Marbin Miller, C. (2003b). Law hurts older foster kids; Most assistance is eliminated unless 18-year-olds are in college. *The Miami Herald, January 20*, p. 3B.


Marbin Miller, C. (2003c). State Gets 10 Days to Prep Teen for Adulthood: The State Has Defied Orders to Teach a Foster Child to Live on Her Own; The Girl—Soon to be 18—And Her Child May End Up Homeless, Her Lawyer Says. *The Miami Herald, October 10*, p. 3B.


O’Matz, M. (2003c). State to 18-year-olds: You’re on your own; advocates worry about what will happen to teens who are no longer eligible for DCF foster care. *Sun-Sentinel (Ft. Laud.), June 4*, p. 1A.


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SB 830 (establishing an independent, full time ombudsman to specifically monitor and field complaints from foster youth about the Texas Department of Family and Protective Services).

S.C. v. GAL., 845 So.2d 953 (Fla. 4th DCA 2003).


Taylor v. Ledbetter, 818 F.2d 791 (11th Circuit 1987).


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and state agencies in abuse, neglect, and dependency cases (pp. 951–962). Denver, CO: Bradford Publishing Co.


