

Ethical Issues in the Legal Representation of Children: Client Autonomy or Child Protection?

by Kathryn A. Piper

Hypothetical: *You have been assigned to represent a young girl in a child protection or CHINS proceeding. The petition alleges that the girl has been sexually abused by her mother's live-in boyfriend. The mother denies the allegations and refuses to ask her boyfriend to leave her home. She says her child is lying. The girl has been removed from her home by SRS and placed in a foster home pursuant to an Emergency Detention Order.*

You meet with the girl and she tells you that she wants to go home. You know that if the court finds at the merits hearing that this child has in fact been sexually abused and the mother continues to believe her boyfriend over her child, it is unlikely that this girl will ever go home. Upon investigation you determine that this girl most likely has been sexually abused and will probably be abused again if she returns home.

Query: What is your ethical obligation as the child's attorney? You know that as a general rule it is the client who determines the objectives of the representation and directs the conduct of the attorney. But this presupposes that the attorney has a client who is capable of giving such direction. In solving this dilemma does it matter if the girl is four-years-old? Ten-years-old? Fourteen-years-old? Say she has retracted her statement that she was sexually abused. Does that change your ethical obligation in any way? Does it matter what reasons the girl gives as to why she wants to go home? Say she tells you that she wants to go home because her family had plans to go to the zoo on Sunday and she doesn't want to miss that. Would your approach be different if she said that she wants to go home because she loves and misses her siblings, doesn't want to live with strangers and feels that she is old enough to protect herself from further abuse because she now knows what to do to stop it from happening again?

It has been your experience that the reasoning and judgment of many of your adult clients has often been highly questionable and yet you have represented their wishes and pursued their stated objectives. What is the justification for treating children differently? Is there a morally relevant criterion for such differential treatment?¹2. Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 *Fordham L. Rev.* 1399, 1421-1424 (1996)(discussing the implications of *In re Gault*, 387 U.S. 1 (1967).

I. The Developmental Evidence About Children's Decision-Making Capacities

When I was a child, I spoke like a child, I thought like a child, I reasoned like a child; when I became a man, I gave up childish ways.

St. Paul (*1 Corinthians 13:11*)

¹ See generally, Laura Purdy, *In Their Best Interest? The Case Against Equal Rights for Children*, Cornell University Press (1992).

Most of us accept without question the assumption that children are different than adults. We assume that by their very nature children lack the maturity and experience to make decisions about what is best for them and therefore require the protection and supervision of adult caretakers. Generally, laws dealing with children's rights tend to focus on protecting their opportunities for healthy growth and development in order to keep open their options as future adults. With the exception of delinquency proceedings,² laws do not presuppose that children have the same rights to self-determination as adults.

As the Supreme Court has stated, children

unlike adults, are always in some form of custody. . . . Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*.³

In 1995 Justice Scalia reiterated the limited nature of children's rights:

Traditionally at common law and still today, unemancipated minors lack some of the most fundamental rights of self-determination....They are subject, even as to their physical freedom, to the control of their parents or guardians.⁴

The laws dealing with children's rights do not rest on unfounded "adultist" biases but on evidence that children are indeed different from adults. Especially with young children, their brains and neurological processes are different.⁵ Children's cognitive, social and emotional abilities develop slowly over time. They lack the capacity for language necessary to acquire and process the information they need to make decisions and to adequately communicate their decisions and articulate their reasons. Their lack of experience limits their ability to understand the long-term consequences of the decisions they make. And finally children's utter dependence on and identification with their adult caretakers makes it difficult for children to be able to distinguish their interests from those of their caretakers when those interests diverge.

Research on cognitive development in children indicates that most children under the age of six or seven are not truly capable of logical thought. They cannot understand concepts of past and future or cause and effect nor do they have the ability to take into account the viewpoint of others. The ages of three to six are referred to by some psychologists as the "Magic Years" in

2

³ *Schall v. Martin*, 467 U.S. 253, 265 (1984) (citations omitted).

⁴ *Veronica Sch. Dist. v. Acton*, 115 S.Ct. 2386, 2391 (1995).

⁵ Sarah H. Ramsey, *Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity*, 17 *F.L.Q.* 287, 311-312 (1983).

that during these years children engage in magical thinking and believe that their own thought processes can influence objects and events in the world.⁶ Children this young have not reached the level of social understanding that enables them to discriminate accidental from intended actions of others.⁷

Even the most outspoken advocates for a child's right to self-determination recognize that children under the age of six or seven lack the decision-making capacity to assess their own interests.⁸ There is virtual unanimity among commentators that a child's ability to express a preference standing alone is not determinative of that child's capacity.⁹

Research indicates that children make a major change in functioning at about age seven. By six to ten most children can understand concepts of cause and effect and past and present, although they have not yet reached an adult-level understanding of time.¹⁰ The organization of memory process also changes at around this time.¹¹ After age seven children are more self-governing and have reached important advances in social understanding.¹² Nonetheless, in this age group children's understanding of their own emotions is less complex than that of older children and they have difficulty conceiving that they can have two conflicting emotions simultaneously. "[P]reteen children do not usually contemplate their own beliefs and plans."¹³ Skills that enable a child to weigh various alternatives against each other are undergoing substantial development in the eight to eleven age period.¹⁴ They are not able to grasp an adult

⁶ William Van Ornum and John B. Murdock, *Crisis Counseling with Children and Adolescents*, Continuum Publishing Co. (1988); see also, Purdy, *supra* note 1, at 202; Ramsey, *supra* note 5, at 311.

⁷ Ramsey, *supra* note 5, at 313.

⁸ Ramsey, *supra* note 5, at 311; Emily Buss, *You're My What? The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 *Fordham L.Rev.* 1699, 1752 (pointing out that between the ages of four and eight children gradually acquire the ability to understand roles in terms of their purposes and relationships, Buss concedes that "where the role [of the attorney] cannot be communicated to a child it is probably inappropriate for the lawyer to assume the traditional attorney role, for the child who cannot understand his lawyer's role (or his own role in the relationship) will never be in a position to truly direct the representation").

⁹ See, e.g., Ramsey, *supra* note 5, at 306.

¹⁰ Ramsey, *supra* note 5, at 312.

¹¹ *Id.*

¹² *Id.* at 313.

¹³ *Id.* at 315

¹⁴ Dan W. Brock, *Children's Competence for Health Care Decisionmaking*, Rosalind Ekman Ladd, Editor, *Children's Rights Re-Visioned*, Wadsworth Publishing Co. (1996) at 189.

sense of time. Children in the seven to thirteen age range “may give inadequate weight in their valuing to the effects of decisions on their future interests” and “present effects [may] receive disproportionate weight in comparison with future effect.”¹⁵ They are unduly influenced by their immediate circumstances. As a result of all this, a preteen child might “find it difficult to understand the temporal significance of a three-month placement in foster care and an abstract discussion of the affect foster care might have on the parent/child relationship.”¹⁶

According to Jean Piaget the intellectual skills necessary for logical reasoning and abstract thinking are not acquired until around the age of puberty when children reach the formal operational stage.¹⁷ “[T]his stage includes the development of an increased cognitive capacity to bring certain operations to bear on abstract concepts in problem-solving situations.”¹⁸ The emergence of the formal operations stage allows a child, for example, to entertain various alternatives and risks simultaneously.¹⁹

The chronological stages discussed above represent the *average* development of the various skills involved in decision-making. Studies indicate that there is considerable variability among children in the ages at which they reach particular states in the development of the capacities needed for decision making.²⁰ This variability may be even more marked in child protection proceedings where the trauma of abuse, neglect or removal from the home can impair the child’s thought processes. Children who have experienced trauma “may regress, or their development may be inhibited so that their chronological age may be misleading.”²¹

In addition to this developmental variability among children, a child may be competent to make certain decisions but not others. The child may be competent one moment but not the next depending on the child’s circumstances. This contextual and temporal variability is recognized by the ABA’s Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases which states that the “child’s attorney should determine whether the child is ‘under a disability’ pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.” Standards of Practice B-3. The Comments to this section point out that “disability is contextual, incremental, and may be intermittent.”

¹⁵ *Id.*

¹⁶ Ramsey, *supra* note 5, at 314.

¹⁷ Purdy, *supra* note 1, at 34, 202; Rosalind Ekman Ladd, *Children’s Rights Re-Visioned*, Wadsworth Publishing Co. (1996), at 8.

¹⁸ Brock, *supra* note 14, at 189.

¹⁹ *Id.*

²⁰ *Id.* at 188

²¹ Ramsey, *supra* note 5, at 316.

Once a child has been determined to be incompetent to make a certain decision, it does not further that child's right to self-determination for his attorney to advocate that child's expressed preference in court. As Sarah Ramsey states, the value of presenting a child's choice "seems meaningless without **some** consideration of [that child's] capacity to understand the significance of the choice he is making. . . . Expecting a person to make a decision which he is not capable of making is not supportive of an individual's rights."²² If a child's attorney advocates the stated position of the child knowing it would place the child at substantial risk of harm, that attorney runs the risk of prevailing. "Allowing substantial risks to children based on whimsical or capricious reasoning betrays the adult whom the child will become."²³

Nonetheless, the older the child and the more closely decision-making capacities resemble those of adults, the less justified the measures designed to protect them. It is more likely that those measures are simply restrictions on freedom and rights to self-determination.²⁴

The question remains: Who decides whether a child has reached the age where he or she is competent to make a decision about his or her own best interests? By what criterion does one judge a child's decision-making capacity? And if a child is not deemed competent to make a specific decision, who then directs the conduct of that child's attorney and sets the objectives for the attorney's representation?

II. Ethical Consideration 7-12 of Vermont's Code of Professional Responsibility and Rule 6 of Vermont Rules for Family Proceedings

Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make.

EC 7-12

A waiver or admission . . . may be approved of with the consent of the guardian ad litem but without the consent of the ward if the ward, because of mental or emotional disability, is unable to understand the nature and consequences of the waiver or admission or is unable to communicate with respect to the waiver or admission. A person who has not attained the age of thirteen shall be rebuttably presumed to be incapable of understanding the nature and consequences of the waiver or admission and of communicating with respect to the waiver or admission.

V.R.F.P. 6(d)(4)

²² *Id.* at 306.

²³ Peter Margulies, *Lawyer as Caregiver: Child Client's Competence in Context*, 64 *Fordham L.Rev.* 1473, 1487 (1996).

²⁴ Ladd, *supra* note 14, at 8.

In drafting Rule 6 the Family Rules Committee attempted to answer questions pertaining to a child's decision-making capacity and the role of the attorney and the GAL. Reacting to evidence presented above, the Rules Committee chose to create a rebuttable presumption that children under the age of thirteen lack the capacity to understand the nature and consequences of a waiver or admission and to communicate with respect to the waiver and admission.²⁵ On its face, this rule appears to apply only to situations where the ward or guardian ad litem wish "to waive a constitutional right of the ward, enter an admission to the merits of a proceeding, or waive patient's privilege under V.R.E.503". When read in conjunction with E.C. 7-12, this Rule suggests that, for all children under the age of thirteen, unless the presumption is rebutted, that child's guardian ad litem in effect becomes the client in making all decisions which are normally the prerogative of the client to make. As the Reporter's Notes to V.R.F.P. 6(d)(4) state, "[A] lawyer alone cannot adequately represent a client who is a minor or otherwise under a disability. A lawyer needs a client who can make, or share in the making of, important decisions."

Unfortunately, when it comes to giving the child's attorney clear direction on the complex issue of when to represent 1) the child's expressed wishes as opposed to 2) the position determined by the GAL to be in the best interests of the child, Rule 6(d)(4) raises more questions than it answers. Who makes the determination of whether there is sufficient evidence to rebut the presumption? By what criteria does one judge a child's capacity to understand the nature and consequences and to communicate with respect to a decision?

III. Recommendations of the Conference on Ethical Issues in the Legal Representation of Children

In 1996 a conference occurred at Fordham Law School to address the complex ethical issues that arise in the legal representation of children. At that conference working groups addressed many of the questions discussed above and came up with several recommendations. The groups took the position that it is the child's attorney who has the responsibility to determine whether a child has the capacity to express a reasoned position. In making the decision, the lawyer should seek guidance from appropriate professionals and others, including family members, probation officers, school officials, clergy, and other concerned parties. Lawyers for children should also seek to facilitate and maximize the child's capacities by accommodating the

²⁵ See also, the American Academy of Matrimonial Lawyers, *Representing Children, Standards for Attorneys and Guardians Ad Litem in Custody and Visitation Proceedings* (1995), Sec. 2.2 (advocating for a similar age-based presumption); Ramsey, *supra* note 5 at 310, 316 (advocating for a rebuttable presumption of incapacity for all children under the age of seven); Brock, *supra* note , at 196-197 (arguing for a rebuttable presumption of incompetence for children under the age of fifteen and irrebuttable presumption of incompetence for children under the age of nine in decision-making regarding medical treatment); Lee H. Haller, M.D., *Considering a Child's Competence to Make a Decision: A Forensic Psychiatrist's View*, 17 *Child Law Practice* 78 (1998)(pointing out that competency of children is not a well-studied issue in the mental health literature but citing the study by G.R. McKee, *Journal of American Academy Psych. Law* 26, 89-99 (1998) wherein only one of fourteen preteen was deemed competent to stand trial using adult standards); See also, T. Grisso, *The Competence of Adolescents as Trial Defendants*, 3 *Psychology, Public Policy and Law*, 3-32.

child's specific needs. They should strive to reduce the risk that biases based on cultural, race, ethnicity or class differences between the lawyer and child might influence the lawyer's perception of the child's capacity. It was recommended that the weight given to factors in the determination of capacity may vary depending on the issue or the nature of the proceeding. Thus, the lawyer would need to "intensify her level of scrutiny of the child's decision as the risk of harm and the duration of the decision's effect on the child's life increase."²⁶ However, it is not the wisdom of the child's decision in the eyes of her attorney that determines her capacity but the process by which the child reaches that decision. "[T]he lawyer should focus on the child's ability to articulate a well-reasoned, independent choice, with a true understanding of the consequences involved."²⁷

The *Working Group on Determining the Child's Capacity to Make Decisions* recommended that the lawyer should consider the following **factors for assessing capacity**, stating that much of this analysis should occur regularly in the normal lawyering process:

- a. Child's developmental stage**
 - i. Cognitive ability**
 - ii. Socialization**
 - iii. Emotional development**

- b. Child's expression of a relevant position**
 - i. Ability to communicate with lawyer**
 - ii. Ability to articulate reasons**

- c. Child's individual decision-making process**
 - i. Influence - Coercion - Exploitation**
 - ii. Conformity**
 - iii. Variability and Consistency**

- d. Child's ability to understand consequences**
 - i. Risk of harm**
 - ii. Finality of decision**

Interviewing Children in Order to Assess Capacity: Why Children Say What They Say

In assessing a child's decision-making capacity in the context of child protection proceedings there are special considerations. The attorney for the child must understand how the abuse and neglect might influence that child's thought processes. For example, preteen children who have been abused generally feel that they have caused their abuse.²⁸ These children have

²⁶ *Working Group on Determining the Child's Capacity to Make Decisions, Proceedings of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *Fordham L. Rev.* 1339, 1344.

²⁷ *Id.* at 1346.

²⁸ Van Ornum & Mordock, *supra* note 6, at 146.

usually been told so often by their parents that they deserve the abuse that they have come to believe it. On the other hand, adolescents take the exact opposite view and know they are not the cause of the abuse. They are much more likely to say about their parents: "It's all their fault. I'm just gonna get the hell out of there."²⁹

An abused child's capacity to trust others is impaired.³⁰ These children are filled with rage and a painful ambivalence towards their parents. Constantly demeaned by their parents, threatened with abandonment and subjected to inconsistent and inappropriate punishment out of proportion to their behavior, these children are often withdrawn, defiant, and fearful of anything new.³¹ Their development may have been severely inhibited by the trauma in their lives.

In CHINS proceedings involving allegations of neglect, it is helpful to keep in mind that the law defines neglect as a deviation from the norm. But for children the norm is the home life they have experienced. It is the only thing they know.

The emotional nature of child protection proceeding itself may interfere with a child's decision-making capacity.³² Children in such proceedings are often guarding many secrets and are more concerned about keeping secrets to protect others (such as their parents) than in protecting their own interests. They may fear losing the love of the most important people in their lives.³³ "Almost all children -- no matter how abusive the parent -- want to love their parents and remain at home," preferring "the security of misery to the misery of insecurity."³⁴ Nonetheless, many children may be secretly relieved once they have been placed in foster care. Children may blame themselves for having come into foster care because "active blaming is preferred over helplessness."³⁵ They may blame themselves, too, because they may have been threatened with foster care by parents who have repeatedly admonished them to behave or else. Children in foster care may feel the burden is on them alone to change their behavior in order to achieve reunification with their parents.³⁶ Because children are so much a part of their parents and identify so strongly with them, foster children will sometimes idealize their parents in order to bolster their own fragile identities and project their anger onto their foster parents.³⁷

²⁹ *Id.* at 159.

³⁰ *Id.* at 157.

³¹ *Id.* at 147.

³² Ramsey, *supra* note 5, at 318.

³³ Buss, *supra* note 8, at 1715.

³⁴ Van Ornum & Mordock, *supra* note 6, at 146.

³⁵ *Id.* at 166.

³⁶ *Id.* at 164.

³⁷ *Id.* at 166-167.

In both CHINS and divorce proceedings, “children are under tremendous pressure to misidentify and/or misarticulate their own interests.”³⁸ Their wishes may be based on threats or bribes or motivated by fear, guilt, a desire to protect their parents, parental promises of change and a lack of experience with alternatives.³⁹ Preteen children “define their moral universe in large part by determining what pleases the important adults in their lives” rather than what they might independently want a lawyer to hear.⁴⁰ In situations where the child suffers from divided loyalty, she may not want the burden of having to make a choice. An eight-year-old child in a termination of parental rights hearing might state with a happy smile to her lawyer, “I want to go back to live with my mommy but SRS probably won’t let me.”

Attorneys for children in child protection proceedings need to be sensitive to all these issues when interviewing their clients. It may take much time and effort to determine why a child is saying what she is saying. These children may not open up very easily but it is essential for the attorney to be able to understand the child’s reasoning in order to accurately assess that child’s capacity and needs.

In interviewing the child another consideration to which the attorney must be particularly sensitive is a child’s tendency to tell an adult interviewer what he thinks that adult wants to hear. This kind of influence on a child’s decision making is often quite subtle but very real nonetheless. “Adult preconceptions can powerfully influence a child by creating self-fulfilling prophecies through nonverbal cues.”⁴¹ Highly anxious children can be easily led by the form of the question into agreeing with almost anything.⁴² Additionally, children will give better information to some adults than to others depending on the adult’s demeanor, tone of voice, style of interaction and degree of empathy.⁴³

The factor of coercion is particularly relevant in child protection proceedings. The value of client autonomy presupposes that the lawyer has a client who is capable of autonomous action. If a child has been threatened by her abuser and recants her statements out of fear, the attorney who fights for that child’s return home is simply allowing her to fall victim once more to her vulnerability as a child and her utter dependence on her adult caretakers.

³⁸ Buss, *supra* note 8, at 1702-03.

³⁹ *Id.*; see also, Stanley S. Clawar, *Why Children Say What They Say*, *Fam. Advoc.*, Fall 1983, at 25, 45.

⁴⁰ Buss; *supra* note 8, at 1703, n. 9.

⁴¹ James Garbarino and Frances M. Stott, *What Children Can Tell Us*, Jossey-Bass Publishers (1992), at 14.

⁴² Van Ornum & Mordock, *supra* note 6, at 15.

⁴³ *Id.* at 14.

Children may vary their stated preference from one interview to the next, depending on their circumstances at the time and who is doing the interviewing. If a child takes a new position with similar alacrity each time, this variability must raise doubts in the attorney's mind about that child's competence.⁴⁴

IV. The Advantages and Disadvantages of Vermont's Hybrid System of GAL/Attorney Representation of Children

As stated above, children in CHINS proceedings and divorce cases may be under enormous pressure to misidentify their interests. One of the main advantages of the GAL system of representation is that the GAL serves as a buffer for the child from all these pressures. In situations where the child is likely to experience conflicting loyalties, ambivalence, guilt, a desire to protect parents, fear and confusion, the child may be relieved that he is not forced to make a choice.

Another advantage of the hybrid system is discussed by Annette Appell in a special issue of the *Fordham Law Review*. Appell pointed out that with such a system "the bulk of the work - investigation and client contact -- will be performed by the non-paid GAL. Attorneys would conduct purely legal work on behalf of the GALs."⁴⁵ Anything that eases the fiscal and time constraints suffered by an overburdened public defender system is a welcome relief. Public defenders in Vermont who represent children in CHINS proceedings are often handling caseloads that are up to twice those that national caseload standards recommend.

Inherent in these advantages, however, lie the disadvantages of this approach:

1) Children's attorneys are not really required to get to know their clients at all. This often results in a "disturbing cookie cutter sameness" to the representation. Without getting a true feeling for the uniqueness of the child through frequent contact, the attorney may tend to assume more about a child and the case than she actually knows and fail to individualize the representation.⁴⁶

2) In order to work effectively, this system requires a great deal of mutual respect, trust and collaboration between the GAL and the child's attorney which is unfortunately not present in many cases throughout the state.

3) This system, too, requires a GAL who is well-trained, sensitive to the issues and willing to spend the time to get to know the child and other players involved in the case. There is considerable anecdotal evidence from across the state that this is not always the case. In fact,

⁴⁴ Margulies, *supra* note 23, at 1488.

⁴⁵ Annette Appell, *Contextualizing the Child Client: The Advocacy of the Attorney-Client Model for Very Young Children*, 64 *Fordham L.Rev.* 1955, 1973 (1996).

⁴⁶ Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 *Fordham L.Rev.* 1511, 1527 (1996).

there is tremendous variability among GALs on how they perform their assigned duties.

4) Once a child, especially one in the middle years of ages eight to twelve, understands that the attorney is not going to advocate his position, the child may become less invested in the attorney/client relationship and may become less candid with his attorney and GAL, choosing instead to tell the attorney and GAL whatever he thinks they need to hear in order to agree with his position. The attorney becomes, in the child's eyes, "just another adult controlling his life in the name of helping him out."⁴⁷ It is not unusual for the child to simply lump the attorney and GAL into the same category as the SRS and social service workers and refer to them as "you all."⁴⁸

V. Recommendations for Change

1. Attorneys representing children should receive extensive training in such areas as child development, interviewing children and assessing a child's decision-making capacity. Attorneys also need training on the affect on children of abuse and neglect and foster care placement. Such training should be mandatory.

2. In order to foster better communication and collaboration between attorneys for children and GALs, the two groups should meet regularly to address these issues, engage in joint trainings and develop protocol for collaboration.

3. Even with children under the age of thirteen, attorneys should take the time to actively listen to their clients, engage them in a dialogue about available options and make whatever accommodations are necessary to enable them to be active participants in the court process to the extent that the child is capable. Lawyers should insist that GALs share with their wards their conclusions about the child's best interests to the extent that child is able to understand them.⁴⁹ The lawyer should "force the GAL to hold [his views] up to the light of the child's opinions and expertise." Even if a child is not the ultimate decision-maker and does not possess veto power over the GAL's views, it is essential that the child be given a voice. Talking and explaining helps a child see the reasons for the decision. It empowers him to the extent that he has at least been accorded some role in the decision-making process.⁵⁰ There are situations where children

⁴⁷ Buss, *supra* note 8, at 1731.

⁴⁸ *Id.* at 1713-1716.

⁴⁹ *Id.* at 1746.

⁵⁰ Edwin N. Forman & Rosalind Ekman Ladd, *Making Decisions-Whose Choice?, Children's Rights Re-Visioned*, *supra* note 14, at 180. See also Janet A. Chaplan, *Perspectives on Lawyers' Ethics: A Report of Seven Interviews*, 64 *Fordham L. Rev.* 1763 (1996), who reports on interviews of former foster children, ages seventeen to twenty. Interestingly, they all believed that their attorneys had a stronger duty to protect them than to keep their secrets or to follow their wishes. They all felt it was important for their attorneys to represent what they wanted but they felt it was even more important for their attorneys to engage in a dialogue with them explaining their options, the court process and the consequences of their decisions. It was most important to them that their attorneys knew how they felt and why.

suffer from such severe Post Traumatic Stress Disorder that the mere mention of a court hearing could cause serious distress for the child. In such cases it is advisable to consult with that child's therapist as to how to speak with the child, if at all, about the court hearing.

Conclusion

All of the above recommendations take a lot of time to be implemented. Realistically, very little is going to change unless some way is found to relieve public defenders from the relentless pressures of the caseloads they carry. Juvenile representation needs to become a priority in the public defender system and the system as a whole needs to be adequately funded.
