YOU BETTER REPRESENT: LESSONS ABOUT LAWYERING FROM ADOLESCENTS (REAL AND IMAGINED)

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"Lawyers are all right, I guess — but it doesn't appeal to me," I said. "I mean they're all right if they go around saving innocent guys' lives all the time, and like that, but you don't do that kind of stuff if you're a lawyer. All you do is make a lot of dough and play golf and play bridge and buy cars and drink Martinis and look like a hot-shot. And besides. Even if you did go around saving guys' lives and all, how would you know if you did it because you really wanted to save guys' lives, or because you did it because what you really wanted to do was be a terrific lawyer, with everybody slapping you on the back and congratulating you in court when the goddam trial was over, the reporters and everybody, the way it is in the dirty movies? How would you know you weren't being a phony? The trouble is, you wouldn't."

I. INTRODUCTION

When I was in college, I worked part-time at a youth shelter. Young people aged eleven to seventeen lived there temporarily while they awaited more permanent placements, or maybe a return home. When I was not

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^{1.} J. D. Salinger, The Catcher in the Rye, 223–24 (1951).

being taken to school on the basketball court, cooking huge pots of spaghetti, or breaking up fights, I spent a lot of time talking with residents about their horrible experiences in foster care. Too often they were split up from their siblings, bounced around from placement to placement, and carried all of their possessions around in a garbage bag. Not surprisingly, they often wondered how the child welfare system could treat them so badly and why no one did anything about it. And here is what really blew my mind: they had lawyers. While too many children still do not receive representation in child welfare cases,² these adolescents were represented by lawyers. But it did not even occur to them that their lawyers might help.

There were obvious reasons for their lack of faith in their lawyers. I encouraged residents to call their lawyers, but I cannot ever remember a lawyer actually calling back. Court dates were always a great mystery and source of tension, in part because youths rarely saw their lawyers until right before court. Without advice from counsel, they almost always developed unrealistic expectations about what would happen at court, and we learned to expect them to feel let down—or worse—when they returned to the shelter.

These experiences were part of the reason I went to law school. But when I got to law school, I felt there was a big hole in my training. The casebooks dealt with important cases that only incidentally might have involved children. In family law, children appeared as property to be divided at dissolution. My juvenile justice class, which was excellent, pondered the question of whether juvenile courts should be abolished.³ In my child advocacy clinic, I represented a parent seeking modification of a child support order (at least it was for an upward modification, right?). In other words, little of my legal training focused on the practical challenges of actually representing young people or on the perspectives of young people themselves. Once I started practice, I learned that there are some lessons about child advocacy that are best learned from our clients.

There is no shortage of legal scholarship speaking to the legal and

^{2.} See Erik Pitchal, Children's Constitutional Right to Counsel in Dependency Cases, 15 TEMP. POL. & CIV. RTS. L. REV. 663, 665–66, 666 n.12 (2006) (explaining that some jurisdictions do not require that a lawyer be appointed to represent a child in dependency proceedings, and instead, only require that a court-appointed special advocate, who might not be trained as a lawyer, be appointed).

^{3.} See Barry C. Feld, Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy, 88 J. CRIM. L. & CRIMINOLOGY 68, 90 (1997) (arguing that juvenile court has become a "second-rate criminal court that provides young people with neither positive treatment nor criminal procedural justice").

ethical duties of lawyers when they represent children and youths,⁴ but there is very little discussion of the way young people⁵ perceive and critique lawyering. This Essay attempts to increase that discussion by addressing three lessons my clients have taught me about lawyering for juveniles: the lawyer's obligation to overcome a presumption of adult "phoniness," the importance of investing time in an adolescent client, and the value of advocacy as a tool to empower young people, regardless of the ultimate outcome. The common theme of these lessons is that effective lawyering for adolescents requires lawyers to think about legal problems and the court process from a young person's point of view. That might sound simple, but my contention is that this kind of shift in perspective is something adults do not do very well. As the poet Randall Jarrell observed, "One of the most obvious facts about grown-ups, to a child, is that they have forgotten what it is like to be a child."

II. LESSONS FROM ADOLESCENTS ABOUT LAWYERING

A. Lesson One: Overcoming the Caulfield Presumption

Boy, did he depress me! I don't mean that he was a bad guy — he wasn't. But you don't have to be a bad guy to depress somebody — you can be a good guy and do it. All you have to do to depress somebody is give them a lot of phony advice . . . that's all you have to do. 10

In the scene above, taken from J. D. Salinger's *The Catcher in the Rye*, Holden Caulfield is speaking with his sister Phoebe about Veteran's

^{4.} See, e.g., Theresa Hughes, A Paradigm of Youth Client Satisfaction: Heightening Professional Responsibility for Children's Advocates, 40 COLUM. J.L. & SOC. PROBS. 551 (2007).

^{5.} This Essay focuses on what adolescent clients can teach us about lawyering, and presents some confounding choices about how to identify or describe adolescents. Are they children? Youth? Young people? Juveniles? Kids? I use several of these identifiers in this Essay, but I have tried to stay away from describing them as children or kids. This is, after all, an essay about adolescent perspectives, and I think many adolescents would resist being referred to as children or kids.

^{6.} See discussion infra Part II.A.

^{7.} See discussion infra Part II.B.

^{8.} See discussion infra Part II.C.

^{9.} RANDALL JARRELL, *Introduction: An Unread Book* to CHRISTINA STEAD, THE MAN WHO LOVED CHILDREN v, xxvi (Holt, Rinehart & Winston 1965) (1940).

^{10.} SALINGER, *supra* note 1, at 219.

Day at the most recent prep school from which he has been expelled.¹¹ Most of my clients in juvenile court have never had much in common with Holden Caulfield. Youth involved in the foster care and juvenile justice systems are disproportionately poor children of color,¹² and although they may have been expelled from school, too,¹³ the school was probably nothing like Pencey Prep. But Caulfield's conclusion that you can be a good guy and still give phony advice—what I call the "Caulfield Presumption"—would resonate strongly with my clients. What the phoniness of adults means to Caulfield, and I think to a lot of adolescents, is the gulf between adult assumptions about and expectations of adolescents, and the reality young people experience.¹⁴

This perception of phoniness makes it challenging to develop a lawyer–client relationship with a young person. When combined with other related obstacles, like differences in race and class, the potential for problems in developing a meaningful attorney–client relationship is huge. ¹⁵ One of the first ways I learned this was meeting with my juvenile clients in detention. Seattle's juvenile detention center has one room where all of the lawyers meet with their clients. There are usually several clients waiting to talk to their lawyers or sitting in chairs along the wall waiting to go back downstairs. I remember in my first visits with clients at detention, I expected all of them to be thrilled to see me and to immediately open up to me about their cases. It would be obvious to them that I was there for them to confide in, and they had to realize how lucky they were to have such a zealous advocate.

What I found, however, was that they were often much more likely to talk with each other about their cases than with me. The youths would be

^{11.} *See id.* at 218–19.

^{12.} Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189, 229 (1998).

^{13.} See Katherine Burdick et al., Creating Positive Consequences: Improving Education Outcomes for Youth Adjudicated Delinquent, 3 DUKE F. FOR L. & SOC. CHANGE 5, 8–9 (2011) (explaining that children involved with juvenile court are disproportionately suspended and expelled from school).

^{14.} *See* SALINGER, *supra* note 1, at 219.

^{15.} Race, class, and other cultural differences between lawyers and their clients combine to create a perfect storm of confusion and missteps, compounding and reflecting the problems related to the Caulfield Presumption. *See* Brief for the NAACP Legal Defense & Educational Fund, Inc. et al. as Amici Curiae in Support of Petitioners at 8–10, Graham v. Florida, 560 U.S. 48 (2010) (Nos. 08-7412 & 08-7621) (explaining how trust issues between the attorney and juvenile client are often exacerbated by the frequent cross-racial nature of the relationship).

talking animatedly with each other along the wall, but when I called my client over to the table to talk, all of the answers would be "yes," "no," or "I don't know." Sometimes the client would even ask if they could go back downstairs because it was time to play basketball in the gym.

Some lawyers would describe scenarios like that as evidence that the client was immature or not taking the case seriously enough. But I learned pretty quickly that once I earned some trust from the client, I did not have to worry about the client being uninterested in talking. I just had to start chipping away at the Caulfield Presumption first. One very young—and very depressed—client met with me a dozen times before he would talk to me about his case. The first few times he just stared blankly at the wall while I talked. Then for a few visits he played video games on my old palm pilot while I talked. Finally, he figured I was serious about wanting to know what was going on, so he started telling me—or maybe he just got sick of beating me at Asteroids. I had to prove to him, by coming back again and again, that I was interested in his case and was going to work hard for him.

It is important to distinguish overcoming the presumption of phoniness from merely building rapport. Overcoming the Caulfield Presumption, I think, requires something more radical: earning real trust in spite of your status as an adult. For the vast majority of juvenile clients, their experiences with adults have taught them that we are not likely to really listen to them, and that even if we try to listen, we probably will not understand and likely will let them down. Making matters worse, many young people are involved with the juvenile court because adults have done more than simply let them down—they have actually harmed and traumatized them. To

And make no mistake, trust does have to be earned. Attorneys have

^{16.} See Thomas Grisso, The Competence of Adolescents as Trial Defendants, 3 PSYCHOL. PUB. POL'Y & L. 3, 15–16 (1997) (explaining that juveniles' mistrust of lawyers is both a natural product of adolescent development and a result of past experience with authority figures).

^{17.} Experts have learned much in the last several years about the way trauma impacts a child's ability to function. *See generally* BRUCE D. PERRY & MAIA SZALAVITZ, THE BOY WHO WAS RAISED AS A DOG: AND OTHER STORIES FROM A CHILD PSYCHIATRIST'S NOTEBOOK: WHAT TRAUMATIZED CHILDREN CAN TEACH US ABOUT LOSS, LOVE, AND HEALING 1–6 (2006). There is a great deal of interesting work being done on how to address childhood trauma in treatment, and lawyers would benefit from thinking about how trauma their clients have experienced impacts their ability to communicate and build relationships with clients. The experience of trauma is also one important similarity between my clients and Holden Caulfield.

no right to expect it from an adolescent client. When we first meet our clients, most of them have never had a lawyer before, and they likely do not understand the lawyer's role. Young people may see their attorney as adversarial, functioning essentially as another arm of the state. For example, research indicates that even after receiving information about attorney–client privilege, a majority of adolescents believe that their lawyer can tell the police what the youth discloses to the lawyer. The lack of trust may be further exacerbated when a child has previously had a poor experience with an attorney. None of this would surprise anyone who knows anything about child development. But somehow many lawyers expect to not have any significant problems relating to their young clients and then blame their clients when easily foreseeable problems occur.

B. Lesson Two: It's a Matter of Time

The only time I ever see my lawyer is five minutes before we go into court. How can they expect to know anything about me? And how am I supposed to decide what I want to do when I don't even know what might happen until right before the hearing?²⁰

Much of the literature in child advocacy relates to the debate over whether lawyers should advocate for a child's best interests or the child's stated interests in child welfare cases.²¹ But in the real world of juvenile court, the best interest–stated interest debate is often rendered moot. Why? Because youths infrequently see or talk to their lawyers, so there is not enough time for someone to find out what really is in their best interests or to give them enough information to develop an informed stated interest.²²

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^{18.} See Melinda G. Schmidt et al., Effectiveness of Participation as a Defendant: The Attorney–Juvenile Client Relationship, 21 BEHAV. SCI. & L. 175, 178 (2003).

^{19.} See Grisso, *supra* note 16, at 15–16.

^{20.} This italicized quote, and the others that follow, are from youths I met in juvenile court in Seattle while I was an attorney at TeamChild. The statements arose from a training organized for juvenile defenders by the Washington Defender Association in 2007. I moderated a panel of youths who shared insight about what it was like to be represented in juvenile court. At the requests of the youths from the panel, I have not included their names with the quotes.

^{21.} See Aditi D. Kothekar, Note, Refocusing the Lens of Child Advocacy Reform on the Child, 86 WASH. U. L. REV. 481, 492–94 (2008) (providing a nice summary of the best interest-stated interest debate).

^{22.} One reason for this problem is that lawyers representing youths often face crushing caseloads. For example, in *Kenny A. v. Perdue*, a class action alleging

In my experience, what most youths are hungry for when they are sitting in detention or awaiting potential foster care placement is the attorney's time. They want someone to listen to them, understand their problem, and give them advice about their options.²³ One might argue this is true with adult clients, too, but I contend juveniles actually need more time in order to build trust, understand the process, and make a decision about what they want.²⁴ Time is so important that, even though many juveniles want—and I would argue all of them deserve—someone to argue their expressed wishes in a child welfare case, most young people would accept, at least grudgingly, an advocate who argued for their best interests if the advocate spent the time necessary to get to know the youth and developed an informed opinion on the question.²⁵ What is more likely to bother young people is when the attorney decides what the client's best interests are based on incorrect or incomplete information, or when the lawyer does not give the youth the information needed to develop an informed stated interest.

inadequate representation of foster children in child welfare cases, child advocate attorneys in Fulton County, Georgia were each handling more than 400 cases each year. Kenny A. v. Perdue, 356 F. Supp. 2d 1353, 1356 (N.D. Ga. 2005). The district court denied the two counties' motion for summary judgment, holding that the youth had both a statutory and constitutional right to counsel and that a genuine issue of fact remained as to whether they had received effective assistance of counsel. *Id.* at 1359, 1363–64. To avoid the possibility of ineffective assistance, the National Association of Counsel for Children recommends that no attorney handle more than one hundred cases at any given time. NAT'L ASS'N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES 7 (2001).

- 23. With regard to potential conflicts between the child's best interests and stated interests, ABA standards suggest that "[a]s a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided." Am. Bar Ass'n, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases 3 (1996).
- 24. While this is partly a function of the Caulfield Presumption, *see supra* notes 11–15 and accompanying text, and other obstacles to developing a meaningful relationship with clients, it is also probably a function of basic adolescent brain development. *See*, *e.g.*, Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 2026–27 (2010) (discussing the differences between juvenile and adult minds).
- 25. See, e.g., In re A.T., 744 N.W.2d 657, 660 (Iowa Ct. App. 2007). In In re A.T., a mother appealed a decision terminating her parental rights because, in part, her daughter's advocate served as both attorney and guardian ad litem, and supported termination in spite of the daughter's opposition to it. Id. at 659. The court agreed that there was a conflict and reversed the decision, id. at 665–66, but there was evidence that the daughter wanted to keep her guardian ad litem as her appointed attorney for the case in spite of his support for termination. Id. at 660.

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Investing time may also mean accepting the young person's timetable. I recently accompanied a law student to a visit with a teenage client. The student arrived without an appointment because the client did not have a phone. When she located the client at a park across the street, he was playing cards with some friends. She called the client over to talk, and he was noticeably annoyed. He told her, in colorful language, that he was not going to talk with her. My student tried unsuccessfully to get him to engage, so I asked the client if there was a better time we could meet. He calmed down immediately, and we scheduled an appointment for the next day.

On the way back to the clinic, the student questioned me about whether rescheduling was the right thing to do. She was concerned that we had a hearing coming up and had to talk with the client. He might refuse to talk with us again next time. I reminded her to look at things from his point of view. We just showed up at his house and expected to meet. We even interrupted his card game. Finally I asked, what if he was a corporate client and we showed up at his house on poker night? Would we expect him to meet with us without setting an appointment? Giving a traumatized, refugee youth a sense of control in our relationship was even more important than in the case of the hypothetical corporate client. Our client is confronted every day with how little control he has over his life and circumstances, and the least we can do is give him some control over when we meet.

In times of crushing caseloads, shrinking public defender budgets, and, at least in some jurisdictions, increased filings in juvenile court, time is an expensive and elusive commodity.²⁶ But from a juvenile client's point of view, it is the key.²⁷ For our young clients, time does not just mean the

^{26.} See generally Katayoon Majd & Patricia Puritz, The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems, 16 GEO. J. ON POVERTY L. & POL'Y 543, 546–60 (2009) (discussing the numerous structural and cultural barriers found in juvenile courts that impede the effective representation of youths).

^{27.} *See, e.g.*, Hughes, *supra* note 4, at 552–53.

I guess my lawyers were okay, they weren't ever disrespectful, they were always kind and polite. But they never visited me in foster care, never came to my home or school. And they never talked to anyone else in my family, just me. I would see them in court, but that was it. I never really felt good about it, a lot of it was a bad experience — they [the lawyers] need to be more on top of it. They need to spend more time on the case, talking to people. . . . Lawyers have to spend an appropriate amount of time on each case They need to

hours you work on the case. It is the way you communicate to the young person whether you think her case matters. As one former client of mine put it, "I've been in foster care all my life, and I have had good lawyers and bad lawyers. The difference between the good and the bad is almost always one thing: what happens to me matters to the good ones."

C. Lesson Three: Make It a Fair Fight

I know you didn't spend all that time getting a law degree just to lose my case.

One of my former clients told me about a time she exhorted her lawyer to try harder by making the above statement. She said that she wanted him to try to win and was trying to appeal to his competitive side. The sad corollary to her efforts is that she did not think her own case was motivating enough.

My client's statement is a good reminder of how important it is to demonstrate to our clients that we will fight for them. Professor Katherine Federle argues that traditional notions of children's rights too often focus on a child's capacity and base the lawyer's role on an assessment of the child's capacity. If the child is young or developmentally delayed, the lawyer's role, at least in the child welfare context, might be to argue for the child's best interest. The more "adult-like" a child is, the more likely it is that courts will ensure representation by a lawyer who advocates for the child's stated interests. Professor Federle argues persuasively that instead of focusing on the child's alleged capacity, the true role of the lawyer is empowerment—to make a child's voice heard in spite of his or her relative powerlessness and perceived lack of capacity. In other words, all children deserve—and want, I would add—a fair fight. My client thought she had a better chance of getting her lawyer to fight by appealing to his basic competitiveness.

Focusing on empowerment almost always results in at least one

hear you out so that you can get your story out.

Id. (first alteration in original).

^{28.} Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client*, 64 FORDHAM L. REV. 1655, 1696 (1996).

^{29.} *Id*.

^{30.} *Id*.

^{31.} *Id.* at 1693–96.

positive outcome: more participation by my client in the case. When I am filing motions, making objections, and otherwise zealously advancing my client's interests, my clients are almost always more engaged in the case and, importantly, are more likely to participate in court.³² One of my clients, a teenager in foster care, initially refused to come to court for hearings. I finally convinced her to come, and she saw me make an objection to negative evidence offered by the state. Maybe more importantly, she heard the judge sustain it. While we prepared for the next hearing, we discussed other evidence that might come in, and my client instructed me to "drop another big, fat objection" on the state's attorney if she tried to introduce the evidence.

The strongest evidence of the importance of ensuring a fair fight may be how often my clients appreciated my efforts, even when I lost their case. Even though my client was being sent to a correctional facility or being expelled from school, he would be the one comforting me. Although there is scant empirical data regarding youth satisfaction with legal services, one survey found that winning was not the highest priority for children in judging satisfaction; instead, children valued consistent communication with their lawyer more highly.³³ Consistent communication helps demonstrate the lawyer's investment in the case and can give the client more confidence about how hard the lawyer will fight for him.³⁴ While desiring a fair fight is certainly not unique to young people,³⁵ I think they value it even more than adults. Maybe that is because, like the teenagers at the youth shelter,³⁶ adolescent clients do not expect it.³⁷

^{32.} Child welfare hearings are unique in that children, even adolescents, are often not present at hearings. For an excellent discussion of this problem, see generally Erik S. Pitchal, Where Are All the Children? Increasing Youth Participation in Dependency Proceedings, 12 U.C. DAVIS J. JUV. L. & POL'Y 233 (2008). Some states have moved toward court rules or statutes that ensure a young person's participation in court hearings. See, e.g., IOWA CODE § 232.91(4) (2013) ("A presumption exists that it is in the best interests of a child fourteen years of age or older to attend all hearings and all staff or family meetings involving placement options or services provided to the child."). Even with these protections, however, young people often do not know when hearings are happening, and may not have a way to get there.

^{33.} See Hughes, supra note 4, at 562.

^{34.} See id. at 562, 564.

^{35.} See id. at 562.

^{36.} See discussion supra Part I.

^{37.} See Hughes, supra note 4, at 564.

III. CONCLUSION: YOUR CLIENTS CAN MAKE YOU A BETTER LAWYER

Adolescents' critique of legal services for adolescents leads to some simple recommendations for improving the quality of legal representation for adolescents. To overcome a child's presumption about adults—and lawyers in particular—lawyers must realize that it may take more time to build a relationship with their client, and they must be prepared to invest that time with the client. To do so, one must recognize and challenge adult assumptions about adolescents and be cognizant of the young person's assumptions about adults. Meeting with our clients before the day of the court hearing and returning their calls are a start, but there are plenty of other things we can do to signal our commitment to their cases.³⁸ We also need to invest more time and accept the young person's timetable. Finally, we need to remember that our clients need to see us fight for them—even when, as is often the case, victory is far from certain and other adults may not agree with the client's goals.

As states continue to assess and reform legal services for young people, our clients should have an important role to play in that process. A study of public defense for juveniles in Washington by the American Bar Association Juvenile Justice Center included a survey of young people to help assess the quality of representation in juvenile courts.³⁹ The respondents consistently stated that they wanted more time with their lawyers and wanted attorneys to listen to them and understand them better.⁴⁰ Meanwhile, we live in a time when states and counties are less willing than ever to increase budgets for programs like public defense and civil legal aid.⁴¹ As lawyers for adolescents, we need to fight hard to reduce caseloads and increase access to legal services for young people. But that is not all we need to do. Many of us are more comfortable critiquing the systems that serve—and often fail—our clients, rather than looking inward at how we perpetuate the problems our clients face. But the bottom line is

^{38.} See id. at 574–75 (providing a useful list of specific recommendations to increase youth satisfaction with legal services).

^{39.} AM. BAR ASS'N JUVENILE JUSTICE CTR. ET AL., WASHINGTON: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN JUVENILE OFFENDER MATTERS 49–51 (2003). The Washington study asked youth two general questions: what did you like about your attorney?; and what could your attorney do better? *Id.* at 49–50.

^{40.} See id. Unfortunately, efforts to reform child advocacy generally tend to focus on clarifying the role of the lawyer, rather than focusing on how to optimize the child's participation in the juvenile proceedings. See, e.g., Kothekar, supra note 21, at 484–86.

^{41.} See Majd & Puritz, supra note 26, at 550–51.

that if you listen to youths talk about their experiences in juvenile court, you will learn a simple truth: adolescents want and deserve better lawyering. And they cannot wait for budget and policy changes to get it.