

Using Developmentally Appropriate Language to Communicate with Court-Involved Youth

ISSUE

For any young person, navigating the juvenile delinquency process can be daunting. Youth are required to understand, make decisions, and act on their rights and responsibilities in court. Yet court-involved youth are likely to face challenges that impact their ability to understand and participate in juvenile court. The legal jargon, abstract language, and complex terminology frequently used in the courtroom can be incomprehensible, especially for young people. Also, traditional courtroom dynamics make it difficult for youth to speak up when they do not understand a question or terminology. Not only does the use of complex language have an impact on a young person's ability to meaningfully participate and understand the juvenile court process, but it also affects a young person's perception of fairness.¹ Given these realities, it is imperative that juvenile defenders, juvenile court judges, and other delinquency stakeholders improve communication with youth by using developmentally appropriate language throughout the delinquency process to ensure youth are meaningfully engaged, understand the process, and can access the constitutional protections to which they are entitled.

NATIONAL SNAPSHOT

The medical community has long recognized that age, experience, and numerous aspects of child development impact how youth understand, process, and retain information. However, it was not until recently that youth language and communication skills were acknowledged as an issue in juvenile court.² The majority of juvenile courts across the country employ an approach that does not adequately account for developmental considerations with regard to a young person's understanding and participation in the court process and may even punish youth for their lack of understanding.³ The prevalence of language and linguistic delays,⁴ special education needs, mental health issues, trauma, and other adverse childhood experiences among court-involved youth

signals an urgent need to reform delinquency practice to embrace an evolving body of adolescent development research documenting the importance of effective language and communication skills in facilitating due process.

WORKING INNOVATIONS

Juvenile defense stakeholders have created innovative strategies to improve communication in juvenile court using developmentally appropriate language by simplifying judicial colloquies, developing dedicated juvenile specific training for court personnel and defenders, and creating youth-friendly resources. The following sample of working innovations describes initiatives that seek to increase youths' understanding of the unfamiliar and complex language used in the delinquency context.

Developmentally Appropriate Judicial Colloquies

Washington State Judicial Colloquies Project

The Washington State Judicial Colloquies Project (Project)⁵ sought to help youth and their families better understand court proceedings and outcomes, as well as court ordered restrictions and obligations placed on the youth, with hopes that improved understanding would lead to greater compliance and more positive youth outcomes. The Project team, comprised of a diverse set of juvenile court stakeholders, re-wrote and implemented judicial colloquies using developmentally appropriate language at pre-adjudication release and post-adjudication probation hearings. The colloquies developed by the Project's team were written at a 6.5 reading level on the Flesch-Kincaid Grade Level Index and have a high readability score on the Flesch Reading Ease Test.⁶ In comparison, the standardized orders used by Washington's juvenile courts are written at 12.9 grade reading level and have a very low readability score. The use of the Project's colloquies improved youths' comprehension of the conditions of pre-adjudication release and post-adjudication probation commonly ordered in Washington's delinquency proceedings. Before their use, youth understood only 30%

of the conditions ordered. With the use of the Project's colloquies, youth comprehension increased to 90%. In addition to improving youth comprehension, the Project also increased stakeholder awareness of the importance of using developmentally appropriate language in juvenile court.

Training Programs and Other Educational Resources

Improving Courtroom Communication: Procedural Justice Demonstration Project in Milwaukee

The Center for Court Innovation (Center) and the National Judicial College (NJC) launched a pilot demonstration project at the Milwaukee County Criminal Court⁷ with the goal of enhancing defendant perceptions of procedural justice⁸ by improving the oral, written, and nonverbal communications used by judges in the courtroom. This project involved facilitating a one-day judicial training on courtroom communication and developing concrete action plans for individual judges to improve communication on a daily basis. The judicial training, was developed by the Center and NJC with the assistance of a multidisciplinary working group of national experts and court practitioners⁹ who helped identify promising practices for effective courtroom communication.¹⁰ Concrete steps to implement procedural justice concepts in the courtroom are identified throughout the training and each participating judge is required to create and submit an individualized action plan detailing the improved practices he or she would implement.¹¹

Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum, Module 5 – Communicating with Youth: Interviews and Colloquies

Module 5 of the MacArthur Foundation's *Juvenile Court Training Curriculum*¹² describes techniques for effective communication with youth involved in the juvenile court system, including respondents, witnesses, and complaining witnesses. In particular, the module covers how professionals can incorporate developmental considerations into their communications with youth, whether they are trying to get information from or impart information to youth. By teaching participants to achieve self-awareness as interviewers, this module provides participants with skills needed to interview youth in developmentally sound and culturally competent ways, including displaying an understanding of girls, youth of color, and lesbian, gay, bi-sexual, and transgender youth. In addition, the module highlights the importance of sensitive interviewing of youth with disabilities, trauma, and mental health needs.

Juvenile Training Immersion Program, Lesson 5 – Interviewing and Counseling the Youth Client

Lesson 5 of NJDC's Juvenile Training Immersion Program (JTIP)¹³ discusses how to effectively interview and counsel youth clients. This lesson involves a combination of interactive discussions, lectures, and exercises touching on the different contexts in which

client interviews may take place; the different challenges defenders face while interviewing youth clients and solutions to overcome those challenges that incorporate adolescent development research; the skills needed for effective youth client interviews in a variety of contexts; and the importance of working with parents/guardians to help them understand the need for attorney/client privacy and confidentiality with youth. During training programs based on this lesson, juvenile defenders identify challenges associated with interviewing youth; become familiar with developmental features of adolescence that may impact the interview of a youth in a delinquency case; learn strategies to accommodate, enhance, or overcome developmental barriers to a successful interview; and practice the skills needed to establish a trusting relationship with a youth client.

Helping Educate to Advance the Rights of the Deaf (HEARD)

HEARD¹⁴ is an all-volunteer non-profit organization that promotes equal access to the legal system for individuals who are deaf and for people with disabilities. HEARD primarily focuses on correcting and preventing deaf wrongful convictions, ending deaf prisoner abuse, decreasing recidivism rates for deaf returned citizens, and increasing representation of the deaf in the justice, legal, and corrections professions. HEARD created and maintains the only national database of deaf, hard-of-hearing, and deaf-blind detainees and prisoners. HEARD's mission is to identify and remove barriers that prevent the deaf from participating in and having equal access to the justice system. HEARD's vision is to create a universally accessible American justice system that equitably serves individuals who are deaf and hard of hearing. HEARD uses education to increase the competence, capacity, and capability of justice professionals to manage language access and ability rights concerns and to empower the Deaf Community through education and advocacy.

Youth Friendly Resources

I Got Arrested! Now What: A Guide to the Juvenile Justice System

The Youth Justice Board of the Center for Court Innovation developed and published a comic book-style guide¹⁵ to increase young people's understanding of the juvenile delinquency process in New York City. This four-page instructional guide helps its young audience navigate each step of the process from arrest through disposition and uses developmentally appropriate language to break down complex legal concepts. The guide is now distributed to anyone under the age of 16 who is arrested on delinquency charges in the city.

The Gault Case and Young People's Right: Debating Supreme Court Decisions

In this book,¹⁶ author Laura Cohen explains how *In re Gault*¹⁷ made its way through the courts, what the Supreme Court decided, and how it has impacted children's rights. The book also includes a moot court exercise that will help readers understand the case and the workings

of the court system. This book is a part of a series of books about pivotal Supreme Court cases intended for young audiences.

Why It's Important to Know Your Rights: A Guide to Young People's Rights in Juvenile Delinquency Court

To commemorate the 40th anniversary of *In re Gault*,¹⁸ the seminal Supreme Court decision that guaranteed due process rights for youth in juvenile court, NJDC published a comprehensive guide to young people's rights in juvenile court¹⁹ featuring substantive input and artwork from youth. This guide sheds light on the common pitfalls of youth who come into contact with the delinquency system, addresses frequently asked questions to common scenarios youth may face in various settings, outlines a youth's basic due process rights, and provides a glossary of commonly used legal terms.

RECOMMENDATIONS FOR REFORM

To ensure that youth are meaningfully engaged in the juvenile delinquency process, NJDC recommends that juvenile court professionals:

- Organize a working group to evaluate and assess the use of language and the accessibility of interpretation services in existing juvenile court practices;

- Train juvenile court professionals on how to use developmentally appropriate language, how to work with youth that are deaf or hard of hearing, and how to work with youth who learned English as a second language in the juvenile court setting; and
- Create developmentally appropriate judicial colloquies and other youth friendly resources to increase youths' understanding of the juvenile court process.

CONCLUSION

Using developmentally appropriate language and ensuring language access is vital to facilitate due process. Implementing these recommendations will demonstrate an important step towards developing a juvenile delinquency system that adequately accounts for the unique individual characteristics of youth before the court.

¹ See Michele LaVigne & Gregory J. Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile and Adult Offenders and Why It Matters*, 15 U.C. DAVIS J. JUV. L. & POL'Y 37, 66 (2011) (explaining that, while most litigants are perplexed by the legal process, language impaired defendants face a "daunting series of procedural and linguistic obstacles when they enter the juvenile or criminal process" that threaten "vital constitutional rights to be competent, to assist with their defense, to due process, and to make knowing and intelligent decisions about which rights to waive and which to assert").

² See *id.* at 38.

³ Countless anecdotes describe youth coming out of juvenile court hearings confused about what happened, unclear about the roles of the various adults in the courtroom, and unsure of what was expected of them. For example, in regards to juvenile probation, court-involved youth are customarily required to comply with a lengthy list of rules imposed by a judge or probation officer. Failures to comply, including technical violations that result from lack of understanding, may be seen by a judge or probation officer as willful failures and become aggravating factors at review or disposition hearings that push the youth deeper into the system.

⁴ See LaVigne & Rybroek, *supra* note 1, at 37, 60.

⁵ See ROSA PERALTA ET AL., MODELS FOR CHANGE, WASHINGTON JUDICIAL COLLOQUIES PROJECT: A GUIDE FOR IMPROVING COMMUNICATION AND UNDERSTANDING IN JUVENILE COURT (2012), http://www.teamchild.org/docs/uploads/JIDAN_Judicial_Colloquies_FINAL.pdf; see also ROSA PERALTA & GEORGE YEANNAKIS, MODELS FOR CHANGE, INNOVATION BRIEF: JUDICIAL COLLOQUIES: COMMUNICATING WITH KIDS IN COURT (2013), <http://www.modelsforchange.net/publications/491>. For more information about this project, contact TeamChild at www.teamchild.org.

⁶ The Flesch–Kincaid Grade Level Index and the Flesch Reading Ease Test are readability tests that evaluate the comprehension difficulty of a passage written in English. Scores on the Flesch–Kincaid Grade Level Index correlate with U.S. grade levels. In contrast, on the Flesch Reading Ease Test, higher scores indicate the written material is easier to read (*i.e.* easily understood by an average 11-year-old student or easily understood by 13-to 15-year old students) and lower scores indicate the material is more difficult to read (*i.e.* best understood by university graduates).

⁷ See ERIN J. FARLEY ET AL., CENTER FOR COURT INNOVATION, IMPROVING COURTROOM COMMUNICATION: A PROCEDURAL JUSTICE EXPERIMENT IN MILWAUKEE (2014), <http://www.courtinnovation.org/sites/default/files/documents/Improving%20Courtroom%20Communication.pdf>. This demonstration project has not been implemented in the juvenile delinquency context as of yet, but the mechanisms used and the lessons learned are easily applicable and transferrable. For more information about this project, contact the Center for Court Innovation at www.courtinnovation.org.

⁸ See *id.* at 1. Procedural justice concerns the role of fair and respectful court procedures and interpersonal treatment in shaping litigants' perceived fairness of the justice system and case outcomes. There are several distinct dimensions of procedural justice, including: Voice—litigants' ability to convey their side of the story directly or through their attorney; Trust/Neutrality—the degree to which litigants perceive the decision-making process to be trustworthy and unbiased. This dimension encompasses consistency—all litigants are treated similarly and accuracy—official decisions are based on valid and reliable information; Respect—the degree to which litigants perceive that they have been treated with dignity and respect by court actors (judge, attorneys, court staff, etc.); Understanding—litigants' comprehension of the court process and the language used by judges and attorneys; helpfulness—litigant perceptions of the court staff as caring and supportive of their needs for services or other assistance.

⁹ The working group was comprised of judges, legal theorists, communications experts, court administrators, and a defender, among other esteemed experts.

¹⁰ See EMILY GOLD, BUREAU OF JUSTICE ASSISTANCE, IMPROVING COURTROOM COMMUNICATION: A NATIONAL EXPERIMENT, <http://www.courtinnovation.org/research/improving-courtroom-communication-national-experiment>. The working group outlined best practices to enhance procedural justice within the criminal court context. These practices encourage judges to use plain language to clearly explain the format and purpose of the court proceedings. They also focus on defenders' roles in promoting a client's comprehension and facilitating participation without compromising his or her legal rights. The judicial training that the Center for Court Innovation and the National Judicial College developed contains five modules. The first module provides an overview on procedural justice, its key components, supporting research, and its benefits within the courtroom. The subsequent modules address how verbal and non-verbal communication could be used to enhance perceptions of fairness and how practices might be adapted for special populations (*e.g.*, disabled, mentally ill, self-represented). The final module includes a small group brainstorming session to identify particular practices and environmental changes that could enhance at least one of the dimensions of procedural justice (*i.e.*, voice, neutrality, respect, and understanding).

¹¹ FARLEY ET AL., *supra* note 7, at 6 ("Specific areas of focus included courtroom management/environment; opening soliloquy . . . ; communication protocols at plea or sentencing; work with special populations; courthouse environment; and system performance. (See Appendix A for a sample action plan).").

¹² See MARTY BEYER & ELIZABETH CALVIN, *Module 5: Communicating with Youth: Interviews and Colloquies*, in TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM (2009). *Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum* provides in-depth training materials on adolescent development research and its application to juvenile court practice. The curriculum is intended for juvenile court judges, defense attorneys, prosecutors, and probation staff. As a part of the John D. and Catherine T. MacArthur Foundation's project, Models for Change: Systems Reform in Juvenile Justice, this curriculum is available to jurisdictions across the country to enhance the capacity of professionals to make high-quality, developmentally appropriate decisions about the court-involved youth with whom they work. Interested stakeholders may request a copy of the curriculum at <http://www.modelsforchange.net/publications/255>.

¹³ JTIP is a highly specialized, comprehensive trial advocacy training program for juvenile defense attorneys. Designed to enhance the capacity of juvenile defense attorneys across the country, JTIP provides the foundation for high-quality, meaningful representation. The program is structured to help defenders meet their obligations at every stage of the delinquency system, providing a substantive overview of juvenile and criminal law and developing effective trial advocacy skills. JTIP is designed to encourage interactive and dynamic learning through interactive exercises, hypothetical case scenarios, facilitated discussions, guides for developing legal arguments, and other training tools. For more information on bringing JTIP training to your area, please contact NJDC at inquiries@njdc.info.

¹⁴ *Welcome*, HEARD, <http://behearddc.org/about-us/about-heard.html> (last visited Sept. 23, 2014). For more information, contact HEARD at www.behearddc.org.

¹⁵ CTR. FOR COURT INNOVATION, I GOT ARRESTED! NOW WHAT: A GUIDE TO THE JUVENILE JUSTICE SYSTEM (2010), http://www.courtinnovation.org/sites/default/files/comic_book.pdf. This guide was created by the Youth Justice Board of the Center for Court Innovation in collaboration with the Center for Urban Pedagogy, graphic artist Danica Novgorodoff, and the New York City Department of Probation. For more information, contact the Center for Court Innovation at www.courtinnovation.org.

¹⁶ LAURA COHEN, THE GAULT CASE AND YOUNG PEOPLE'S RIGHTS: DEBATING SUPREME COURT DECISIONS (2006).

¹⁷ See *In re Gault*, 387 U.S. 1 (1967).

¹⁸ See *id.*

¹⁹ RASHIDA EDMONDSON-PETTY, NAT'L JUVENILE DEFENDER CTR., WHY IT'S IMPORTANT TO KNOW YOUR RIGHTS: A GUIDE TO YOUNG PEOPLE'S RIGHTS IN JUVENILE DELINQUENCY COURT (2007), http://www.njdc.info/gaultat40/pdfs/kyr_booklet.pdf.



National Juvenile Defender Center

1350 Connecticut Avenue NW, Suite 304

Washington, DC 20036

202.452.0010 (phone)

202.452.1205 (fax)

www.njdc.info

The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.