

# Engaging parents in Family Court: Lessons from an observational study of child protection cases

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## Abstract

- *Summary:* This study explores the courtroom interactions between judges, attorneys, and parents charged with child abuse or neglect. Drawing on ethnographic observations of court cases in a Family Court located in the northeastern United States, this study seeks to understand how judges encourage or inhibit parents' participation and the strategies and tactics used to influence parental behaviors and obtain cooperation with court orders.
- *Findings:* On one end of the spectrum are judges who engage little, or not at all with parents, preferring to speak only to the professional court actors. On the other end of the spectrum is a more participatory approach, with judges weaving parents into court room exchanges and engaging them in informational and decision-making dialogs. A similar divergence appears when soliciting cooperation from parents, with some judges relying on shaming rituals and others using a softer approach that incorporates praise and support.
- *Applications:* Strategic interventions are identified that will increase parents' cooperation and satisfaction with the Family Court system. These include vigorously engaging in both informational and decision-making dialogs with parents and using rituals of praise and support, rather than shaming.

## Keywords

Social work, child neglect, child abuse, children's court, law, qualitative research

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## **Introduction**

In the U.S., child abuse and neglect is both a social problem and a legal one, with the Family Court serving as the fulcrum for both. Federal legislation, most notably the Adoption and Safe Families Act, has expanded the court's role beyond its traditional function of adjudicating whether a child has been abused or neglected. Courts must also ensure that children are provided with a "safe, permanent and stable home" (National Council of Juvenile and Family Court Judges Project, 1995, p. 10). This often involves continuous monitoring of families, with judges making decisions ranging from the momentous, such as whether to remove a child from a home, to the more routine, such as what type of treatment and services should be mandated. Many of these decisions involve a complex mix of the legal, the social, and the psychological. As one commentator observed, Family Court judges, must "act as social workers, counselors, cheerleaders and disciplinarians, or all of the above, during any particular case" (Maze & Hannah, 2008, p. 33).

However, there has been little systematic research on the interactions between judges and parents in child neglect and abuse proceedings. Much of the focus has been on improving well-documented flaws involving case processing, efficiency, and thoroughness (see for e.g. National Council of Juvenile and Family Court Judges Project, 1995). While observational studies of court room behavior have identified the importance of engaging and acting respectfully toward parents, giving a clear explanation of the law and making supportive comments (see for e.g. Ashford, 2006; Ellet & Steib, 2005; Gover, Brank, & MacDonald, 2007) further empirical research is needed to examine the precise communication pathways for accomplishing this. How do judges demonstrate respect, or not, in court room processes that focus mainly on parental flaws? How do judges engage or inhibit parents in an environment structured by adversarial rules and dominated by professionals, legal, and otherwise, whose job is to speak for, or about, the parent?

## **Theoretical framework**

This study draws on the theoretical frameworks of therapeutic jurisprudence and procedural fairness to explore courtroom interactions. Therapeutic jurisprudence recognizes that "legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) constitute social forces that, whether intended or not, often produce therapeutic or anti-therapeutic consequences" (Winick, 1997, p. 185). In other words, court interactions may either improve participants' psychological well-being or harm them if participants are left depleted, distraught, or confused. Beneficial interactions include judges who are respectful, supportive, empathetic and good listeners, avoid acting paternalistically, actively engage participants in the decision-making process and ensure their voices are heard, and use persuasion rather than coercion (Winick, 2002–2003).

Procedural fairness is also concerned with how people are treated in court. Tyler, the leading scholar in this area, has identified four basic elements of procedural fairness: voice, neutrality, respectful treatment, and trustworthiness (Tyler,

2006). Voice means the opportunity to tell one's story, to actively contribute to, and shape, the narrative of events. It parallels the extensive literature in child welfare on the right of family members to participate in decisions (Darlington, Healy, & Fenney, 2010; Darlington, Healy, Yellowlees, & Bosly, 2012; Firestone, 2009; Olson, 2009; Sankaran, 2007). Neutrality requires an unbiased decision maker who is transparent about how decisions are made. Respect means dignified and courteous treatment. Trustworthiness requires expressions of benevolence, sincerity, and concern.

Procedural fairness and therapeutic jurisprudence provide models for positive court room behaviors. While elements of both, such as respectful treatment and benevolence, overlap there are distinctions between the two. Procedural fairness seeks a respectful, inclusive, and less punitive legal system, and hence one which engenders trust in legal authorities. Therapeutic jurisprudence is more focused on behavioral effects, seeking "to minimize anti-therapeutic effects, and when it is consistent with other legal goals, to increase law's therapeutic potential" (Winick, 2002–2003, p. 1055).

Family Court is an especially fertile arena for examining legal interactions that have social and psychological consequences. Family crisis and conflict involve issues of psychological and social well-being, with judges compelled by law to monitor parents who have abused or neglected their children. Much of a judge's daily work is focused on positively affecting parents' behaviors or sanctioning negative behaviors. A judge's relationship with parents is also ongoing, as parents receive treatment and services that alter the pattern and rhythm of family life and interactions, hopefully for the better.

While many elements of due process, including the opportunity to speak and be judged by a neutral third party, have positive aspects, the adversarial system also creates difficulties unique to child maltreatment cases. Ferreting out facts through formal testimony requires a public and often humiliating airing of parental flaws and failings. Likewise, the monitoring of parents' progress and behavioral changes can be shameful and demeaning. Attorneys, whether speaking for or against parents, may silence and marginalize parents who prefer to speak for themselves about personal family matters. Parents often disengage from the process, with the system "silencing their voices both in and out of court and giving them little control over the process" (Sankaran, 2007, p. 11).

Both therapeutic jurisprudence and procedural fairness suggest ways to surmount some of these obstacles, and hence increase the likelihood of better court outcomes. While no studies have documented how procedural fairness affects Family Court outcomes, the importance of procedural fairness in the context of Family Court has been well established (see for e.g. Sankaran, 2007). In other contexts, studies have consistently demonstrated that people who believe that government authorities have treated them well and fairly are more likely to comply with the law and court orders, including even those detrimental to them (Tyler & Huo, 2002). As one example, batterers who believe their court cases are handled fairly are less likely to violate orders of protection than those who thought they

were treated unfairly (Eckberg & Podkopacz, 2004; Paternoster, Brame, Bachman, & Sherman, 1997). More so than sanctions, the usual tool of the courts, procedural fairness can motivate people to cooperate with the court and to ultimately self-regulate their behavior (Tyler, 2006).

There is also evidence to suggest that therapeutic jurisprudence techniques can lead to better outcomes, including in child welfare cases. Several studies have shown that Family Treatment Courts, which incorporate therapeutic jurisprudence techniques for families with substance abuse problems involved in child maltreatment proceedings, resulted in shorter foster care placements and a greater likelihood that children would be returned to their parents as compared to children in traditional courts (Bruns, Pullman, Weathers, Wirschem, & Murphy, 2012; Green, Furrer, Worcel, Burrus, & Finigan, 2007; Worcel, Furrer, Green, Burrus, & Finigan, 2008; c.f. Pacard-Fritsche, Bryan, Kralstein, & Farley, 2011). While other variables may be at work, particularly in specially designed courts that offer enhanced access to resources and other benefits, these studies suggest that therapeutic jurisprudence techniques make a difference.

Evidence also suggests that judges play a pivotal role in motivating behavioral change. Several studies in the related arena of drug courts, which like Family Court proceedings require behavioral changes to achieve better outcomes, found a correlation between the use of a positive therapeutic approach by the judge and a defendant's adherence to treatment plans (Satel, 1998; Senjo & Leip, 2001). Judges also have an advantage over other court actors, including social workers. As Ashford (2006) found in his study of a Family Drug Court, parents viewed the judges as more trustworthy and fair than Child Protective Services workers. The likely reason for this was both the judges' higher status and more authoritative role and the use of such therapeutic techniques as being supportive and reinforcing and celebrating any successes (Ashford, 2006).

However, research has also shown that injecting a therapeutic approach into such an intimidating and complex environment as Family Court is difficult. Even judges in specially designated therapeutic courts may miss the mark, as Maze and Hannah (2008) found in their qualitative study of a therapeutic juvenile dependency court for domestic violence victims. They observed a disconnect between what judges say and what the parent hears. As they described, "most clients interviewed described feeling they were demeaned and treated unfairly by the same dependency judges who expressed a strong desire to empower and support" (Maze & Hannah, 2008, p. 42). Most of the women interviewed reported negative experiences, claiming that the judge didn't "listen to their side of the story," that they were not treated with respect, and "were spoken to harshly and treated 'like children'" (Maze & Hannah, 2008, p. 37). They often felt like outsiders with little control over how they were represented by the professionals in the room.

Much of the literature has focused on specialized courts, such as Family Treatment Courts, that incorporate therapeutic jurisprudence techniques in their design. Missing are studies that examine interactions in a traditional court, which may include a range of therapeutic and antitherapeutic approaches, and less or

more adherence to procedural fairness. This study fills this gap. Using ethnographic methods, it dissects the interactions and exchanges between judges and litigants in a Family Court located in an urban area in the northeastern United States. The overall goal is to inform and improve court room practices in child neglect and abuse cases by delineating and illustrating the differences between positive and negative interactions, as defined by therapeutic jurisprudence and procedural fairness. As described above, full and active participation is an essential ingredient of both. Securing the cooperation of parents is also a central focus. Thus, this study focuses on these two core aspects of court interactions, participation and cooperation, and the key choreographer of the proceedings—the judge. It addresses the following questions: How do judges encourage or inhibit a parent’s participation in court room proceedings? What strategies and tactics do judges use to secure a parent’s cooperation?

## Methodology

This study draws on data from an urban Family Court located in a state in the northeastern United States. The data are the result of a focused ethnography, a type of sociological ethnography that examines specific and well-defined interactions, acts, or social situations in the field rather than an entire system or culture (Knoblauch, 2005). Focused ethnography is characterized by relatively short-term field visits and intensive data collection to observe specific structured events or activities. It is especially suited to the observation of court room interactions, which are a form of structured social interaction bounded in space and time, with a well-defined beginning and end and cast of characters.

Ninety-four child welfare and abuse proceedings were observed over a one-year period between 2012 and 2013, with 46 observations conducted by the author, and 48 conducted by a research assistant. During the time period of the observations, nine judges were assigned to the Family Court. All nine judges were observed multiple times over multiple observation days, and with one exception, were observed both by the author and research assistant, at different times. The Family Court does not distinguish cases by level of severity, and all types of proceedings involving child abuse and neglect were observed including initial intakes, emergency removal hearings, fact-finding hearings where the charge of abuse or neglect is adjudicated and dispositional, review, and permanency planning hearings, where the family’s progress is assessed and monitored and decisions made as to where the child will live.

During the hearings a detailed log was maintained, recording both what was said (as much as was able to be recorded) and other observations. These other observations include physical descriptions of the parties and the environment of the room; obvious states of emotions (e.g. anger, crying, laughter); the parties’ demeanor, tone, and style (e.g. authoritarian, conciliatory, antagonistic); and quality of personal interactions (e.g. friendly, hostile, apathetic). Routine and standardized data for each hearing observation were also recorded. These include the parties

present, the issue that prompted the hearing, and the length of the hearing. Field jottings and observations were transferred into full field notes immediately after actual observations. In-process memos were used to “identify and develop analytic themes” (Emerson, Fretz, & Shaw, 1995, p. 100).

The data were analyzed using thematic analysis, which has been defined as a “method for identifying, analyzing and reporting patterns (themes) within data” (Braun & Clarke, 2006, p. 79; Guest, MacQueen, & Namey, 2012). Line-by-line coding was conducted first. As an example, variations in participation were noticed, specifically that in some proceedings judges engaged directly in conversation with parents while other judges did not. The code “social lubricants” was used when the judge greeted the parent by name, the code “informational dialogs” when parents were asked to supply information about their case, and the code “decision-making dialogs,” when parents were included in conversations about what steps to take in their cases. A set of codes was identified that described nonparticipation; for example the code “silence” when the parents did not talk at all and “shutting down” when the judge prevented a parent from talking. The properties and dimensions of the central themes of “participation” and “nonparticipation” were then developed and compared.

Data sessions were also conducted between the author and a research assistant, who, as noted above, had also conducted observations. The use of two researchers observing the same site allowed observations to be cross-checked, thus increasing the trustworthiness of the data (Erlandson, Harris, Skipper, & Allen, 1993). In addition to reaching consensus on each judge’s dominant style, the author and research assistant independently coded a portion of the data and then met to reach consensus on code definitions and the properties and dimensions of the emerging themes.

## **Findings**

### *Participation*

Much of the time in Family Court is spent not on fact finding and determining legal fault, but the daily grit and concerns of a disrupted domestic life—how to improve and maintain parent–child relationships, how to protect children from domestic violence, what to do about an acting out child, how to help a drug abusing parent. While neglect or abuse charges are adjudicated in trial-like procedures, most court room interactions are more informal and focused on rehabilitating parents and repairing family relationships, with the judge rendering primarily social, rather than legal, judgments and observations. Unlike formal testimony where the exchanges are narrowly circumscribed and focused on specific facts, these encounters consist of wide-ranging discussions about the parents’ progress and the status of family relationships. There are no set rules or procedures for structuring these dialogs and it is the judge who decides whether or not to directly engage parents.

Judges took varying advantage of the opportunity to involve parents. At one end of the spectrum were instances where the judge did not directly speak to the parent, or did so only after decisions were made, and to primarily admonish them to comply with the decision. At the other end of the spectrum were instances where the judge engaged the parent throughout.

*Keeping quiet.* One of the most notable aspects of Family Court was how little parents (usually mothers) participated, even during the routine informal discussions that characterized most court room interactions. Much of this can be attributed to the adversarial system. From its rules of engagement to the design of the courtroom, it can impede interaction with parents. The physical space, like most court rooms, emphasizes its hierarchical and formal nature. The judge is elevated on a platform, signifying his or her authority and control (Mack and Anleu, 2010). Papers and documents are passed through clerks to the judge, who sits ensconced behind a protective shield comprised of people (assorted clerks and court officers) and objects (tables, computers, and files). The number of professionals that populate the room, including the judge, lawyers for various parties (including the child welfare agency, the parent, and the child), and social workers far outnumber the respondents. Court proceedings are, in essence, conversations between groups of highly skilled professionals. It is not uncommon for five or six professionals to be gathered around the table, with a lone mother or father seated in their midst.

Parents always appear with their attorney, who is provided at no cost to indigent parents. As is true of adversarial proceedings in general, attorneys are expected to act as mouthpieces for their clients, communicating on their behalf so as to filter out any thoughts or deeds that may be harmful to their cases. Thus, protective attorneys often prevented parents' unsolicited and spontaneous attempts at speech, gesturing for them to stop talking, and interrupting and speaking for them if they persisted.

Some judges though amplified this silence, choosing not to directly address the parents standing before them, instead communicating through their attorneys. Topics as varied as how a mother was doing in anger management classes or in drug treatment, the logistics of arranging visitation, a girlfriend's presence when children were visiting, and whether a mother could take her children away for the holidays, to describe just a few examples, were discussed without the parent's input. Family and other conflicts were also mediated without directly addressing or engaging the parents. An illustrative example was a judge, who when told that a father "is not comfortable" with a foster parent because of disparaging comments she made about him, failed to engage the father, instead lauding the efforts of the foster parents "for hav[ing] gone above and beyond" and further noting that the "children have enough going on. They don't need to know what is going on in the court room."

Sometimes the judge directly engaged parents, but only briefly at the end. Similar to the examples described above, when information was being processed and decisions made, the dialog was limited to the professionals, including the judge,

attorneys, and caseworkers. The judge spoke directly to the parent only after a decision was made and only to stress their compliance.

An illustrative example involved a teenage daughter in residential treatment with a tumultuous relationship with her mother. The judge, attorney, and social worker discussed a range of topics, from the child's emotional state and problems, to the request that random drug testing of the mother be eliminated, to the appropriate type of therapy—individual or family. The mother sat silently through these exchanges. After announcing her decision to maintain the goal of returning the child to her mother, the judge directly addressed the mother for the first time, telling her “I want you to keep working on your relationship,” asking her whether she was engaged in individual counseling (to which she answered with a simple yes) and telling her “you need to be supportive.”

As these examples demonstrate, although parents were the central actors in the unfolding drama, they were situated on the sidelines. The parent was spoken about, but not to, and variously referred to as “the mother,” “your client,” or sometimes by their formal name. As they sat silently listening to the dissection of their domestic travails their social marginalization was put on display. What other parents take for granted—the ability to be the prime spokesperson and decision maker for their families—was denied. Instead, others spoke for and about them, as the details of their family life, from the mundane to the momentous, were publicly discussed. They were given little opportunity to rehabilitate their stained identity as a parent. In short, they were treated as objects to be worked on rather than active participants.

*Refusing to be silenced.* While most parents acquiesced to this silent role, some spoke up, disrupting the dialog between the professional actors. Sometimes they interjected to set a record straight or to contradict the picture others drew of them. Thus, one parent sat passively until the judge said she had not been complying with mandated mental health services. She interrupted, ignoring her attorney's gesture to stop talking, and told the judge about her medication's side effects. The judge engaged her and the mother eagerly cataloged all the services she was attending, telling the judge she just met with her counselor last week.

While most of the time judges responded to parents who spoke up unbidden, in some instances they did not. Instead of engaging parents they harshly silenced them, refusing to let the parent talk. Thus, in one such case, a caseworker and the mother's attorney disagreed over whether the mother failed to follow through with mandated services (the caseworker's version) or did so, but was told that no services were available (the mother's attorney's version). The mother loudly insisted to her attorney that she did follow through; in response the judge told her to stop talking. She also excluded her from the conversation, pointedly asking her attorney, and not her, “If there is another appointment, is your client going to go?” When the mother tried to respond, the judge told her “Ms. I'm going to need you to quiet down for a minute.”

In another more dramatic example a mother was removed from the courtroom when she spoke up. At the outset of the hearing it was alleged that the mother



violated an Order of Protection by allowing the father to interact with the child. A request was made to remove the child and return her to foster care. The visibly upset mother first tried to communicate through her attorney, who told the judge “it’s hard for [the mother] to accept that after three years of rebuilding the relationship with her child she will be separated from her.” As the mother tried to speak, the judge glared at her, telling her “Ma’am, that’s *enough!*” As she continued to cry and leaned over to speak with her attorney, the judge told her “This will be the *last* time that I warn you. If you continue you’ll be asked to leave . . . *Look at me when I’m speaking to you!*”

The mother spoke anyway, asking that the foster mother not be allowed at the child’s school because it would interfere with the child’s progress. The judge cut her off, telling her “Ma’am, I am asking you to *stop speaking.*” The mother stopped speaking but began to cry audibly as the judge indicated that the mother would not be allowed “community visits” with the child. The judge chastised the mother for her “poor judgment” in letting the child see the father. When she attempted to speak again and object to the decision, the judge, in a harsh, loud voice, said “This court finds it very [disturbing] that the mother seems less concerned for the comfort and wellbeing of her child than for herself.” The judge asked the court officers to remove her from the room; the mother’s shrieks and cries of “it’s not fair” echoed from the hallway as she was ejected.

*Creating space to talk.* At the other end of the spectrum were proceedings where judges created a participatory, inclusive atmosphere at the outset. In Family Court most proceedings begin with the legal ritual of swearing in the parties. Thus, among the first voice heard in any court proceeding—formal or informal—is the parent’s, who is sworn in by the court officer, and asked to state their name and relationship to the child. The swearing in ritual, deliberately devoid of any social niceties, is not a ritual of welcoming, but solemnity. It signals that words have weight in these proceedings and are not being judged by the ordinary rules of conversation. Required only of the parent (and other witnesses and caseworkers) it differentiates their words from those of the professional actors in the room. It is a ritual that signals caution and silence rather than speech and participation.

In some proceedings judges supplemented this legal ritual with a social one. They incorporated simple social lubricants, such as greeting the mother by name, and asking how they are doing, as in the following example: “Ms. H, How are you? You’re looking well.” This ordinary greeting became less ordinary in the courtroom. Spoken by a judge clothed in a robe and ensconced on an elevated platform, and surrounded by a bevy of professionals, it signaled care, inclusion, and social respect. In marked contrast to instances where the judges failed to personally greet the parent and where the acknowledgment of the parent’s presence was limited to the pro forma swearing in ritual, it communicated that the parent’s voice was welcome. A similar inclusionary and respectful gesture marked the closing of proceedings when the next court date was set. In contrast to less participatory proceedings, where only the attorneys were consulted about their preferences,

the judge asked parents what times and days were convenient for them. Such accommodations were a sign of respect and social inclusion; their absence marks its opposite.

During the proceeding, the parent's voice was incorporated in different ways and in varying degrees. Sometimes the dialogs were informational, with the judge engaging the parent in order to gather facts. Other times, judges would engage the parent in decision-making dialogs. While the professional actors were not excluded from these conversations, they also did not dominate them. Instead the judge wove a web of conversation that encompassed both the attorneys and parents, often alternating between them.

Informational dialogs gave parents the space to complete, or even contradict, agency records or reports. These reports are the prism through which a parent's behavior and progress is assessed and occupy a prime space in the evidentiary hierarchy. Judges often review these reports during the proceedings. In more participatory courtrooms, parents were asked to confirm a stray fact, for example the date of a therapy session or drug test. Or they provided additional personal details, for example how medication side effects were affecting their progress in counseling, or whether they were in contact with a child placed in residential treatment. Inviting parents to supplement or clarify what others have written has both instrumental and symbolic value. Such statements close information gaps, and deflate, albeit slightly, the rarified role bureaucratic records hold in such settings as unassailable facts. Asking parents to confirm, clarify, and even contradict such records positions them as an authority on their own lives. In short, it is a participatory and inclusive gesture.

Decision-making dialogs have similar effects and positioned parents as active agents whose preferences count and who are capable of making decisions about their families. Unlike the examples above, visitation schedules and logistics were discussed directly with the parents. The judge and the mother together conferred as to what family services were needed, for example what residential treatment center was best for a child or how to handle a child's "anger issues." During such discussions the parent was situated as an active participant in the child's care.

### *Compliance*

Equally as significant as whether judges spoke to parents, is how they spoke to them. This was particularly true when judges communicated about compliance with court orders, and especially those directed at improving a parent's behavior, and where a parent's cooperation was key to the repairing and reuniting of families. As noted above, the literature on both therapeutic jurisprudence and procedural fairness suggests several best practices for encouraging compliance and cooperation. Soft, rather than hard power is emphasized; respect and persuasion rather than coercion and shaming are stressed. As with participation, judges' strategies for obtaining compliance diverged; some judges used a heavy hand and other judges employed a softer, gentler touch.

*Shaming rituals.* A common approach among judges who used a harsh style to elicit compliance with court orders was to simply ignore the parent, and talk about them, but not to them, about complying. Compliance messages were delivered through a third party, with the judge, in the presence of the parent, telling the attorney to “talk to your client about compliance.” Other compliance messages were delivered through impersonal third person colloquies. For example in response to being informed of a mother’s inconsistency in visiting her two teenage daughters, the judge, speaking loudly and harshly, but not directly to the mother, said “Children need warm, loving homes. Under the law the children cannot remain in foster care forever. So Ms. (x) needs to start following through with the dispositional orders.”

Failing to talk directly to a respondent—generally a protective mechanism in adversarial proceedings—can have a malignant effect in the highly personal and intimate setting of Family Court, especially when the comments are about people’s behavior. It reinforces their low social status and powerlessness, signaling that the parent is unable and unworthy of joining the conversation. It sends a social message of disrespect and disregard, while also inviting a distant, depersonalized, and remote relationship between judges and parents.

Another approach used by some judges was to directly engage the parent, but primarily to chastise and admonish them. Such judges dictated compliance rather than soliciting it, using authoritarian, paternalistic, or punitive styles of communication. In one such example, a dispute over whether a doctor had cancelled an appointment or the mother missed it concluded with the judge commanding the mother “You are going to call [and reschedule the appointment] as soon as you step out of this courtroom!” In another example, after it was noted that a recent visitation had been cut short when the mother and step mother had an altercation, the judge loudly and forcefully said “If there is *any* such behavior, the agency is to suspend visits *immediately!*” While scowling and pointing and wagging pen, the judge said to the mother “I will *NOT* have adults behaving inappropriately in front of the children!”

Judges also portrayed respondents as errant and irresponsible, as people who were expected to fail. Positive steps were overlooked in favor of highlighting setbacks. For example, in one case a report of a positive clean drug test was followed by an order for another test, with the judge warning the mother of speculative future failures rather than lauding her for past and present successes: “Mother to comply with drug test and random drug tests thereafter. If you have a no-show, I will assume it is positive. If it comes back diluted, I will assume it’s positive.”

In some instances the judge’s critical and harsh stance was not confined to isolated moments, but continued throughout the proceeding. An illustrative example was a case involving a charge of educational neglect, where the child was in danger of failing first grade for the second time. Throughout the proceeding the judge spoke to the mother in a disapproving, impatient tone, sometimes raising her voice, and criticizing her at every juncture and finding fault in all of her efforts and actions. Thus, when the mother explained that the daughter was on a waiting list for tutoring and that she sent a letter to the school through her child to request

tutoring, her attempts were framed as failures by the judge, who told her “a waiting list is not helpful here” and “It isn’t the child’s job to hand in a letter.” Evidence of the difficulty in obtaining tutoring, attested to by the caseworker, was ignored by the judge. After asking the mother if she had a computer the judge chastised her for not using it to help her child, telling her “if you are using a computer at work, you should be using it at home to look for tutoring.” The mother’s quiet attempts to defend herself by claiming that she did “her best” were rejected by the judge, who told her “It’s not about doing your best.”

*Rituals of praise.* In sharp contrast to these negative encounters, were approaches which incorporated support and praise, and which suggested that the judge (and other court actors) and parent were working in partnership. Not surprisingly, these interactions typically occurred in tandem with a more participatory atmosphere, as described above, where the judge incorporated the parent into the flow of conversations from the initial encounter to closing remarks. Such encounters often began with a warm greeting to the parent and ended in a similar fashion. Words of praise were also offered throughout.

In one illustrative and very brief encounter, which lasted a mere 7 minutes, the judge overcame the impediments of the adversarial process, including the imposing physical formality of the court room and the abundance of professionals to engage in a supportive dialog with the parent about the course of her drug treatment. The judge’s initial greeting—“How are you? You’re looking well”—was warm and welcoming. The mother proudly reported she was “172 days clean.” In response the judge loudly applauded, smiling and gesturing for others in the room to also applaud, which all did. The judge then leaned forward and commended the mother for her sobriety: “I want to emphasize these clean days. And I’d like you to do the same.” The judge then urged the mother to do things at her own pace, telling her there are “No celestial brownie points for doing things faster than you are comfortable with,” thus positioning her as autonomous and competent, and able to make decisions about her own treatment. In short, the potentially stigmatizing issue of drug addiction was transformed into an occasion of praise which enveloped the whole court room. The judge concluded by asking the mother to bring in a picture of her son the next time, thus further humanizing the encounter.

In another example, a judge complimented all of the parties on a case, telling them “You’ve all worked very diligently, attorneys, caseworkers” and then asked that the mother (waiting outside the courtroom with the children) be brought in, “so we can acknowledge her efforts.” The judge then solicited her perspective, a rarity in such proceedings. The mother gave what appeared to be an honest and critical answer—that she was tired of jumping through the hoops. When speaking about the child, the judge told her “we thought you may have the best sense of what he needs,” thus restoring her to a mother’s traditional place of prominence. It constructed her as a loving, caring mother, repairing, even if slightly, the stigma of failed mothering embedded in child welfare cases. The inclusive atmosphere—where all were lauded for the efforts—parents, attorneys, and social

workers—transformed adversaries into collaborators, working toward a common goal.

Just as such proceedings began well, with the parents' presence acknowledged, they also ended well. In contrast to more negative encounters where parents were excluded from closing rituals, judges used a few simple words or a well-placed question to close on a positive, caring note. At the end of one proceeding, the judge told the father "Mr. (x) take care, be well, I wish you continued success. Before we adjourn please tell me how Ellen is doing." In another example, the judge ended the proceeding by asking the mother "are you satisfied with the services you have been referred to?" This seemingly simple and straightforward question transformed the mother, albeit briefly, to a consumer rather than a passive receiver of services, with the power to judge their quality. It signaled respect and suggested that parents were entitled to a certain level of service, in contrast to how services for the poor are usually framed. It also gave the mother an opportunity to turn the tables and focus the court on the agency's behavior, rather than her own.

## Limitations

A limitation of this study is that it is limited to observations conducted in a single Family Court, located in an urban area, and which may be dissimilar to other Family Courts on various dimensions, including the severity and number of cases and the characteristics of respondents. Another limitation is that of the nine judges observed, only one was a male, thus the role of gender could not be analyzed.

## Discussion

Engagement and voice are key components of both therapeutic jurisprudence and procedural fairness. Court interactions less bound by the rules of legal talk and primarily focused on social assessments afford ample opportunities for both. As the findings demonstrate, the opposite frequently occurred, with parents often denied the chance to participate, in their own voice, and with their own words.

Arguably judges were simply adhering to the well accepted adversarial path of letting the attorney speak for the client. Rather than disempowering parents, it "can also be experienced as empowering, giving a parent a sense that she does not stand alone, that her position has legitimacy, and that it commands attention and respect from the judge" (Sinden, 1999, p. 390). Especially in Family Court, with its striking power disparities between the professional actors and parents, and where much is at stake, an attorney may be the only way a parent's voice will be heard.

However, other factors militate against this. The very same disparities that separate a judge from a parent also separate a parent and her attorney. The majority of parents in Family Court are often poor people of color with low levels of education; their attorneys are most likely to be well educated, middle

class, and white (Sinden, 1999). This gulf is difficult to navigate as lawyers translate their clients' stories into legal stories. Even lawyers for the poor may "inevitably replay the drama of subordination" (White, 1990, p. 861), where "lawyer-spoken narratives" are substituted for client narratives (Alfieri, 1991). Practical obstacles, including heavy case loads and a lack of time, only add to the difficulty.

Organizational factors can also loosen the bonds between attorney and client. As Knepper and Barton (1997) found in their study of a juvenile court, court professionals who work together daily and come from similar backgrounds are more likely to function as "bureaucratic allies" than adversaries. Lawyers, judges, and others in the professional work group of Family Court create informal rules that help them manage burdensome workloads and challenging cases. Often these informal rules are for their benefit, not necessarily the clients, "allow[ing] them to dispose of cases with a minimum of conflict and uncertainty" (Knepper & Barton, 1997, p. 293). A form of "group think" may also permeate Family Courts, as collectively the group tries to "quickly assess and resolve the family trauma and crisis every day" (Breger, 2010, p. 78).

In short, legal representation is not a substitute for participation. Models of participation that more actively incorporate the parent's voice are needed. As the study's findings indicate, even within the context of the adversarial system, judges have the opportunity to employ a more participatory approach. Modifications large and small can be made, from being cognizant of the power of social rituals, including how parents are greeted and addressed, to engaging parents in both informational and decision-making dialogs.

Judges also chose different approaches to securing cooperation with court orders and treatment plans. More common was the use of stigmatizing shaming, which "involves labeling offenders as deviant and casting them out of the community" (Ray, Dollar, & Thames, 2011, p. 50). Both the person and his or her acts are condemned, which can lead to self-hate and self-degradation. Such an approach is inconsistent with the ethos of both therapeutic jurisprudence and procedural fairness. In contrast, some judges relied on "reintegrative shaming," which condemns the act, but not the person, and uses respect and forgiveness to integrate the person back into the community (Ray et al., 2011). It chooses as its mechanism praise, support, and empathy.

As this study's findings indicate, rituals of praise and support are relatively easy to integrate into a courtroom, including courtrooms not specifically designated as therapeutic, and even in a busy overworked courtroom. Paradoxically, rituals of praise and support can take less time than shaming rituals, which exacerbate tensions and divert court room resources to managing the blowups they trigger. While such approaches can be learned, they are best executed by judges with a certain demeanor and style. Thus, the findings suggest that the selection of judges to such courts should be guided by such considerations.

The meaning of cooperation, though, in the complex environment of Family Court must also be considered. As Slobogin (1995) argued in the related context of drug courts, soliciting cooperation is not necessarily a therapeutic or positive

act, especially when viewed in the context of the treatment plans offered to respondents. As he put it, “one might question whether encouraging participation in treatment plans, cajoling people into making choices and commitments, facilitating feelings of vindications, and enhancing self-esteem are unmitigated psychological goods” (1995, p. 203). Fearful of losing their children, cooperation may mean capitulating to whatever the professionals have decided. Professionals, steeped in “group think” and believing they are doing “moral work,” may also have faulty, stereotypical, and paternalistic notions of what works for families (Breger, 2010; Sinden, 1999). They may also pay insufficient attention to what works or what is needed, as Fedoravicious, McMillen, Rowe, Kagotho, and Ware (2008) found in their study of mental health referrals and assessments in a Family Court, where judges indiscriminately ordered mental health evaluation and treatments without regard to need and/or quality. Cooperation may thus mean agreeing to inadequate mental health services or poorly designed parenting classes.

Just as voice means more than venting, but also to be listened to, cooperation is a two-way street. It requires not only praising and supporting parents but listening closely to what they have to say, and what *they* think they, and their children, need. As Darlington et al. (2012, p. 331) observed, professionals may “have difficulty accepting that families culpable of child abuse and neglect have the capacity to make decisions about their child’s care.” Consequently, alternative and innovative solutions, including ones offered by parents, may be too easily dismissed. In short, acting therapeutically by praising and supporting parents may not be enough. A more collaborative model is needed, with parents helping to design and determine what is therapeutic for them.

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