

SET ANOTHER PLACE AT  
THE TABLE:  
CHILD VOICE IN FAMILY  
LAW CASES

Stacey Platt  
Loyola Civitas ChildLaw  
Clinic  
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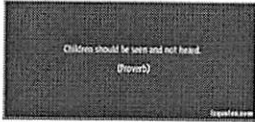
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CHILD ADVOCATE'S VANTAGE  
POINT

- ❖ Policy Struggle leads to the  
Tokenism of Child Voice


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DAY-TO-DAY REALITY:

- ❖ Use and Fear of Child  
Voice
- ❖ Child Power through Voice




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# U.N. CONVENTION ON CHILD VOICE



## Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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# STATE LAW CHILD VOICE REQUIREMENTS



❖ Kansas, Illinois, Colorado: Best Interest Factors

❖ NY: Case Law: Eschbach v. Eschbach (1982)

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# OREGON I



❖ Child's Wishes not included in Best Interest Factors. 2017 ORS 107.137(1)

❖ The court ... may appoint counsel for the children... (I)f requested by... the children, the court shall appoint counsel for the ... children. 2017 ORS 107.425 (6)

❖ The court ... may take testimony from or confer with the child ... may exclude from the conference the parents and other persons if ... in the best interests of the child .... (T)he court shall permit an attorney for each party to attend ... and question the child, and the conference shall be reported. 2017 ORS 107.425 (7)

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## OREGON II



❖The court may cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties for the purpose of protecting the children's future interest. 2017 ORS 107.425(1)

❖ The court, on its own motion or on the motion of a party, may order an independent physical, psychological, psychiatric or mental health examination of a party or the children and may require any party and the children to be interviewed, evaluated and tested by an expert or panel of experts. 2017 ORS 107.425(2)

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## PROCEDURES INCORPORATING CHILD VOICE

- ❖In Court
- ❖In Camera
- ❖Evaluation
- ❖Therapy Reports
  - ❖Family Therapy
  - ❖Child Therapy
- ❖Mediation
  - ❖Consultation Mo



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## RISKS OF CHILD PARTICIPATION



- ❖Due Process & Evidentiary Thorns
- ❖Empowerment, Responsibility, Guilt
- ❖Right of Non-Partici
- ❖Reliability Concerns



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### BENEFITS OF CHILD PARTICIPATION



- ❖ Resolution of Factual Disputes?
- ❖ Procedural Fairness
- ❖ Acknowledgement of Child Agency
- ❖ Modeling Positive Conflict Resolution

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### IN CAMERA TIPS FROM CHILDREN (AND THEIR FRIENDS)



- ❖ Talk less; Listen more; Open up the Floor.
- ❖ Don't make me feel responsible.
- ❖ Tell me the truth about confidentiality, before I talk to you.
- ❖ Just because I'm prepared doesn't mean I'm lying.
- ❖ Just because my feelings are strong, doesn't mean I'm being manipulated.
- ❖ Respect my desire to be heard and truly consider my wishes.
- ❖ Respect my desire to be quiet.
- ❖ Tell me what's going to happen next, and when.

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### MOVING CHILD VOICE FORWARD



- ❖ Shift the Default from "No" to "How?"
- ❖ Expand/Promote Independent Evaluation of Younger Children.
- ❖ Give Children over age 8/9/10/11 an *in camera* option.
- ❖ Institute/Expand Judicial Training on Child Interviewing.
- ❖ Expand Research on the Impact of the *In Camera*, as well as child participation in ADRs and Evaluations.

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