

# Juvenile & Family Court JOURNAL

1993/Vol. 44, No. 1

## “Family Courts” An Effective Judicial Approach to the Resolution of Family Disputes

*Robert W. Page  
Presiding Judge, Family Part,  
Superior Court of New Jersey*

National Council of Juvenile and Family Court Judges

# Juvenile & Family Court JOURNAL

1993/Vol. 44, No. 1

## Table of Contents

<b>Chapter 1</b>	
<i>History of Family Disputes in Court and the Family Court Movement</i> .....	3
<b>Chapter 2</b>	
<i>What Is A Family Court?</i> .....	7
Jurisdiction .....	7
Functions .....	9
Court .....	9
Social Service Delivery System .....	11
Case Processing and Management System .....	12
Organization and Administration .....	13
<b>Chapter 3</b>	
<i>The Justification For A Family Court;</i> .....	15
Its Advantages And Disadvantages .....	15
Unified v. Individual Judicial Systems .....	15
Improved Services .....	16
Damage Control and Empowerment .....	17
Recognition of Importance and Status of the Court .....	19
Costs .....	19
Expertise and Training .....	21
Judicial Exhaustion, "Burn Out" and Rotation .....	22
One Central Facility vs Multiple Locations .....	23
<b>Chapter 4</b>	
<i>Principles</i> .....	25
<b>Chapter 5</b>	
<i>Establishing a Family Court</i> .....	39
Forming a Working Committee and Designating Responsibility .....	39
Selecting the Appropriate Court .....	40
Overcoming Resistance to Change .....	40
Developing and Marshalling Resources .....	43
Evaluation .....	44
<b>Chapter 6</b>	
<i>Conclusion</i> .....	47

“The common picture of an American court is that of an institution rooted in the past, resistant to change, and resigned to inefficiency.”

C.C. Torbert, Jr.<sup>1</sup>

The concept of a unified and comprehensive family court system is worthy of full implementation. The idea that all judicial proceedings involving children and relating to family life should be collected and resolved in a single court system is not novel,<sup>2</sup> but has proceeded slowly over the past thirty years.<sup>3</sup> With substantial increases in court calendars and steady raises in problems within dysfunctional families, considerable interest has emerged in recent years<sup>4</sup> in the reorganization of state court systems in this manner.<sup>5</sup> As this trend continues there must be a greater understanding of what actually constitutes a family court.

The question of why a family court is preferable needs exploration. The advantages and disadvantages of court reorganization in this form must be understood and specifically enunciated. The resolution of these questions will determine the nature and extent of any effort in this direction.

Even when the questions of why a family court system should be established and what it will contain are answered, the necessity remains to establish a set of principles upon which all judicial actions, projects or efforts can be based. Without these principles there is a substantial risk of creating a family court in name only, which promises so much, but fails to deliver.

To establish a unified and comprehensive family court it is not necessary to “reinvent the wheel.” The experience of existing family courts and the problems and solutions encountered by newly developing state family court systems should be studied and utilized. One of the reasons why more states have not been able to move in this direction is the failure to overcome internal and external resistance to change. These problems must be brought into the open and plans developed to meet these concerns.

---

<sup>1</sup>In his opening remarks at “The Future and the Courts Conference” held in San Antonio in May 1990, C.C. Torbert, Jr., Chairman of the Board of Directors of the State Justice Institute and former Chief Justice of the Supreme Court of Alabama, continued:

“Our society needs a court system that can provide justice speedily, efficiently, and responsively – and needs it too much to allow its future to be left to chance. . . All of us who are involved with the state courts of this nation need to be more active and purposeful in shaping their future.” Dator and Rodgers, *Alternative Futures for the State Courts of 2020*, 1991.

<sup>2</sup>In advocating for the establishment of a unified court to hear family law matters, Dean Roscoe Pound of the Harvard Law School noted: “It has been pointed out more than once of late that a juvenile court . . . a court of divorce jurisdiction . . . a court of common-law jurisdiction . . . and a criminal court or domestic relations court . . . all of these courts might be dealing piecemeal at the same time with the difficulties of the same family. It is time to put an end to the waste of time, energy, money, and the interests of the litigants in a system, or rather lack of system, in which as many as eight separate and unrelated proceedings may be trying unsystematically and frequently at cross-purposes to adjust the relations and order the conduct of a family which has ceased to function.” Pound, R. “The Place of the Family Court in the Judicial System,” 5 *Crime & Delinquency* 161, 164 (1959).

<sup>3</sup>Rhode Island established the first family court system in 1961.

<sup>4</sup>Katz and Kuhn, *Recommendations for a Model Family Court*, A Report from the National Family Court Symposium of the National Council of Juvenile and Family Court Judges, May 1991.

<sup>5</sup>Vermont opened its family court in October 1990, family courts are functioning in some areas of Florida and Kentucky. A two-year pilot family court project in Virginia operated for the calendar years of 1990 and 1991. In Virginia, the enabling legislation required all participating courts to cease their consolidated family court operations as of January 1, 1992, and await further evaluation and report to the legislature by June 1992. The *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* was presented on June 23, 1992. In California, a pilot family court project has been established in Santa Clara County and Sacramento. (Interview with Kathy Smith, Division III Manager, Superior Court of Santa Clara, California, January 1993.)



tus of all family members as individuals has also increased the demand for more responsive laws and a better judicial system to most effectively resolve their disputes.<sup>15</sup> Legislatures have responded with increased legislation involving family relationships, including easy divorces, with the attendant new issues, e.g., equitable distribution, joint custody. These new laws and the formalization of juvenile court processes has substantially increased the workload and focus upon courts deciding intrafamilial disputes.

At the same time other movements focusing on court reform have led toward the family court. These include the movement toward unified trial court systems, which emphasize the avoidance of overlapping and duplicative judicial processes. From both the consumer and taxpayer points of view have come demands of the general public for more efficient and higher quality governmental services. To this extent fragmented and conflicting court systems serve to frustrate the demand for reform by litigants who are required to assert and reassert their status in multiple forums.<sup>16</sup> Nowhere is this phenomenon more easily observed than in the multiple litigation of family issues. With spiraling legal costs, as well as the emotional turmoil of repetitive litigation, the general public has become very dissatisfied with incomprehensible multiple judicial systems.<sup>17</sup> Similarly, child advocates have experienced the frustration

of having the status of their wards determined inconsistently by different courts, which is counter-productive to the stability necessary to healthy child development.

The primary reason for the focus of court reformers on the establishment of family courts at this time is the increasing realization of the importance of these courts hearing intrafamilial disputes and their emergence as a respected judicial system. Stated simply, the lights have been put on a heretofore darkened area of the courthouse. With the increased status comes the increased demand for a responsible and effective system.

In response to this increased awareness of the court, numerous studies have been conducted at the national<sup>18</sup> and state<sup>19</sup> levels which recommended the establishment of family court systems from different perspectives. The National Council of Juvenile and Family Court Judges has maintained a leadership position in the advocacy of family courts since 1959.<sup>20</sup> The National Council has provided annual programs on the subject and presentations throughout the country upon the request of many states.<sup>21</sup>

In 1914, the first family court was established in Hamilton County, (Cincinnati) Ohio.<sup>22</sup> The State of Rhode Island began the first state-wide comprehensive family court in 1961.<sup>23</sup> In 1965, Hawaii passed a family court act which at that time set forth the most comprehensive

---

<sup>15</sup>"When our divorce law was originally drawn, woman's role in society was almost totally that of mother and homemaker. She could not even vote. Today, increasing numbers of married women are employed, even in the professions. In addition, they have long been accorded full civil rights. Their approaching equality with the male should be reflected in the laws governing marriage dissolution and in the decisions of the courts with respect to matters incident to dissolution." Assembly Committee Report on Assembly Bill No. 530 and Senate Bill No. 252 (The Family Law Act) submitted by Committee on the Judiciary, James A. Haynes, Chairman, August 8, 1969, printed in *Assembly Daily Journal* (Sacramento, California, Aug. 8, 1969).

<sup>16</sup>Arthur, L., *A Family Court - Why Not?*, 51 Minn. 223-225, (1966).

<sup>17</sup>The impetus behind the controversial move toward the unification of the Massachusetts trial court system, which presently is organized into 7 different trial courts, has come from a series of expose articles in the *Boston Globe*. (Interview with Daniel Crane, Esquire, President of Massachusetts Bar Association March 1992.)

<sup>18</sup>*Task Force on Courts of the National Advisory Commission on Criminal Justice Standards and Goals*. (Std. 14.1) (1973); *Model Acts for Family Courts and State-Local Children's Programs*, U.S. Department of Health, Education & Welfare (1974); "Standards for the Administration of Justice," issued as a part of the *Report of the National Advisory Committee on Criminal Justice Standards and Goals*, (Standards 3.11 and 3.12) (1980); *Standards Relating to Court Organization*, American Bar Association, Judicial Administration Division, Standards of Judicial Administration, Vol. 1 (1980).

<sup>19</sup>(Florida) *Report of the Commission on Family Courts* (1991); (Maine) *Final Report of the Commission to Study Family Matters in Court* (1986); (New Jersey) Pathfinders Committee Report, 125 N.J.L.J. 41 (1986); (Virginia) *The Adjudication of Family Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985) and *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992); (Maryland) *Final Report Governor's Task Force on Family Law*, October, 1992.

<sup>20</sup>The "Standard Family Court Act" was promulgated by the National Council on Crime and Delinquency, in cooperation with the National Council of Juvenile and Family Court Judges and U.S. Children's Bureau in 1959.

<sup>21</sup>The National Council of Juvenile and Family Court Judges sponsored a National Family Court Symposium which was held in October 1990, with representatives from 20 states in attendance. The conference published its findings in May 1991. Katz and Kuhn, *Recommendations for a Model Family Court*, National Council of Juvenile and Family Court Judges (1991).

<sup>22</sup>Mulvey, E.P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior* Vol. 6 No. 1, 1982; Kephart, W., "The Family Court: Some Socio-Legal Implications," 1955 *W.U.L.Q.* 62-67.

<sup>23</sup>R.I. Gen. Laws § 8-10-3 (1961).

jurisdiction in our nation.<sup>24</sup> Thereafter, family courts were established in Delaware (1971),<sup>25</sup> South Carolina (1968), District of Columbia (1970), Louisiana (1979), New Jersey (1984) and Vermont (1990). Pilot family court programs have come into existence in courts in Florida, Kentucky, Maine and Virginia. Outside of the United States, unified family courts have been proposed in Canada<sup>26</sup> and New Zealand.

---

<sup>24</sup>HAW. REV. STAT. 31, § 571 (1965).

<sup>25</sup>Del. Code Ann. tit.10 § 902 (1971); S.C. Code Regs. 14-21 (1968); D.C. Code Ann. § 16-2301 (1970); La. Rev. Stat. Ann. § 13:1401 (West 1979); N.J. Stat. Ann. § 2A:4A-20 (1984); Vt. Stat. Ann. tit. 4 § 451 (1990).

<sup>26</sup>"The Quebec Experience: Codification of Family Law and A Proposal for the Creation of a Family Court System," 44 *La. L. Rev.* (1984).



# What Is A Family Court?

The term "family court" has different meanings to different persons.<sup>27</sup> Many state, county and even local courts call themselves a "Family Court" without any thought about what the term includes substantively or procedurally.<sup>28</sup> The family court must be considered in terms of both jurisdiction and function.

## Jurisdiction

The basic element of any court system is jurisdiction. As the power base or foundation for any court action it must be clearly established at the outset. This involves the collection of all types of family dispute cases into one unified court system. In practice these various case types are divided among courts at the highest trial level, generally named Circuit,<sup>29</sup> Superior,<sup>30</sup> Common Pleas,<sup>31</sup> County,<sup>32</sup> District,<sup>33</sup> Probate<sup>34</sup> or even Supreme<sup>35</sup> and limited or inferior courts, generally named Juvenile,<sup>36</sup> Domestic relations,<sup>37</sup> Family,<sup>38</sup> Probate, District, or City or Parrish<sup>39</sup> courts.<sup>40</sup>

- Jurisdiction over all family disputes can best be established by statute or constitutional amendment. Where the jurisdiction over all family matters already exists in different divisions on one level, a family court can be created merely by a court rule<sup>41</sup> or an order of the state supreme court consolidating and assigning such cases into a "Family Division."<sup>42</sup> In practice, in some states or areas within a state, the jurisdiction over all family matters is collected *de facto* merely by assignment of all such cases to one judge or a small number of judges, regardless of the label of the court into which the complaints were first filed.<sup>43</sup> Whether or not the jurisdiction is established *de jure* or *de facto* it should be broad-based with authority over all necessary persons, parties and agencies involved.

The jurisdiction of a model family court should include:

Abuse and neglect--Adoption--Alimony--Child Custody and Visitation--Child Support--Dissolution of Marriage (in-

<sup>27</sup>"Family court means different things to different people. New York's does not handle divorce actions. Milwaukee's does not handle juvenile proceedings. Honolulu's is patterned after the classical model." Corbett & King, *The Family Court of Hawaii*, *Family Law Quarterly* 1968 2(i) 32-40.

<sup>28</sup>"Family" courts vary even more widely than juvenile courts, both in function and in name. Most courts which are designated as Family Courts or Domestic Relations Court are not integrated family courts. For the most part, such courts deal with segmental aspects of family problems, i.e., some handle desertion cases and cases involving nonsupport of indigent parents, others have only juvenile jurisdiction, etc. The true family court, on the other hand, is a court which is empowered and staffed to handle all family problems of a justifiable nature." Kephart, W., "The Family Court: Some Socio-Legal Implications," 1955 *W.U.L.Q.* 62-73.

<sup>29</sup>States with "Circuit" Courts are Alabama, Florida, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Oregon, South Dakota, Tennessee, Virginia, West Virginia and Wisconsin.

<sup>30</sup>States with "Superior" Courts are Alaska, Arizona, California, Connecticut, Georgia, Indiana, Maine, New Hampshire, New Jersey, North Carolina, Vermont, Washington.

<sup>31</sup>States with "Common Pleas" Courts are Ohio and Pennsylvania.

<sup>32</sup>Family law cases are tried in "County" Courts in Denver, Colorado.

<sup>33</sup>States with "District" Courts are Alabama, Colorado, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Texas, Utah, Vermont and Wyoming.

<sup>34</sup>States with "Probate" Courts are Indiana, Maine, Massachusetts, Michigan, New Hampshire and Vermont.

<sup>35</sup>New York only.

<sup>36</sup>States with "Juvenile" Courts are Colorado, Georgia, Indiana, Louisiana, Massachusetts, Oregon, Tennessee, Nebraska, Utah and Virginia.

<sup>37</sup>Virginia is the only state that has a "Juvenile and Domestic Relations District Court."

<sup>38</sup>States with "Family" Courts are Delaware, District of Columbia, Hawaii, New Mexico, New York, Rhode Island, South Carolina and Virginia.

<sup>39</sup>Louisiana is the only state with a City or Parish Court.

<sup>40</sup>The terms "District," "Family," and "Probate" are used by different states to label both courts at the highest level and those at a lower level depending upon the state, e.g., the "Family" courts of Hawaii and Rhode Island are considered at the highest level while the "Family" courts of South Carolina and Delaware are considered inferior courts. A comprehensive discussion of the subject is found in *Courts Exercising Family Court Jurisdiction*, a publication of the National Center for Juvenile Justice (August 10, 1990).

<sup>41</sup>In addition to the specific statutory authority, New Jersey has an all inclusive court rule. *R. 5:1-2* provides "All civil actions in which the principal claim is unique to and arises out of a family or family-type relationship shall be brought in the Family Part. . ." *N.J. Court Rule 5:1-2* (1990).

<sup>42</sup>In Florida, the Supreme Court, in an opinion by Justice Ben Overton, required the Circuit Courts to establish a Family Division under its constitutional authority without further legislation. *In Re: Report of Commission on Family Courts*, 588 So.2d 586, 16 FLW § 609 (1991).

<sup>43</sup>In the Portland, Maine Family Court Project all family law cases are collected and assigned to one court from the Circuit, District, and Administrative Courts. (Interview with Judge Dana Cleaves, Administrative Court (Jan. 1992).) Judge Cleaves serves as the Chief Judge of the Family Court Project.



cluding divorce, annulment, separate maintenance, etc.)--Domestic Violence--Spousal Abuse--Elder Abuse--Consent to Marriage by Minors--Management of Minor's Funds--External Review of Children in Placement--Juvenile Delinquency--Palimony--Paternity--Status Offenses (including children or families in need of supervision, incorrigibility, truancy, runaways, dependent and neglected, etc.)--Termination of Parental Rights.

In addition to the above-discussed basic case types, other areas which should be considered for inclusion in the total jurisdiction include:

Adult Criminal (intrafamilial)--Appeals of Agency Decisions affecting children--Competency--Commitment to Mental Health Facilities or Institutions--Motor Vehicle Offenses of Minors.

While these case types provide the basic ingredients of a full "Family Court," they may be supplemented by more specifically designated areas.<sup>44</sup>

The primary indicator of the establishment of a comprehensive family court is the placement of cases involving both juvenile delinquency and divorce within one single court system<sup>45</sup> Generally, divorces have been granted by courts at the highest trial levels, with privately retained counsel at hearings or trials located in the more ambient parts of the courthouse. This is in contrast to lower level trial courts which generally hear juvenile or domestic relations

issues between parties, who frequently appear *pro se*, at hearings located in the less desirable areas of the courthouse or outside of the courthouse complex. Since the status of the court is important in its ability to obtain the resources and facilities necessary to perform most effectively, all jurisdictional case types should be combined at the highest judicial level whenever possible.<sup>46</sup> To the extent that any part of the established jurisdiction is not exclusive but concurrent with any other court, this weakens the family court's effectiveness.<sup>47</sup> All issues involving the custody or visitation of children should be determined exclusively in one court system, rather than in multiple cases located in different courts.<sup>48</sup> Since the sociological, psychological and legal principles applied do not vary in custody decisions, they should be determined consistently in one court.

Concurrent adult criminal jurisdiction over crimes involving family members is the furthest extent to which family courts have gone. Some states have concurrent or limited criminal jurisdiction in the family courts, shared with adult criminal courts, particularly in cases of intrafamilial abuse or domestic violence.<sup>49</sup> Some may claim that the family court will not fully recognize the interest of the state to provide a deterrent to criminal activity or will in some way be more lenient than the adult criminal system.<sup>50</sup> Consideration of the placement of criminal matters within the family court involves the recognition that the imposition of some sentences involves incarceration, fines and probationary terms which impact substantially upon

<sup>44</sup>More specific case types recommended for inclusion in a model family court are set forth in Katz and Kuhn, *Recommendations for a Model Family Court*, a Publication of the National Council of Juvenile and Family Court Judges (May 1991).

<sup>45</sup>New York established a "Family Court" in 1963 but limited its jurisdiction to exclude divorce proceedings. Similarly, in reverse, family courts being established in Florida by Order of the Supreme Court are not required to include juvenile delinquency. *In Re: Report of Commission on Family Courts*, 588 So.2d 586, 16 FLW § 609 (1991).

<sup>46</sup>Juvenile and Domestic Relations Courts situated in the lower courts do not appear to carry the needed clout to carry out this mission." Mulvey, E.P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior*, Vol. 6 No. 1, 1982.

<sup>47</sup>The omission by the New York Family Court of divorce jurisdiction causes continued concurrent litigation of key issues of child custody and support between different courts. This effect was commented upon by Professor Mulvey who noted: "... a separate family court division in itself does not appear to guarantee successful implementation unless plenary jurisdiction accompanies such a designation. As demonstrated in the early New York Family Courts, duplication and multiple suits occur as long as certain proceedings do not have to originate or stay in the family court (Paulsen, 1962; Dyson and Dyson, 1969 IJA/ABA, 1977). Jurisdiction appears to set the limits of the court's ability to achieve coordination." Mulvey, E.P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior*, 6 No. 1, 1982.

<sup>48</sup>Issues of custody and visitation can be presented in complaints for divorce, domestic violence, child abuse or neglect, status offenses, juvenile delinquency, or adoption, as well as in complaints brought solely to decide custody or visitation questions when the parents' marital status is not in issue.

<sup>49</sup>Colorado, Hawaii, New Jersey, Virginia.

<sup>50</sup>Both sides of the question of the inclusion of criminal jurisdiction over intrafamilial matters were noted in The National Family Court Symposium held in Las Vegas in 1991. The conference report notes:

"Not receiving consensus approval was the assumption of criminal jurisdiction over intrafamilial matters such as spouse abuse and child abuse inclusive of physical and sexual abuse. While proponents for inclusion of this jurisdiction in family court argued that such a system promotes coordinated delivery of services to the family and discourages multiple interviewing of victims, as well as fragmented delivery, those arguing against such jurisdiction cited possible due process violations and community pressure for a more punitive stance toward offenders as rendering such jurisdiction inappropriate for the family court." Katz and Kuhn, *Recommendations for a Model Family Court*, May 1991.

all family members. The practical effects of such sentences may tumble into the family court in the resolution of disputes involving child support, divorce, or placement of children during the period of parents' incarceration. Intrafamilial criminal offenses, e.g., domestic violence, spousal and elder abuse, should be heard in the family court to maximize the information available to the court and coordinate most effectively the criminal sanctions with the civil restraining, child support and custody orders. At the minimum, concurrent jurisdiction in such cases is necessary in order that the unresolved familial issues and disputes be effectively determined without unnecessary delays or hardship upon the innocent.

In addition to jurisdiction by subjects and persons, every family court must have jurisdiction over all necessary methods of enforcement of litigant's rights, contempt, interstate compacts and all such laws involving children or families, e.g., Uniform Reciprocal Support Enforcement Act (URESAs) and Uniform Child Custody Jurisdiction Act (UCCJA). Family court jurisdiction should also include administrative and quality control over all referees, masters, commissioners or other persons performing any of the above functions.<sup>51</sup>

The Rhode Island and Hawaiian family court systems' comprehensive jurisdictions extend to authority to review actions of state agencies involving children.<sup>52</sup> This extended jurisdiction to act as a watchdog to ensure the provision of adequate services to children is a valuable component to a family court system which is charged

with the responsibility to protect children.<sup>53</sup>

## Functions

The functions of a comprehensive family court involve four basic elements which need identification and consideration from the outset. First, as a *court* it must strictly adhere to legal and equitable principles and refuse to act without a solid legal basis. Second, the family court system should be recognized as a *social service delivery system* which requires and provides necessary services either directly or by way of referral to outside agencies. Third, as a *unified case processing and management system*, the family court provides substantial screening, assignment and monitoring of cases. Finally, the *organizational structure and administration* of a total family court system needs to provide the leadership necessary to ensure that it functions in accord with established principles and standards.

## Court

The family court is a *court* for families.<sup>54</sup> When considered in terms of the disputes presented and the impact of their resolution upon the litigants and others, the family court is the most powerful branch of the judiciary. This power comes from many sources including constitutional mandates, federal and state statutes, court rules and case precedents. In addition to its written authority, the family court derives inherent powers, as *parens patriae*,<sup>55</sup> from its historic position as a court of chancery.<sup>56</sup> These equitable powers are recognized specifically by

<sup>51</sup>In this respect, Section 1.12(b) of the Standards Relating to Court Organization provides: "... To assist the judges, the court should have a convenient number of judicial officers performing such function as ... receiving testimony as referee or master ... all of which are subject to judicial approval." *Standards Relating to Court Organization*, American Bar Association, Judicial Administration Division, Standards of Judicial Administration, Vol. 1.

<sup>52</sup>R.I. Gen. Laws § 8-10-3(c) (1961); HAWAII REV. STAT. ANN. tit. 31, § 571 (1965).

<sup>53</sup>As to this factor, Professor Mulvey notes: "Judging from the available history of several states' attempts at statewide family court systems (Dyson and Dyson, 1968: IJA/ABA, 1977) the issue of jurisdiction is important because it directly affects the ability of the court to provide unified services. ..." Mulvey, "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior* Vol. 6, No. 1 (1982) (emphasis supplied).

<sup>54</sup>Former Chief Judge William C. Gordon of The Family Court of the State of Delaware in his article "The Family Court: Advantages and Problems" notes: "By definition, a family court is a court, and must function as a court. To believe otherwise is a contradiction in terms. Worse still, it is utter hypocrisy for an institution that purports to interpret the law, adjudicate conduct under the law, and to apply it with great authority, to question whether it is bound by all legal principles. ..." 2 *Juvenile Justice*/November 1974 (emphasis supplied).

<sup>55</sup>*Parens patriae* is defined as "Father of his country; parent of the country. In England, the King. In the United States, the state, as a sovereign - referring to the sovereign power of guardianship over persons under disability." *Black's Law Dictionary* 4th Ed., p. 1269, St. Paul: West Publishing Co., 1968.

<sup>56</sup>It appears well-settled that courts having historic chancery or equity jurisdiction exercise and control the sovereign power called *parens patriae*. This historic jurisdiction was developed in 13th and 14th century England. In early English common law, all judicial authority reposed in the crown. Ultimately, as the population expanded and society's problems grew complex, the crown delegated these problems to courts of law for resolution. The King retained certain prerogatives to insure that ultimate equity was done. When an injustice was found at law, or perhaps the law had no remedy for a particular circumstance, a plea to the crown or to its lord chancellor led to the creation of a separate system -- one where the chancellor (hence chancery) as keeper of the King's conscience sought to do equity and cure the injustice and inequities often caused by the inflexible forms of the common law. As this alternative system grew, its hallmark became one of flexibility and invention to meet new situations and circumstances. ... Kimmelman, I., "Chancery: Introduction and Perspective," *New Jersey State Bar Journal* (Summer 1977). Thus ... this court, as the present day successor to a part of that historic legacy of equity jurisdiction, applies said jurisdiction to the issues herein presented; to wit: *the best interest of a child and contractual rights, if any, of the litigating parties.*" (Emphasis supplied). *In re Baby M.*, 217 N.J. Super. 313, 323-325 (Ch. Div. 1987).

latures in enabling statutes, specific enactments and authorization to use equitable principles.<sup>57</sup>

A court derives its very existence and the validity of its orders from an initial determination of a legal basis to act. This is true regardless of the substantial needs of those who are affected most by the decision. A good rule of thumb is, the more substantial the need for judicial involvement, the more the need to be substantial in finding the legal basis. A legal basis includes the findings of jurisdiction and venue at the outset, full respect of the rights of due process, with reasonable notice and an opportunity for all to be heard and adherence to all statutes, court rules, case precedents and established legal and equitable principles. The family court is no place for either judicial scofflaws or goodwill ambassadors without portfolio.

Prior to *In Re Gault*,<sup>58</sup> the treatment of children in our nation's juvenile courts could be accurately described as "the worst of both worlds."<sup>59</sup> In addition to the juvenile court, the area of crisis intervention provides the most common opportunity for conflict between the role of the family court as a court of law and the need to provide services to families seeking emergent relief. Frequently persons will come to the court with allegations that a child has been abused or severely neglected while in the custody of or residing with another party. They request immediate intervention by a protective order without providing the other party with notice and an opportunity to be heard. In providing quick access to both formal and informal mechanisms for dispute resolution, family courts often func-

tion as the "Emergency Room" of the legal system. Service of process problems test the court's willingness to act without proper legal foundation. Yet another area in which family courts must safeguard the procedural due process rights of all involved is in the area of the reception of confidential reports and information from treating or evaluating experts or agencies which are sent directly to the court.<sup>60</sup> In order that all involved obtain a fair hearing it is important that there be no hidden information, reports or other information considered by the court without advising the parties of its existence or giving them a right to confront and challenge the author. Too often such information is innocently received in the mail from parties or other persons who "just want to be sure that the court has all the facts."

The standards of proof, e.g., beyond all reasonable doubt in juvenile delinquency,<sup>61</sup> clear and convincing in termination of parental rights,<sup>62</sup> and a preponderance of the believable evidence in most other case types, must be fully determined before a family court exercises its substantial power. Jurisdictionally required factual determinations must be substantiated first, even though the alternative may be not to provide needed protection to an allegedly battered woman or to allow some children to be returned to a potentially abusive situation or to "beat the rap" for their delinquent misbehavior. While the court's function as the protector of constitutional rights is most often thought of with respect to adults, the judicial role with respect to children is clearly established and can not be overlooked.<sup>63</sup> Recognition of the individual rights of children has

<sup>57</sup>In Delaware, 10 Del. C. Sec. 925 (15) provides "In any civil action where jurisdiction is otherwise conferred upon the Family Court, it may enter such orders as against any party to the action as the principles of equity appear to require." (Emphasis supplied.)

In Vermont, the family court statute specifically recognizes "The Family Court is a Court of Record and has all of the equitable and other powers of the Superior Court as to civil matters within its jurisdiction, except as specifically limited by statute." (Emphasis supplied.) VT. STAT. ANN. tit. 4 § 451 (1990).

<sup>58</sup>*In re Gault*, 387 U.S. 1, 19 L. Ed 2d 527, 541 87 S.Ct. 1428 (1967). As to the need for family courts to insist upon due process, Arthur T. Vanderbilt, former Chief Justice of the New Jersey Supreme Court, wrote: "In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally a fair hearing." Footnote 40 from *In re Gault*, 387 U.S. 1, 19, 19 L.Ed 2d 527, 541, 87 S.Ct. 1428 (1967).

<sup>59</sup>*Kent v. U.S.*, 383 U.S. 541 (1966). In *Kent*, Justice Fortas noted: "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded adults nor the solicitous care and regenerative treatment postulated for children. 383 U.S. at 555 (footnotes omitted).

<sup>60</sup>N.J. Court Rule R. 5:3-3(d) provides in part: "The expert shall not communicate with the court except upon prior notice to the parties and their attorneys who shall be afforded an opportunity to be present and be heard during any such communication between the expert and the court." N.J. Court Rules, 1990.

<sup>61</sup>*In re Winship*, 397 U.S. 358 (1970).

<sup>62</sup>*Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982).

<sup>63</sup>In *Brown v. The Board of Education of Topeka*, 347 U.S. 483 (1954), arguably our most important contemporary exercise of constitutional jurisprudence, the court recognized and enforced the individual rights of children to the extent of revamping our nation's educational system. In the developing area of children's rights, the extent to which a court will go is observed in the area of desegregation of schools and the frequent recognition of the constitutional right of children to receive a quality education. *Abbott v. Burke*, 100 N.J. 269 (1985); *Serrano v. Priest*, 487 P.2d 1241 (1972); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); *Edgewood Independent School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); Chambers, "Adequate Education for All: A Right, An Achievable Goal," *Harvard Civil Rights - Civil Liberties Law Review*, Vol. 22, p. 55. Other areas of developing children's rights include a "right to treatment" and other areas in which the court has recognized that children have rights independent of their parents. *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974). Davidson, "The Child's Right to be Heard and Represented in Judicial Proceedings," 18 *Pepperdine L. Rev.* 255.

increased significantly by court decisions and statutes within this country<sup>64</sup> and internationally.<sup>65</sup> The power of the court is exercised significantly within the discretion of each judge. The unbridled exercise of judicial discretion without definitive standards has been a concern of legal scholars.<sup>66</sup> In making factual conclusions and legal determinations family court judges need to develop the relevant expertise. While judges consider sociological and psychological factors and expert opinions, they cannot avoid the ultimate decision in cases tried to conclusion. Beyond financial guidelines, the complex nature of intrafamilial problems in a changing society make the development of objective standards for judicial determinations, beyond financial guidelines, incapable of formulation by consensus and difficult to enforce. Substantial reliance upon the decision of the trial court or its methods of resolving the dispute is shown by the lack of utilization of the appellate process.<sup>67</sup> For most of the families coming before it, the family court is truly the court of last resort.

In addition to the substantial powers of a family court judge, the roles of the judge in court vary significantly depending upon whether or not the litigants are represented by counsel and the type of case presented. In the cases in which the parties are *not* represented by counsel, the judge often carries the dual role of presenter and trier of the facts, in addition to the expected function of determining the judgment and setting the specific terms of all dispositional orders. Family court orders and judgments are significantly more detailed and comprehensive than those of other divisions of the judiciary.

The effectiveness of family court orders is seen most often in the volume of post-judgment motions or applications and enforcement proceedings. Since courts are only as valid as the

effectiveness of their orders, this factor becomes an element to be considered in arriving at the judgment itself. For example, it is generally accepted that court orders that are entered as a result of an agreement between the parties are more effective than those which are imposed after adversarial proceedings.<sup>68</sup>

While the powers of the family court judge have been described as "almost unlimited,"<sup>69</sup> in practice the family courts are composed of many persons other than the judge.<sup>70</sup> Staff needs are higher than any other division due to the greater number of persons coming in daily contact with the family court system. In addition, a majority of the intrafamilial disputes coming before a well-staffed family court are resolved outside of the courtroom by persons other than the judge. This may include intake personnel, mediators or other facilitators who work with the parties to resolve the dispute by agreement rather than court appearance.

While the nature of the court is controlled by its powers and established practices, it is also controlled by an ever increasing case load. It seems as the pressures in society increase, the volume and complexity of the family problems brought into the court also increase. In many courts the pure economics of the volume of cases pending has a substantial impact on the nature and extent of the family court.

### *Social Service Delivery System*

When consideration is given to the orders of family courts and their related staff actions, it is apparent that the family court system is a substantial provider of social services. Examples are most frequently seen in many provisions contained in orders involving children. In juvenile delinquency dispositional orders, juveniles are ordered to attend counselling or therapy, perform community service, function under the supervi-

<sup>64</sup>Soler, M., "An Introduction to Children's Rights," 74 *ABAJ* 52 (1988).

<sup>65</sup>Corcos, "The Child in International Law: A Pathfinder and Selected Bibliography," 23 *CRWJIL* 171 (1991).

<sup>66</sup>Murphy, "Eroding the Myth of Discretionary Justice in Family Law: The Child Support Experiment," 70 *NCLR* 209 (1991).

<sup>67</sup>In New Jersey the family court matters compose 39% of the trial court caseload, while only resulting in 9% of the matters heard on appeal. *Annual Report of the New Jersey Judiciary*, 1989-1990.

<sup>68</sup>"Mediation may result in lower recidivism . . . the experience of other mediation programs suggest that it will be lower than among those who adjudicate. For example, while 34.3% of traditional custody study families returned to the court from 1976 to 1978 in Dane County, Wisconsin, only 10.5% of mediation families returned." Pearson, "Child Custody: Why Not Let the Parents Decide?," 20 *Judges J.*, Winter 1981, at 10.

<sup>69</sup>"Decisions of Family Part judges not only affect the litigants in particular cases, but also have substantial impact on family systems. In practice, when dealing with many types of family cases, the power of Family Part judges is almost unlimited." "Pathfinders Committee Report," Committee Report, 125 *N.J.L.J.* 42.

<sup>70</sup>A recent New Jersey study of personnel assigned to the family court indicated an average of 14.5 staff persons per judge assigned to the family court. Willets, Guy, Administrative Office of the Courts, State of New Jersey, May 8, 1991 (unpublished).

sion of probation officers, attend residential treatment programs or stand committed to state training schools for their rehabilitation.<sup>71</sup> In child abuse and neglect proceedings, upon a finding of the existence of abuse or even as a preliminary order prior to such adjudication, courts often request parents, extended family and other involved persons to participate in therapy, attend substance abuse programs, obtain improved housing, provide medical treatment and submit to the supervision of the state's protective child welfare agency. Dispositional orders involving the delivery of social services are also included in cases involving custody or visitation arrangements, domestic violence petitions, and status offenses.<sup>72</sup> While this role as a provider of social services is foreign to judges who do not envision themselves as social workers (and are clearly not trained in this discipline), it cannot be avoided. On this function of the family court to provide more than the resolution of the immediate dispute and deliver social services, a committee recommending the establishment of a family court noted:

"The goal of a court dealing with family disputes should be more than simply resolving the particular issues before them. Rather, such resolution should leave the family with the skills and access to support services necessary to enable them to resolve subsequent disputes constructively with a minimum need for legal intervention."<sup>73</sup>

The required social services to meet the needs of the dysfunctional families can be provided

either by direct services or referral to appropriate persons and agencies.<sup>74</sup>

The court's responsibility to provide for social services is often imposed by the state legislature.<sup>75</sup> Frequently, the family court is required both by statutory law and case precedents to ensure the delivery of social services. It has become increasingly popular for state legislatures to respond to the requests of their constituents to "do something" by passing legislation mandating family courts to provide that children receive the proper social services or that families attend custody or visitation mediation.<sup>76</sup> Such legislative demands are most often made without the appropriation of any of the funds necessary to deliver these required social services. Ironically, in times of limited funds and poor economy, the need for such social services increases while the funds to provide them decreases.

### Case Processing and Management System

The importance of the recognition of a family court as a case processing and management system can neither be overlooked nor understated. Too often judicial planners and court reformers speak in terms of substantive principles for decision-making without a full understanding of the need to have each case effectively managed to the point of decision. The reality of ever increasing case loads and the need of litigants for timely decisions which effect their ongoing family concerns demands that any court adjudicating family disputes must provide the most effective methods for processing the cases filed and propelling them to comprehensive resolution. The adage: "Jus-

<sup>71</sup>New Jersey has one of the most comprehensive juvenile codes with twenty-one dispositional alternatives specifically set forth. N.J.S. 2A:4-40.

<sup>72</sup>A status offense is a case involving allegations that a child has committed an act or failed to comply with a law which constitutes an offense only by reason of the status of their being under age. Examples include truancy, incorrigibility, running away, and dependent or neglected children. They are most commonly referred to as juveniles, children or persons "in need of supervision." ("JINS," "CHINS," or "PINS.")

<sup>73</sup>Governor's Task Force on Family Law, Family Court and Court Services Committee, Recommendations and Procedures For Establishing A Family Court in Maryland, Final Report, October 1992 (Maryland).

<sup>74</sup>An example of a comprehensive family court which relies heavily upon referral services was noted by Katz and Kuhn in *Recommendations for a Model Family Court*, May 1991. At page 1 of the Preface the authors note: "We should also note the integrity of Family Court systems wherein the service provision remains separate from the family court. Established in 1983, the New Jersey Court is a shining example. While these disciplines have maintained their separate autonomy, regular communication between them has resulted in an overall improvement over the manner in which the family court and social services agencies respond to children and families."

<sup>75</sup>The juvenile codes of most states specifically direct the court to develop plans to meet the needs of the child. Various purpose clauses provide:

Alabama, "To secure for any child necessary treatment. . ." Ala. Code § 12.15.0.

Hawaii, "the court may formulate a plan adapted to the requirements of the child and his family . . . and may utilize all state and community resources . . . in its implementation." Hawaii Rev. Stat. § 571-1.

Kentucky, "to offer all available resources to any family in need of them." Ky. Rev. Stat. Ann. § 600.010.

Maryland, "to provide for a program of treatment, training and rehabilitation consistent with the child's best interests. . ." Md. Code Ann. § 3.802.

New Hampshire, "To encourage the wholesome moral, mental, emotional, and physical development of each minor . . . by providing treatment, counselling, supervision, and rehabilitative resources which he needs and has a right to receive." N.H. Rev. stat. Ann. § 169.B.1.

South Carolina, "When children or their families request help, state and local government resources shall be utilized to compliment community efforts to help meet the needs of children. . . the state shall assist and encourage families to utilize all available resources." S.C. Code Regs. § 20.7.20.

<sup>76</sup>Arizona, California, Delaware, Maine and Utah now provide for mandatory mediation of custody disputes. Ariz. Rev. Stat. Ann. tit. 25, § 25.381.23; Cal. Civil Code § 4606 (1983); 13 Del. Code, Rule 470; Me. Rev. Stat. tit. 19, §§ 214, 581 & 752 (West. Supp. 1985-86); Utah Code Ann. tit. 30, § 30-3-11.1. In several other states mediation may be required at the discretion of the court. Okla. Stat. Ann. tit. 1275.4; Pa. Stat. Ann. tit. 23 § 1006.

tice delayed is justice denied" has its most serious impact in the family court.

With the need to rely so heavily upon outside agencies and services, the one area which the family court can control is its own system for processing and managing the cases. Without such control the judicial resolution of the dispute becomes irrelevant since it is resolved *de facto* by the passage of time and the need of ongoing relationships to adjust to daily events. This may be particularly disastrous when a child is held in limbo without permanency planning or a battered woman is forced to remain in a violent situation because of ineffective judicial protection. As important as effective case processing and management is to the litigants, it is equally important to the judges who should not make substantial decisions on outdated information without knowing the present circumstances.<sup>77</sup> This concern is also noted in the appellate review of family court matters which most often result in a "final" determination that is irrelevant to the present needs of the children of families involved.<sup>78</sup> The need for timely decisions of issues involving children<sup>79</sup> must be considered at all times by all court systems determining family disputes.<sup>80</sup>

### *Organization and Administration*

Perhaps the most important component of a family court system is the *organization and administration*. The court can have certain principles set down; it can also have a broad based jurisdiction, but if it doesn't have someone administering, monitoring, or watching over the daily operations, the unified family court may

quickly fall back into many of the former ways. These problems exist in family courts whenever the leadership at the local and state level is not maintained.<sup>81</sup> A firm administration will insure that a system will follow certain standards. Family courts throughout our nation function best where there is a strong presiding judge and staff committed to the full implementation of established principles and performance standards.<sup>82</sup>

The organization of the family court should provide for the assignment of its judges from the highest trial level whenever possible. Organization and administration at the highest trial level becomes important in consideration of the allotment of resources to the court as well as staff and budgetary requirements.<sup>83</sup> An administration which recognizes this status will advocate for sufficient funding and allotment of personnel to meet its needs, while an organization or administration that down-plays or considers the court in any way to be inferior to other courts will fail to properly allocate its resources. Most family courts need to employ the highest number of staff of any division of the court merely to deal with the volume and complexity of the cases and dispositional orders. A committed administration will also plan for the necessary physical facilities, including sufficient conference rooms at all locations. All staff including the judges, professional and clerical personnel, must be readily accessible to each other and subject to the communication and control of the central administration.

The authority to direct and control each and every step of the daily processing and manage-

<sup>77</sup>The role of the family court as a case processing and management system was accurately described by Judge Ida Chen of the Family Court Division of the Common Pleas Court of Pennsylvania when she noted: "I now realize that just being a good judge is not enough. You must also know how to manage your list of cases. If you cannot manage your list in a timely manner, then you cannot possibly dispense justice to society." *The Philadelphia Inquirer*, December 15, 1991.

<sup>78</sup>"With the exception of divorce cases involving financial issues, juvenile delinquency waiver matters, and a few isolated cases, there is no effective appellate review of family court matters. This is due to the impact of substantial delays in the appellate process on the children and families involved. Stated simply, while they wait for the decisions of the appellate courts, their lives are affected and changed to the point where the decision is either moot or requires yet another hearing." Pathfinders Committee Report, 125 *N.J.L.J.* 41, 45.

<sup>79</sup>"The child's sense-of-time guideline would require decision-makers to act with 'all deliberate speed' to maximize each child's opportunity either to restore stability to an existing relationship or to facilitate the establishment of new relationships to 'replace' old ones. *Procedural and substantive decisions should never exceed the time that the child-to-be-placed can endure loss and uncertainty.*" (Emphasis supplied.) Freud, Goldstein, Solnit, *Beyond the Best Interests of the Child*.

<sup>80</sup>"Where there is potentially irreparable harm in delay, particularized motions to accelerate should be made in all appeals in delinquency dispositions as matter of course." *State in the Interest of S.T.*, 233 N.J. Super., 598 (App. Div. 1989).

<sup>81</sup>In New Jersey the Pathfinder's Committee conducted an extensive study of the first five years of the family court and made findings and recommendations in a report to the Chief Justice. The Committee strongly recommended that firm state-wide leadership was necessary in order to set standards and goals and monitor their statewide implementation. "Pathfinders Committee Report," 125 *N.J.L.J.* 41.

<sup>82</sup>The family courts of Delaware, Rhode Island and Hawaii have statewide Presiding Judges. In *New Jersey* the family court in each vicinage is led by a Presiding Judge. *R.* 1:33-6. In *Vermont* the Administrative Judge is given the responsibility of selecting the appropriate judges for assignment to the family court. (Interview with Judge Steven Martin, Administrative Judge of Vermont Superior Court, Jan. 1992.) In the Portland, *Maine*, Family Court pilot project Administrative Law Judge Dana Cleaves was selected to serve as Chief Judge with administrative responsibilities over the judges and staff assigned into the unified court from three different courts. (Interview with Judge Dana Cleaves, Jan. 1992.) In the Jefferson County, *Kentucky* Family Court, Circuit Court Judge Richard Revell was designated as the Chief Judge by the Supreme Court. (Interview with Judge Richard FitzGerald, Feb. 1992.)

<sup>83</sup>"Without equal status, the family court may get secondary consideration with respect to direct needs, such as more personnel or more judges, and with respect to the legal and other services provided to the court. . . Lower judicial status reduces the court's ability to obtain other resources as well. The legislature and the executive branch do not listen with the same respect to statements of need coming from an inferior member of the court hierarchy." Gordon, William C., "The Family Court: Advantages and Problems," 2 *Juvenile Justice*, November 1974.

ment of all family court cases should be placed in one central office, with one family court administrator having the ultimate responsibility, subject to reporting through the established chain of command.<sup>84</sup> This ensures that everyone will be heading in the same direction and operating in accord with the same principles. This control of the key personnel is an important component of an effective family court.<sup>85</sup> The collection of accurate, relevant information and data by the central case processing units is a necessary function of the administration of the family court system.<sup>86</sup> Such information must be available to be accessed and shared with appropriate agencies and persons.<sup>87</sup> As a minimum standard, "records should be maintained in every county and statewide which will indicate compliance or noncompliance with all statutes, court rules, and directives in every area of the family court."<sup>88</sup>

---

<sup>84</sup>Pathfinders Committee Report," 125 *N.J.L.J.* 41, at 30-35 (1991).

<sup>85</sup>*Id.* at 35-37.

<sup>86</sup>"One of the most frequently heard arguments favoring a family court is that involving administration and record keeping. In an integrated family court all family cases are heard under one jurisdiction and under one roof. Without such a court there is bound to be jurisdictional overlapping and some loss of efficiency. . . In most of our large cities three or more separate courts have jurisdiction over marriage and the family, and in nearly all instances no liaison or cross-reference procedures are utilized." Kephart, W., "The Family Court: Some Socio-Legal Implications," 62 *W.U.L.Q.* 73 (1955).

<sup>87</sup>The National Family Court Symposium recommended: "The state court should develop and implement a statewide information system that can be accessed by appropriate agencies, court officials and personnel, for information sharing purposes relative to pending cases, interviews, judgments and disposition." Katz and Kuhn, *Recommendations for a Model Family Court*, May 1991.

<sup>88</sup>Pathfinders Committee Report," 125 *N.J.L.J.* 41, 45.

# The Justification For A Family Court; Its Advantages And Disadvantages

In addition to properly defining the "Family Court," the question of "why" it should be created should be examined. This involves consideration of the claimed advantages and disadvantages of organizing a family court system. A comparison of theory vs. practice is necessary since what is theoretically correct is so dependent in the area of family law upon the persons carrying out the tasks. There is sufficient experience, both old and new, to examine the question.<sup>89</sup>

The claimed advantages and disadvantages of a family court system are based in part upon the experience of existing courts and others considering and studying proposed court reforms. On the positive side, the advantages include more effective access for the public in a "user friendly" system, an efficient unified case processing and management system with consistent and comprehensive judicial determinations, improved services (both legal and social), reduction in the emotional damage to the persons involved, the empowerment of weaker parties and recognition of the importance of family court judges and staff. On the negative side, the disadvantages alleged include the costs of establishing and maintaining the family court, an inability to diagnose and effectively deliver services and the "burn out" of judges and staff who are assigned exclusively to family law matters. Each claim should be studied both as to the present and proposed systemic changes and their impact upon the families involved. Decisions to establish a family court should be based upon which system, or combina-

tion of systems, will provide the most effective judicial resolution of intrafamilial disputes.

## Unified v. Individual Judicial Systems

The primary advantage claimed for a family court system is the unification of all complaints, petitions, and case types within one case processing and management system in order to provide a more efficient, less costly and damaging, consistent and longer lasting resolution of the problems presented.<sup>90</sup> By directing that all complaints or petitions must be resolved in one unified court, the opportunities for inconsistency<sup>91</sup> and errors based upon inaccurate or incomplete information are greatly reduced. With the complexity of family problems, divergent case processing and the separate decision on individual prayers for relief add to the barriers to effective determinations. The collective or "holistic" approach to resolution of the total family's problems, inclusive of each and every individual claim for custody, child or spousal support, division of property, marital status and so on, will result in a more understandable and unavoidable final determination. For example, an unhappy litigant will not be able to seek a redetermination of any basic issue by merely going to a different court and asking for a new and separate decision. Such manipulation of the different parts of the judicial system is common where separate courts hear the same types of issues at different levels.<sup>92</sup> In addition to the problems created by concurrent jurisdiction, they are compounded by judicial systems which

<sup>89</sup>(Florida) *Report of the Commission on Family Courts* (1991); (Maine) *Final Report of the Commission to Study Family Matters In Court* (1986); (New Jersey) "Pathfinders Committee Report," 125 *N.J.L.J.* 41 (1986); (Virginia) *Report on the Family Court Pilot Project* by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (1992); (Maryland) *Governor's Task Force on Family Law*, Final Report, October 1992.

<sup>90</sup>"No longer would some family law issues be reposed in one court with others in yet another court and some of these issues even then being bounced between two courts. Decisions, especially in matters where children are involved, would lead to greater stability, less pulling on the emotions of the parties, and greater finality in the judicial resolution of disputes." *The Adjudication of Family Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985).

<sup>91</sup>"People suffering from several family problems are taken to as many as five different courts where personnel of varying degrees of training each treat one particular aspect of the problem under the direction of whatever judges happen to be unwillingly assigned to the court for that month. The various courts are seldom aware of other courts involved, and know much less what they are doing." Arthur, L., "A Family Court - Why Not?" 51 *Minn. L. Rev.* 223-232 (1966).

<sup>92</sup>Chief Justice Harry L. Carrico of the Supreme Court of Virginia noted: "An increasing important issue in Virginia is the need to develop a comprehensive approach to judicial resolution of matters involving the family. We presently operate under a dual system whereby the circuit and the juvenile and domestic relations district courts exercise overlapping jurisdiction in domestic relations cases. The 'yo-yo' effect in the referral of cases back and forth between these two courts has proven detrimental, costly, and frustrating to the parties involved." *State of the Judiciary Report for 1982*.



provide for the appeal of family law matters by trial *de novo* from a lower, e.g., juvenile, domestic relations or district, trial court to an upper-level trial court, e.g., superior or circuit. This costly duplication and fractionalization is effectively eliminated in the unified family court.

Common information systems, using computers or other state of the art equipment, are more easily accessible in the unified system than those of different courts at different levels in different areas or physical facilities.<sup>93</sup> Clerical staff which is cross-trained in the case processing of all types of cases can be more effectively assigned to meet the case load needs in a unified system. In addition, a unified system is much easier to manage in terms of establishing and monitoring, without unnecessarily duplicative meetings, set principles and standards of performance in order to reduce disparity and provide greater accountability.

### Improved Services

In addition to the improvement of the judicial system, an important feature of a family court system is the improved delivery to the public of both legal and social services. In Virginia, commenting on the need to provide improved services for troubled families, a committee noted:

“Family conflicts do not present solely legal issues anymore than they present solely sociological ones. A quality resolution of family disputes requires procedures which integrate the societal protections provided by the law with the remedial interventions provided by court service units, social services, mental health agencies and other alternative dispute resolution approaches.”<sup>94</sup>

At times, persons under stress and troubled families are unable to cope with a fragmented system or overcome its barriers to fill the services

needed for full resolution of their disputes. In a unified system, families presenting problems will be considered in a coordinated manner with specific actions, services and facilities provided to meet the individual needs.<sup>95</sup> Comprehensive dispute resolution avoids continuing costly litigation or relitigation.

The judicial processes are more accessible by providing one central point for the reception of all complaints together with an intake function to comprehensively advise the inquiring public as to the proper steps to be taken to obtain the necessary relief. Rather than being shuttled from place to place or office to office in order to get resolution of the total problem, the public may expect to receive a comprehensive resolution. For example, a divorcing couple will not only receive the termination of their marriage and division of common property, but also resolve the questions of child custody and visitation and support using mediation or other non-adversarial techniques. Similarly, a woman seeking a domestic violence restraining order is also able to obtain an order for child custody and visitation, support and counseling, as well as a detailed, effective restraining order, in one appearance before one person in one office and one court.<sup>96</sup>

Improved services are also the result of maximizing the collection of necessary information. By avoiding duplication of evaluations and information taking sessions, the effectiveness of the services provided daily to the consuming public is increased. Stated simply, persons in need of judicial orders need not tell their same story over and over again to different people in different offices in a unified family court. With the increased availability of compact informational services comes more consistent and comprehensive determinations, particularly with persons or families which are not highly motivated to attend multiple appointments in different offices.

---

<sup>93</sup>One of the costs which resulted from the pilot family court project in Virginia was incurred in upgrading the computer system in certain counties to include the additional complaints previously heard in a different court. (Interview with Judge Dale Harris, Judge of the Juvenile and Domestic Relations District Court of Lynchburg, Virginia, Jan. 1992.)

<sup>94</sup>Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (June 1992), p. 33.

<sup>95</sup>Ideally, each court intervention should be a step in a reasoned plan promoting family stability by coordination of many material and social service resources.” Mulvey, “Family Courts, The Issue of Reasonable Goals,” *Law and Human Behavior*, 6, No. 1 (1982): 49-61.

<sup>96</sup>In Virginia, the family court pilot project noted that improved services were available in some areas in the Juvenile and Domestic Relations Court from those of the Circuit Court. At times families needed to be referred from the Circuit Court (upper) to the Juvenile and Domestic Relations Court (lower) in order to receive needed counselling or evaluations rather than by providing the holistic approach in either court. (Interview with Judge Jennine Shannon, Juvenile and Domestic Relations District Court for Albamarle County, sitting in Charlottesville, July 1991.) Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (June 1992), p. 44.

The delivery of social services by a family court system need not be provided directly by the court system but is more often provided by referral to existing appropriate public agencies and private professionals. While the participation of the litigants prior to adjudication should be voluntary, they should be given an initial opportunity to obtain the services without going before the court in an adversarial proceeding.<sup>97</sup> Those who do not wish to receive any service offered by a family court must be given the opportunity to be heard in court at an adjudicatory hearing.<sup>98</sup> Dispositional orders made by a court of law even after full adversarial proceedings, will also have a wider range of services and alternatives from which to develop the required plan of action. After adjudication these services may be mandatory or a condition or prerequisite to other actions.

### Damage Control and Empowerment

By providing for one central point for reception and resolution of total intrafamilial problems, the unified system can empower persons who are unable, either financially or emotionally, to participate in multiple suits at different court levels. The combination of legal and equitable principles necessary to develop a comprehensive plan to minimize the impoverishment of women and children<sup>99</sup> after separation or divorce is best accomplished by one court under a one judge-one family approach. The enforcement of every court order is most effectively accomplished in a unified system; a most important factor to women, children, elderly and all persons who are dependent upon compliance with the order's provisions

to maintain stability in their life and an adequate standard of living.

A significant advantage of a unified family court system is its ability to minimize the damage done to innocent children by the separation of their parents.<sup>100</sup> In addition to the damage done to them directly by their parents actions, these children, as well as some adults, are unable to protect themselves from the abuses and neglect inherent in a fragmented legal system. Children are affected substantially by multiple legal processes, including repetitive required testimony and examinations, its inconsistent decisions by different judges, hearing officers and evaluators and the inordinate delays which effect ongoing relationships. The damage done by their being caught in limbo between competing adults is frequently overlooked.<sup>101</sup> Generally, children love both parents and experience a divided sense of loyalty to them and extended family. Rarely are their interests represented.<sup>102</sup> The "yo-yo" effect is a term given to cases involving children who are pulled up and down emotionally and in different directions physically by different courts in cases involving custody and visitation disputes. In addition to providing the necessary consistency, a unified family court is best able to give these important cases the priority in decision making that recognizes the importance of their determination within "the child's sense of time."<sup>103</sup>

In her now classic work, *The Divorce Revolution*, Dr. Lenore J. Weitzman called national attention to the plight of women and children several years after separation and divorce. As to

<sup>97</sup>"While adjudication and other dispute resolution methods should continue to be available, litigants should be offered the opportunity to choose the best method for resolving their differences." *Report on the Family Court Pilot Project* by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (June 1992), p. 35.

<sup>98</sup>The responsibility of a judiciary to "provide citizens with a full set of options for resolution of disputes, including traditional litigation [adversarial] as well as various complementary forums," [nonadversarial] has been enunciated as "the basic principle." *Supreme Court of New Jersey, Task Force on Dispute Resolution, Final Report* (February 1990).

<sup>99</sup>Weitzman, L., *The Divorce Revolution*. New York: The Free Press, A Division of Macmillan Publishing Co., Inc., 1979.

<sup>100</sup>Of particular concern are the most vulnerable casualties of the modern marriage, the minor children of divorce. Children typically bear substantial psychological and economic costs for a decision in which they have no role." Scott, E., "Rational Decision-Making About Marriage and Divorce," 76 *Va. L. Rev.* 9 (1990).

<sup>101</sup>In its report the Virginia Family Court Study Committee noted a custody case that was originally heard in a divorce hearing and thereafter, presented again during a visitation period in Virginia to the Juvenile and Domestic Relations District Court. After another full plenary hearing, with attorneys for all and the child interviewed by the court, the decision was appealed to the Circuit Court where a trial *de novo* was held with yet more lawyers and evaluations by clinical psychologist and "transferred" to yet another circuit court and again reheard with yet more attorneys, psychologists and child interviews before being returned to Texas. The committee noted the boy was kept in Virginia while "... at least three courts, ten lawyers and two clinical psychologists were involved in interviewing, examining and questioning the young boy, along with two different judges." (Emphasis supplied.) *The Adjudication of Family Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985).

<sup>102</sup>A significant exception is noted in the use of Guardians ad Litem and Court Appointed Special Advocate (CASA) programs in which trained and sensitive volunteers are appointed to represent the child's interests throughout the litigation. Florida has a substantial Guardian ad Litem program. Some 450 CASA programs are operating very effectively in 49 states. (Information received from The National CASA Association, 2722 E. Lake Drive, Suite 220, Seattle, Washington.)

<sup>103</sup>Freud, Goldstein, Solnit, *Beyond the Best Interests of the Child*. The Free Press, 1979.

the economic consequences of such events she noted:

"The result is often hardship, impoverishment, and disillusionment for divorced women (and their children). This research shows that, on the average, divorced women and the minor children in their households experience a 73 percent decline in their standard of living in the first year after divorce. Their former husbands, in contrast, experience a 42 percent rise in their standard of living."<sup>104</sup>

While the extent of Dr. Weitzman's findings have been criticized as being inflated due to methodological differences, even her critics acknowledge the truth of her basic finding and admit that "the economic status of men and women diverge substantially in the years after divorce."<sup>105</sup> "The feminization of poverty" has been further substantiated by studies and similar findings in a number of other states.<sup>106</sup>

Court systems, faced with these national studies and the facts presented in individual cases, must consolidate the provisions of each specific determination into one comprehensive final and effective order. The nature and extent of child and spousal support, custody and visitation arrangements and the division of all property interests are interrelated and indivisible. They must be determined by one court after consideration of past, present and future events. "Divide and conquer" has its most disastrous effect when utilized by persons with greater financial resources who are better able to hire attorneys to separate, litigate and relitigate these issues. The damage done by such legal maneuvers can be minimized by requiring all proceedings to be heard in a unified

family court which can most equitably structure the present and future financial responsibilities. This can include the process costs, (attorneys fees, expert costs), as well as the division of property, (the marital home, family business) in order to provide for the long-term protection of the children and the least financially empowered spouse. Such plans may include the requirement that the party with the greatest earning capacity must pay the mortgage and other costs on the marital home and that its sale be postponed until the children are emancipated. Comprehensive plans emanating from a unified family court should consider permanent or rehabilitative alimony, as well as the future division of pensions and retirement benefits, medical insurance coverage, life insurance benefits, vocational and psychological counseling. Even after the establishment of such a comprehensive order by one court, a major advantage of the unified system post judgmentally is seen in its exclusive locus as the place of enforcement to which a needy party can turn and from which the financially responsible party can not avoid by diversionary tactics within separate existing judicial systems.

### Recognition of Importance and Status of the Court

A significant advantage of the family court system over "split" or divided jurisdictions is the increased respect of the status of the courts and judicial systems resolving family law issues.<sup>107</sup> Judge's salaries, facilities, staff and other emoluments of judicial office should be equal to the highest level trial court. Too often family law issues are not considered worthy of the best judges, attorneys, or facilities and placed at a level

<sup>104</sup>Weitzman, L., *The Divorce Revolution*. The Free Press, (1979).

<sup>105</sup>Hoffman and Duncan, "What are the Economic Consequences of Divorce?" *Demography*, Vol. 25, No. 4, November 1988. It must be noted that these analysts criticize Dr. Weitzman's methodology and premised causes for the substantial economic disparity, but not her basic finding. In this respect Professor Jacob notes: "Weitzman's book should be the beginning and not the end of research on the impact of law on divorced people in the United States. A careful reading of her work demonstrates how much is left to learn. The book's deficiencies will be a good guide to future researchers. Weitzman has made both the scholarly community and the policy world aware of the scope of the problems that confront us. For that we are much in her debt." Jacob, "Faulting No-Fault," *A.B.F. Research Journal*, Vol. 1986, Fall, No. 4, p. 773. Further criticism is noted of Dr. Weitzman's attribution of the cause for the economic disparity being attributed to no-fault divorce laws. Melli, M., "Construction a Social Problem: The Post-Divorce Plight of Women and Children," *A.B.F. Research Journal*, Vol. 1986, Fall, No.4, p. 759.

<sup>106</sup>Various states have conducted surveys on the economic disparity between husbands and wives after divorce. Alaska, H:+17%, W:-33%, Baker, *Family Equity At Issue, A study of the Economic Consequences of Divorce on Women and Children*, Alaska Bar Assoc. (1987); Calif. H:+42%, W:-73%, L. Weitzman, *The Divorce Revolution*; Utah, H:+73% after 10 years, W:-32%, Utah Task Force on Gender and Justice, *Report to the Utah Judicial Council*; Connecticut, H:+60%, W:-30%, McLindon, "Separate but Unequal: The Economic Disaster of Divorce for Women and Children," 21 *Fam. L.Q.* 351, 392 (1987); Vermont, H:+120%, W:-33%, Wishik, "Economics of Divorce: An Exploratory Study," 20 *Fam. L.Q.* 79, 147 (1968); and Maryland, H:+55%, W:-37%, Bell, "Alimony and the Financially Dependent Spouse in Montgomery County, Maryland," 22 *Fam. L.Q.* 225, 284 (1988).

<sup>107</sup>In Virginia, evaluating the public confidence and respect for the different courts hearing familial disputes, a committee noted: "What you see depends upon where you sit. However, the removal of the barriers hampering effective access to justice will promote the public's perception of the accessibility of the court system. Similarly, a court which offers effective, responsive and appropriate methods for resolving disputes, which functions fairly, and which demonstrates that its decisions have integrity will not only afford a quality resolution of disputes but will earn the trust and confidence of the public." *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992), p. 43. defenders and probation officers to the Family Part. They are led to believe that they can be 'promoted' to Civil or Criminal once they have 'learned the ropes' in the Family Part. "Pathfinders Committee Report," 125 *N.J.L.J.* 41

below adult criminal or civil actions.<sup>108</sup> Recognition of the importance of a family court encourages the best among the judicial system to seek and maintain positions within it. Such status also provides an example to the public that these cases are truly "second to none" and will be accorded the highest level of decision making.<sup>109</sup> The judges and staff work on matters that are emotionally and physically draining due to the quantity and quality of the disputes presented;<sup>110</sup> they should be given every consideration for salary and the other "perks" or other emoluments of their high office.<sup>111</sup> Family court cases should be heard in the better parts of the courthouse with full access to all litigants.<sup>112</sup> With the improved status of judges and family court systems comes their proper position in judicial budgets as worthy of appropriate funding.

### Costs

The primary objection to the family court is that it will increase the cost of the judicial system in resolving family matters. This involves consideration of the costs of locating the courts in one facility and upgrading and rearranging staff and judges. Whenever a family court is established at the highest trial level as recommended, the resultant increase in the salaries of the judges who previously served in a lower level trial court is a necessary cost. Additional costs may be incurred for expanded computer systems and other technological advances. The reassigning of matters from other courts into one family court without the concurrent reassignment of some of the judges

and staff will increase the work load and calendars of the resultant family court with the need for more judges and staff.<sup>113</sup> However, if both courts were adequately staffed at the time of the reassignment, the creation of a family court with reallocation of the existing judicial resources at the same time should not result in significant increased costs. In addition to direct costs to the judiciary, by providing greater access and improved services to more persons, the costs of providing counselling, evaluations or social services will increase significantly. Those family courts which provide direct services to the public will have increased expenses by the hiring of additional counsellors, evaluators, mediators and other related personnel.

The issue of costs involved can be argued both ways.<sup>114</sup> An analysis of the costs involved in establishing and maintaining a family court system requires consideration of the philosophy, principles and limits established by the court itself. Proponents of family court systems claim that the costs involved in case processing will actually decrease by elimination of duplication of efforts. It will no longer be necessary to have different persons filing different papers in different offices at different locations under different clerks and management systems. In addition the cross-training of clerical personnel to handle and process multiple types of complaints will result in a savings by reason of personnel being interchangeable in times of need or to meet temporary shortages.

Analysis of the cost of improved services

<sup>108</sup>Many noted that the Matrimonial Division and the Juvenile and Domestic Relations Court were traditionally deemed "inferior" courts. This stigma continues to attach to their successor, the Family Part. Traditionally, divorce law was not considered by attorneys and judges to require a high degree of legal knowledge or skill. Also, the Juvenile and Domestic Relations Court was a statutory court created pursuant to the constitutional authorization for the legislature to establish 'courts of inferior jurisdiction.' The unfortunate tradition continues with the assignment of newly appointed judges, assistant prosecutors, public

<sup>109</sup>In *New Jersey*, Chief Justice Wilentz in his remarks to the 1987 Judicial College noted: "I know of no better example than the Family Division whose work is second to none in its impact on society, on children, on the lives of our citizens. It can often save and sometimes destroy. You would think that the most experienced judges would be called upon to give at least some of their time and talent to this work." "Pathfinders Committee Report," 125 *N.J.L.J.* 41, 42.

<sup>110</sup>In *Florida*, the Commission studying the establishment of a family court noted: "... assignment is considered by most members of the judiciary as the most stressful and difficult of all the jurisdictions. . . . Because of these broad discretionary powers, judges recognize that they are making decisions where, as one said, 'I am playing God.' . . . Judges, by the nature of their responsibility, are trained to be problem-solvers. However, in many of these instances, the problems given to the judge to solve border on the impossible. . . . Given the emotions, the animosity, and the individual concern of judges for the children of these parties, the problems are stressful for the judge and are not easily left in the courtroom." *Report of the Commission on Family Courts* (September 12, 1991).

<sup>111</sup>"Granting the court equal status and making the judges pay commensurate with other state trial courts also contributes to morale among court personnel and the image of family law in the community of lawyers and clients." Poznanski & Bassett, "A Family Court for Michigan?," 66 *Mich. Bar Journal* 657-66 (1987).

<sup>112</sup>Prior to establishing a family court in Camden County, New Jersey, the Juvenile and Domestic Relations Court was placed in the basement of the parking garage where it functioned, literally and figuratively, at the lowest level of the court system.

<sup>113</sup>In the Virginia pilot family court project from 20% to 50% of the divorce cases were transferred from the Circuit to the District Courts without any accompanying transfer of judges or staff to handle the additional matters. The resultant increased demands without additional help, made work in those courts "very difficult" at times. (Interviews with Judges Jennine Shannon and Dale Harris, July 1991 and January 1992.)

<sup>114</sup>"It can be argued that the centralization of administration and records that would obtain in a family court would result in a lower overall court budget. This argument is true as far as it goes, but such financial savings would be insignificant when compared to the other costs involved in operating an integrated family court. For instance, full-scale services alone would include increased probation and psychiatric staffs, referees, investigators, marriage counselors, and others, and the cost for such services comes high." Kephart, W., "The Family Court" Some Socio-Legal Implications," 62 *W.U.L.Q.* 64 (1955).

must begin with the recognition that the most costly service provided by the judicial system is a fully contested adversarial trial before a judge in a courtroom. By maximizing the opportunities for nonadversarial dispute resolution prior to coming to court, a substantial savings can be realized,<sup>115</sup> in addition to providing timely calendar control. Overburdened calendars result in relisting cases again and again, which results in an unnecessary expenditure of effort and the attendant costs. The resolution in one case of all related issues in a timely manner avoids the duplication of costs in the immediate future by the filing of subsequent actions.

In considering the costs involved it is necessary to also consider the cost to the litigant as distinguished from the court system.<sup>116</sup> In terms of legal fees and costs, "time is money" and the opportunity to resolve all related issues in one action results in a savings of the legal expenses.<sup>117</sup> A good example of this is the experience of mandatory custody-visitation mediation by law in California.<sup>118</sup> Other cost savings to the litigants include the most effective enforcement of orders already obtained. For example, whenever child support or custody or visitation orders are effectively enforced they increase the monies available to the family or avoid further costly post-judgment court appearances. In cases of the establishment and enforcement of child support orders, society has an additional interest in making sure that all custodial parents receive adequate child support in an "expedited process"<sup>119</sup> to avoid the need for public assistance or other social services.

Those receiving welfare are required to reimburse the appropriate agency with child support funds collected from supporting noncustodial parents.

In addition to the financial costs, the psychological costs to children involved in nonfinancial terms are an important consideration. Too often the court is advised of the underlying reasons for antisocial behavior by children which is the result of their dysfunctional families.<sup>120</sup> Specifically such children suffer substantially from the impoverishment of their mother who is most often the custodial parent after a divorce.<sup>121</sup>

The most persuasive assertion of increased costs is the contention that with improved services more persons will come before the court seeking their availability. This is a "Catch-22" argument: as the court does a better job more persons will be attracted to it as a method of dispute resolution. Stated simply, the better the family court system functions the higher its costs because of the volume of the persons served. It is difficult, if not impossible, to maintain a balance sheet between the costs incurred of providing improved services to more people, versus the costs saved in improved case processing and management of the resolution of their dispute, together with the preventative resolution of predictable future legal issues.<sup>122</sup> As to the cost of the actual social services provided, they can be limited to those which are available by referral only or even legislatively mandated to not include any additional funding. In fact, the most recent state-

<sup>115</sup>The Los Angeles Superior Court began mandatory mediation of such disputes in 1978. Mediators last year resolved 64% of the 6,901 cases that came before them, said Hugh McIsaac, the county's director of Family Court Services. The unsettled cases go to court. . . County officials said it costs the taxpayers \$3,237 a day to run each of the 27 family law courts, compared to the \$462 a day for each of the 19 mediators and accompanying overhead." Railey, J., "Plan Would Streamline Domestic Litigation," *Los Angeles Times*, March 12, 1989.

<sup>116</sup>In Virginia, as an important part of its evaluation and study of the Family Court Pilot Project, the Advisory Committee conducted extensive litigant surveys which found: ". . . greater satisfaction with the legal costs of resolving their disputes in the family court was confirmed by the written comments made by individual litigants at the conclusion of their surveys. (See Tables 6 and 15, "Survey of Litigants," in Appendix B, Attachment B.1.)" *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992), p. 23.

<sup>117</sup>. . . it appeared from some responses that the states and counties saved money, and everyone (courts, attorneys, and clients) saved time and, as a result, money." Poznanski & Bassett, "A Family Court for Michigan?," *66 Mich. Bar Journal* 657-66 (1987).

<sup>118</sup>In 1981, California passed a mandatory mediation law -- the first state to do so -- requiring family law mediators to see all families involved in custody disputes. . . divorcing couples -- with or without counsel -- can save considerable money by avoiding a trial." . . . "Representatives of Conciliation Court saw 10,034 families last year, 8,304 of them for child custody and visitation mediation. Of the custody matters, more than 60% (5,034 cases) were mediated at a savings in total trial costs of roughly \$15 million." Simross, L., "Consumers; Tempering Custody Trials, Tribulations," *Los Angeles Times*, April 18, 1990.

<sup>119</sup>Federal Expedited Process: 42 USC 66(a)(2); 45 CFR 302.70(a)(2); 45 CFR 303.101(a)&(b).

<sup>120</sup>As to the cost of the damage to children caught in an inefficient legal system in Maryland, the Committee on Family Court and Family Services noted: "The suffering of economically dependent family members during these delays are particularly painful. The cost to the state increases as children, in particular, are traumatized by being subjected to an unnecessarily prolonged impoverished condition." *Committee on Family Court and Family Services, Governor's Task Force on Family Law*, Final Report, October 1992 (Maryland).

<sup>121</sup>"Children who are in their mothers' custody (approximately ninety percent of all children of divorce) experience a significant decline in family income from their pre-divorce status, while noncustodial fathers experience an increase in their income level. Although the extent of the economic impact of divorce is disputed, the fact is not. This economic decline is not only a direct cost of divorce but is often associated with other stressful disruptions such as leaving the family home, changing schools, leaving friends, and placement in child care. It has been suggested that many of the psychological difficulties experienced by children after divorce may be related to economic hardship." Scott, E., "Rational Decision-Making About Marriage and Divorce," *76 Va. L. Rev.* 9 (1990).

<sup>122</sup>In their final report, the Virginia Family Court Study Committee notes: ". . . it is practically impossible to estimate the savings to litigants involved in family law legal matters in the proposed system over the current system. . . there would be a cost savings through the elimination of costs for substitute judges who currently serve the juvenile and domestic relations district courts . . . there will be some savings to be set off against the projected costs. *The Adjudication of Family Court Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985).

wide family courts established were created with little or no additional funds appropriated.<sup>123</sup>

### Expertise and Training

Another disadvantage noted involves the nature of the court system and its lack of expertise, training or reliable information to resolve intrafamilial disputes. The past ineffectiveness of some juvenile court systems and the lack of resources in all areas of government are cited as proof that a family court system may not be able to make the reasoned determinations or necessary plans.<sup>124</sup> Some assert that it is simply not the court's business to decide more than the immediate issue before it or provide a mechanism for the resolution of ancillary issues. Since all judges are not trained in the areas of psychology or sociology and are not provided with sufficient professional staff to even consider these issues, "the court should limit its dispositions to behaviorally specific outcomes for its clients."<sup>125</sup>

In response, it should be noted that after a legal foundation has been established, the courts cannot refuse to go further because of their lack of expertise or resources. In this respect former Chief Judge William Gordon notes:

"Just as the court does not have discretion to go forward with a matter where there is no legal basis to act, I believe a court must go forward where there is the legal basis for court action and the case is properly before the court."<sup>126</sup>

Since the court cannot avoid its responsibility to decide the cases and issues presented, the important task becomes that of the administration to make its best efforts to assign the most experi-

enced and sensitive judges and staff and provide them with the necessary training to develop the needed expertise.<sup>127</sup> Family court judges and appropriate staff must also be held accountable to develop the necessary expertise and knowledge to provide a comprehensive and effective resolution of intrafamilial disputes.<sup>128</sup> The administration must also gather information, collect and network existing services and agencies and educate the judges and staff as to the most effective use of available resources.

As society has become more complex and the presentation of cases involves greater use of social sciences,<sup>129</sup> a judicial system which is responsible to determine difficult issues of medical malpractice, product liability, anti-trust or psychiatric defenses to criminal charges can be reasonably expected to develop and apply the expertise of its judges and staff necessary to comprehensively resolve family law matters. As with all complex litigation, family courts utilize experts in many fields, both court appointed and privately retained, to advise on issues requiring specialized knowledge. In addition, guardians ad litem are regularly appointed to ensure that all relevant information is brought to the court prior to the determination of significant issues affecting children. With the most power in the judiciary comes the concomitant responsibility to exercise it in the most competent manner.<sup>130</sup>

The persons best qualified to decide whether or not the judicial system can effectively meet their needs for dispute resolution are the litigants themselves. By maximizing the involvement of the parties through the use of non-adversarial techniques, they are assisted to use their own

<sup>123</sup>The Virginia legislature in its enabling legislation for the pilot family court refused to provide any new funding or additional monies to be expended in the project. (Interview with Judge Dale Harris, January 1991.) Similarly the New Jersey legislature appropriated only \$500,000 in total funds to be divided among the Administrative Office of the Courts and 21 counties with the resultant funds being insufficient for the counties to hire even one additional employee.

<sup>124</sup>Viewed organizationally, the family court is not designed for optimal social service delivery, but instead suffers from a potentially crippling oversight. One of the striking aspects of family court proposals is the reliance on adequately trained and qualified personnel and resources in order to handle family-based problems in a professional manner. . . Family court recommendations rely heavily on highly trained professional staff, but existing family courts have rarely received even adequate staff or resources." Mulvey, E.P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior*, p. 59-60.

<sup>125</sup>Mulvey, E.P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior*, Vol. 6 No. 1, 1982

<sup>126</sup>Gordon, W., "The Family Court: Advantages and Problems," *2 Juvenile Justice*/November 1974.

<sup>127</sup>In Virginia, one of the major benefits noted by the litigants and lawyers was the provision of more specialized and sensitive judges and staff in the family court project in comparison with the traditional court. *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992).

<sup>128</sup>"... once the truth is known, once it has been determined what the situation is, then the Family Court must search for the treatment." Arthur, L., "A Family Court -- Why Not?," *51 Minn. Law Rev.* 223-232 (1966).

<sup>129</sup>Classic examples of the application of social sciences and medical technology by the judiciary are seen in the cases of *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) and *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). Modern legal theorists also urge the court to develop further expertise and utilize judicial authority for the public benefit in the areas of critical legal studies and law and economics.

<sup>130</sup>"The second phase of the litigation, treatment, cannot be successful unless the court is well-assisted by persons of considerable training in social work. To settle for less than a well-trained staff is to settle for inferiority." Arthur, L., "A Family Court -- Why Not?," *51 Minn. L. Rev.*, 223-232 (1966).

resources effectively to resolve their problems.<sup>131</sup> Experience in the areas of nonadversarial dispute resolution nationwide indicates that efforts to resolve such disputes out of court are most favored.<sup>132</sup> If the services provided in the family court are recognized by the public as important, reliable or necessary, they will be respected and supported.

### Judicial Exhaustion, "Burn Out" and Rotation

With respect to the judges individually, a claimed disadvantage of the family court is that to limit judges to hearing only family court matters is to provide further problems of "burn-out" or exhaustion of the judges.<sup>133</sup> Upon consideration of the importance and volume of the cases presented, together with the emotional atmosphere of the court, family court judges are exposed to the heaviest judicial workload.<sup>134</sup> No judge should be forced to a steady diet of any type of case in which they cannot receive some satisfaction from their work. Some feel that by diversifying the judge's calendar to include civil or criminal matters the cumulative effects of such decision-making will be reduced and avoid burn out. However, in actual practice the opportunities for judges to receive satisfaction in the resolution of family law matters is increased substantially by the collection of all such types into one area of the court system. This can reduce the frustration to a particular judge who is only able to resolve one particular issue, while, at the same time, knowing

that the other problems remain and will be impacting substantially on any long-term resolution. The best way to avoid judicial burn-out is to provide the positive feeling of a job done well with the sense of significant accomplishment. In addition, since many judges are appointed or assigned to a specific court of limited family law jurisdiction, e.g. Juvenile, Domestic Relations, the establishment of a family court will provide expanded opportunities to hear different types of intrafamilial cases. Similarly, judges who previously heard only divorce matters will have the opportunity to work with juveniles in trouble or be involved in the resolution of other children's issues. The increased diversity of case types can relieve the tension of hearing too much in one area, while presenting stimulating challenges in other case types.

The question of rotation among different civil and criminal divisions of the court to avoid burn out can best be resolved by establishing the family court system at the highest trial level.<sup>135</sup> This will provide judges with the opportunity to rotate to a different division whenever it is felt that their overexposure to one type of a case or another is prejudicial or interfering with their most effective performance.<sup>136</sup> The creation of a family court actually increases the flexibility and sphere of judicial activity, rather than narrowing it. Rotation into the family court should involve a commitment of a minimum period of continuous service in order to develop the necessary expertise and ensure the maintenance of a experienced

---

<sup>131</sup>"Those who have participated in ADR see it as superior to formal in-court adjudication. This form of conflict resolution engenders a higher degree of satisfaction among the participants than those involved in formal adjudication. Properly implemented, court-approved ADR can empower the parties to use their personal resources to work toward common ground. A mediated agreement is more effective because it is reached, not by the exclusive imposition of a higher authority, but by greater participation of the parties themselves." "Court-Approved Alternative Dispute Resolution," *Juvenile & Family Court Journal* 1989 Vol. 40 No. 2.

<sup>132</sup>In *Maine*, "In 1983, the Commission to Study the Matter of Child Custody in Domestic Relations Cases issued a report calling for a less adversarial forum for the handling of divorces involving minor children. As a result of that report, the Maine legislature enacted a requirement of mediation of contested divorces involving children. After more than a year's experience with mandatory mediation of these cases, Maine litigants, lawyers, and judges applauded the success of this approach." *Final Report of the Commission to Study Family Matters In Court* (March 1986).

<sup>133</sup>Burnout is the flip-side of specialization. If it can be avoided, a court can retain the significant benefits afforded by specialization 'without incurring the detrimental effects of overload from hearing too many difficult cases day after day.' Poznanski & Bassett, "A Family Court for Michigan?," 66 *Mich. Bar Journal* 657-66 (1987).

<sup>134</sup>Family Part judges need more time to handle the cases that come before them. Enough time should be allotted to review and consider the many reports (predispositional, psychological, school, probation, custody evaluations, etc.) and conference cases, as well as preside over hearings and trials. . . . The workload of Family part judges should be comparable to that of their counterparts in the Criminal and Civil Division." "Pathfinders Committee Report," 125 *N.J.L.J.* 41.

<sup>135</sup>Rotation is one means of dealing with judicial burn-out. . . . Hurst, H., "Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary," *Juvenile & Family Court Journal* 13 (1991).

<sup>136</sup>We agree that the assignment of a judge to family law cases is one of the most difficult and stressful of all the responsibilities of a circuit judge. Consequently, we acknowledge that there is a need for rotation among judges assigned to the family division. Overton, J., *In re: Report Of The Commission On Family Courts*, 588 So.2d 586, 16 FLW § 609 (Florida).

judiciary.<sup>137</sup> In practice, concerns that the best judges be available to hear family matters are met through careful selection and comprehensive training of the judges assigned to the family court. They must be then allowed to function at the highest level with the full recognition of their peers.

In addition to lessening burn out, rotation "out" of the family court can be an effective method of controlling the overly zealous judgmental judge whose continued hearing of sensitive family matters is not beneficial to the public.<sup>138</sup> Such "kingdom builders" are best handled by their rotation "out" to a different division wherein they can do less damage.

### One Central Facility vs Multiple Locations

Another mixed factor to be considered involves the desirability and costs of relocating multiple scattered facilities into one central facility vs maintaining multiple courthouses throughout the community as a part of the total family court system.<sup>139</sup> With respect to the location of facilities it is not required that the issue of either one central vs community locations be resolved in order to establish a family court if the costs of

relocation would be prohibitive. With today's technology, multiple facilities can be linked by computer or other electronic systems.<sup>140</sup> The one central point of a family court could be the smallest office of the leadership responsible for maintaining the principles and standards to be applied by each location. There need not be one specific court location to which all of the public is directed so long as the public is advised of the family court location in their area. Multiple locations may be necessary due either to space availability or in order to provide services closer to the population served.

Most proponents of the family court system recommend that it be located in one central area of the main courthouse whenever possible. The central location within the courthouse will facilitate the attendance of the parties, witnesses, social service providers,<sup>141</sup> while maintaining the recognition of the family court as a court.<sup>142</sup> At the same time, the location of all courts into or out of the main courthouse to be more accessible to the public remains an open issue. Regardless of location, this issue is the same for all courts and should not be considered as an impediment to the establishment of a family court system.<sup>143</sup>

<sup>137</sup>In New Jersey the Pathfinders Committee in evaluating the needs of the family court recommended: "The policy of rotation into the Family Part should be encouraged and maintained while permitting experienced Family Part judges with demonstrated ability to remain. Judges should be assigned to the Family Part for at least three years." "Pathfinders Committee Report," 125 *N.J.L.J.* at p. 42.

Differing recommendations as to the minimum length of assignment of judges rotated into the family court are discussed by Hunter Hurst in his comprehensive article, "Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary." He notes "The Standards advanced by the Institute of Judicial Administration and adopted by the American Bar Association are the most straightforward in prescribing a specific rotation system. In the draft Standards, a one-year judicial assignment - with renewal of up to two years in the family court division - was recommended. This system, a 'modified rotation system,' identified the problems of 'one-man empires,' and proposed to enhance the system by bringing experienced judges together with backgrounds in other types of law. The only real and immediate drawback of such a system was seen as the length of time it takes a judge to know the law and the dispositional alternatives. . . . By the final draft, the recommendations of the IJA-ABA for a modified rotational system has become optional." *Juvenile & Family Court Journal* Vol. 42, No. 3, at p. 14 (1991).

<sup>138</sup>In recommending a unified trial court at the highest level, the Judicial Administration Division of the American Bar Association noted: "... a unified trial court with specialized divisions can and should provide for periodic rotation of judges from one division to another. Such rotation helps to assure that members of the court are familiar with the entire range of the court's functions and responsibilities and to prevent specialized divisions from becoming a preserve of individual judges." (Emphasis supplied.) *Standards Relating to Court Administration*, American Bar Association, Judicial Administration Division Standards of Judicial Administration, Vol. 1, 1990.

<sup>139</sup>In 1983, a group studying the feasibility of a family court in Chicago did not recommend its establishment primarily because "... the melding of the subject matter jurisdictions which are included in the Model Family Court Act and which are now scattered throughout the Cook County Court system would mean (sic) the addition of almost 63,000 new filings, based on 1981 figures to the Juvenile Court's current caseload of approximately 22,000 new filings per year. \* \* \* The impact of such an expansion would be staggering physically and administratively. The Juvenile Court's current facility at 1100 South Hamilton would be overwhelmed and the dispersion of cases which would be required would defeat the ideal of hearing all Family Court cases in one court building." Members Newsletter "Special Edition" (unpublished).

<sup>140</sup>The Future and the Courts Conference noted that courts of the future could be linked at one central point through technology. Dator & Rodgers, *The Future and the Courts Conference* (Exec. Summ.) p. 17, Nov. 1990.

<sup>141</sup>Administrative centralization as found in a family court would be a convenience to lawyers, judges, and others who upon occasion must divide their time in different buildings." Kephart, W., "The Family Court: Some Socio-Legal Implications," 62 *W.U.L.Q.* 73 (1955).

<sup>142</sup>The Family Part, its judges and staff, should be housed in the main county courthouse. This would assure the effective and efficient administration of justice in the court and enhance the court's stature and credibility." "Pathfinders Committee Report," 125 *N.J.L.J.* 41, 42.

<sup>143</sup>In California, the family court project in Santa Clara County is functioning in four locations and not physically located together. The administration recognizes the need for an automated system to identify related cases for consolidation. (Interview with Kathy Smith, Division III Manager, Superior Court of Santa Clara, California, January 1993.)





# PRINCIPLES

Judicial actions or projects to establish and operate a family court must be firmly rooted in a set of principles. All plans and decisions should be made with these principles in mind<sup>144</sup> to ensure that the result is one of substance and not merely a name change.<sup>145</sup> Six principles of a comprehensive family court include:

1. The family court needs *carefully selected, trained and experienced judges and staff*.<sup>146</sup> With the recognition of the power of family court judges and the importance of such decisions, should come an awareness that the persons making such decisions ought to be the

most carefully selected and trained.<sup>147</sup> The nature and extent of the disputes presented and workload is the most demanding and requires sensitive and committed persons. Whenever there is flexibility in the assignment of judges or staff to those most important positions, their personal attributes should be considered. The policy of rotation of judges from the highest trial court has significant advantages together with some disadvantages.<sup>148</sup> The length of term is important since considerable training and experience is necessary to develop the important expertise.<sup>149</sup> A

<sup>144</sup>In *Virginia*, as to the need to integrate certain principles into the very structure and operations of the family court, the Advisory Committee noted: "Resolving disputes is the basic function of a court system. The challenge is to perform this task in such a way as to resolve disputes fairly and with a high quality of justice. In order to accomplish this task, especially in the area of family law, the courts should seek to resolve disputes rather than simply decide cases. The expectations of a family bringing its legal problems to court include a judicial system which is sensitive to the psychological impact on the parties of the litigation, which consolidates all cases related to that family, which affords a method of dispute resolution which best addresses the issues involved in the case, which is fairly and professionally administered, which provides finality to the court's decisions; and which treats all similarly situated litigants uniformly. Integration of these principles in the court systems' structure and procedures should contribute to the quality resolution of disputes. *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia*, (June 1992), p. 27, 28.

<sup>145</sup>In *Kentucky*, the Jefferson County Family Court Project adopted and distributed the "Goals of Family Court." They include: (1) Protection and Assistance; (2) Fair, Prompt and Uniform Resolution; (3) One Judge, One Staff, One Family; (4) NonAdversarial Approach When Appropriate; (5) Prompt Dissolutions and Terminations When Appropriate; (6) Sound Management; (7) Improved Record Keeping; (8) Advisory Committee; (9) Education of the Public; (10) Education of Family Court Personnel; (11) Enforcement. *Family Court Newsletter*, Jefferson County, Pilot Project, Vol. 1, No. 1, March 8, 1991.

<sup>146</sup>In *Virginia*, the Family Court project required that all judges attend a comprehensive training session which was held in November 1989 before the start of this project January 1, 1990. Comprehensive written materials were prepared and distributed. (Interview with Judge Dale Harris of Family Court Pilot Project in Lynchburg.)

In *New Jersey*, a mandatory weekend retreat was held for all Family Court Presiding Judges. All judges assigned into the family division are also required to attend the 3-day new Judges orientation sessions on the family court. In addition, a special Family Court Education Committee has been appointed by the Chief Justice and charged with the responsibility of "Planning for all levels of training. . . It would establish a learning curriculum and monitor the quality of all courses." 125 *N.J.L.J.* p.43.

In *Nevada*, the legislation establishing family courts in Reno and Las Vegas provides: "A judge assigned to the family court must attend the instruction required. . . Each judge to whom this section applies shall attend the instruction provided when it is offered for the first time after his election, appointment or assignment." Nev. Rev. Stat. § 3.223.

<sup>147</sup>In *Florida*, the Commission on Family Courts noted: "Judges should be assigned to the family division by the chief judge, who should give special consideration to the aptitude, demonstrated interest, and experience of each judge." After reviewing this report the Florida Supreme Court, in an opinion of Justice Overton, noted: "We agree that the assignment of a judge to family law cases is one of the most difficult and stressful of all the responsibilities of a circuit judge. . . For such a division to work, judges must be committed to carrying out this judicial responsibility and willing to participate in education and training programs in this area of the law." Overton, J., *In Re: Report of the Commission on Family Courts*, 588 So.2d 586, 16 FLW § 609 (1991).

In *Maine*, the Commission to Study Family Matters in Court noted: "Judges are people, with the different personalities and interests one finds in any group. Maine's current approach to family cases does not take advantage of these differences. . . some approach these hearings with hope, while others approach them with resignation. Families, and judges, will be better served if we encourage and permit judges with energy and interest for family cases to concentrate on those matters. . . In this way, judges with an inclination for family matters can use their talents, and develop more expertise, through a deeper involvement with family problems." *Final Report Of The Commission To Study Family Matters In Court*, March 1986.

In *New Jersey*, the Pathfinders Committee noted: "The personal attributes of Family Part judges are critical. The judges must be learned both in the law and behavioral science, and able to apply them to complex factual situations. They must be sensitive to the needs of persons and families in crisis and understanding of social mores and community standards. A Family Part judge needs physical and mental energy, confidence, patience and an accepting, sympathetic and open mind. . . Even with training, some judges will never have these attributes. It is incumbent upon the assignment judges and the Chief Justice to carefully evaluate persons whom they are considering for recommendation and assignment to the Family Part." "Pathfinders Committee Report," 125 *N.J.L.J.* 42.

In *Virginia*, identifying the "Development of Skilled Staff" as a problem area to be met by establishing a unified family court, the Virginia Family Court Study Committee noted: "One hallmark of the juvenile justice system in Virginia and elsewhere has been the development of a skilled and specialized staff trained to provide services to families in trouble. There has really been no parallel staff development for dealing with family law matters at the circuit court level because of the broader and more general range of jurisdictional responsibilities in that court." *The Adjudication of Family Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985).

<sup>148</sup>The advantages and disadvantages of rotation are discussed in Hurst, H., "Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary," *Juvenile & Family Court Journal* (1991) Vol. 42, No.3, p. 14.

<sup>149</sup>It is expected the new family court judge will require nearly two full years of family court experience before a high level of proficiency and productivity can be expected. Requiring the judge to remain on the family court assignment for a four year period before rotation is conducive to a more empathetic and efficient family court." Katz and Kuhn, *Recommendations for A Model Family Court*, A Report from the National Family Court Symposium, May 1991.

minimum term of service of at least three years is preferable whenever possible.<sup>150</sup>

Upon assignment to the family court, every judge and key personnel must be fully trained and experienced in all types of family law actions, as well as intrafamilial problems and methods of resolution.<sup>151</sup> A unified court requires that any judge hearing the case should be able to resolve all the family's problems whatsoever, including juvenile delinquency, support, custody, equitable distribution, divorce, and domestic violence. The training should include the delivery of social services as well as legal expertise. They should become familiar with the various methods of non-adversarial dispute resolution of all types of family problems. The judges and staff must have a working knowledge of psychological and sociological theories including child development, permanency planning, community-based treatment, extended family, the battering cycle, and others. They must also learn and be able to use residential treatment and placement procedures, tax laws, child-study team evaluations and other practical tools of the family court.

Responsibility for the training of judges and staff should be clearly placed with a designated person or standing committee.<sup>152</sup> This will ensure the maintenance of definite programs for both initial and on-going training. Standards should be established which require the attendance<sup>153</sup> and completion of certain courses of instruction prior to being permitted to serve in the family court.<sup>154</sup>

2. *One judge, one staff, one family.* The one judge, one staff, one family, principle provides that the same judge is

assigned to hear all matters involving a particular family. This can be accomplished by initial assignment of all family law cases filed to particular judges, either by designated portions of the alphabet, docket numbers, geographical areas, case types or other methods of delineation. Once a judge has determined a substantial matter involving that family, all subsequent matters are assigned initially to that judge, until he or she declines further involvement. This principle can be easily monitored by the staff or judges requesting reassignment of any file to the appropriate judge whenever the file discloses a substantial prior determination. This eliminates overlapping, judicial inconsistencies, judge shopping, and manipulation of the system to avoid enforcement of the judge's orders. As one New Jersey committee stated, "Under the one judge-one family approach the judge would come to know the family and therefore be able to deal more intelligently with its legal problems."<sup>155</sup>

Before the development of the family court in New Jersey, if attorneys and their clients were not happy with the support order which they got from the Juvenile and Domestic Relations Court, they would merely file for a divorce, make a further *pendente lite* support application and ask for a new determination of that same issue by a different judge in the Superior Court.<sup>156</sup> As the basic minimum standard, one judge should hear exclusively all contested matters arising during the pendency of a particular case.<sup>157</sup> Under a unified

<sup>150</sup>Pathfinders Committee Report, 125 N.J.L.J. 42.

<sup>151</sup>... training is necessary to ensure not only competent performance, but for enhancement of the status of the family court. Clearly, the legal system will provide a higher quality of justice through well-trained professionals. To meet the increasing needs of children and families in all states, mandatory judicial education and training is essential." Katz and Kuhn, *Recommendations for a Model Family Court*, A Report from the National Family Court Symposium, May 1991.

<sup>152</sup>In *Nevada*, the state legislature designated the National Council of Juvenile and Family Court Judges as the appropriate organization to train its family court judges. Nev. Rev. Stat. Chap. 3, § 5.

<sup>153</sup>We strongly recommend that if a family court is created in Michigan, its judges be required to attend a rigorous orientation to family law and frequent mandatory continuing legal education sessions as . . . " Poznanski & Bassett, "A Family Court for Michigan?," 66 *Mich. Bar Journal* 657-66 (1987).

<sup>154</sup>In *New Jersey*, the Pathfinders Committee studied comprehensively the family court and recommended the establishment of the Family Part Education and Training Committee "with the responsibility to establish and administer orientation and continuing training programs within this state for judges which will include instruction in legal, psychological and sociological principles, special practices and procedures, case processing, calendaring and management techniques, and any other relevant material. . . ." Pathfinders Committee Report, 125 N.J.L.J. 43. The recommendation has been implemented by the Chief Justice who appointed a multi-disciplinary standing committee charged with this responsibility.

<sup>155</sup>*Family Part Operations and Organization*, (Unpublished internal report of the New Jersey Administrative Offices of the Courts) p. 44-46 (Dec. 1983).

<sup>156</sup>In *Kentucky*, as to this factor of inconsistency and judge-shopping, the 1988 General Assembly in adopting the House Concurrent Resolution Number 30 which established the Family Court Feasibility Task Force noted: "The jurisdiction of the various courts of the Commonwealth can and do overlap concerning matters of dispute within particular families, thereby causing fractionalization and disruption of judicial decision-making continuity; and the establishment of a court devoted to and specializing in family law might promote continuity of judicial decision-making and foster the development of expertise in the management and disposal of family law cases." *Family Court Feasibility Task Force*, House Concurrent Resolution, No. 30 (1988).

<sup>157</sup>In *Maryland*, this principle was noted by the Committee on Family Court and Family Services which recommended: "Where practical, one judge shall hear all contested mat [sic] matters before the court, for any one family for the duration of the case." *Governor's Task Force on Family Law*, Final Report, October 1992. (Maryland). In *New Jersey* the principle is contained in a court rule which provides: ". . . insofar as is practicable, all subsequent motions in the cause, other than motions directly addressed to the trial or arbitration calendar, shall be heard by the same judge who heard the first motion in the cause." R. 1:6-2.

family court system, all judges should be hearing every type of case, including both divorce involving families with substantial financial means and support complaints brought by welfare departments on behalf of unmarried parties. The major issues of family law which are most often presented for determination by different courts are custody, visitation, child support and domestic violence. While related cases of pending juvenile delinquency and divorce complaints are rare, the comprehensive resolution of all intrafamilial disputes will lessen the damage done to the children, and act to prevent further causes of delinquency.<sup>158</sup> Their exposure to the full spectrum of litigants should improve the quality of justice for all, both by insuring more uniformity and by establishing an approach to be followed by judges and staff that all parts of complex family problems must be resolved together at one time.<sup>159</sup>

A useful corollary to the principle of one judge-one family is the organization of the family court staff to provide "one staff-one family." This can be done by assigning integrated case management "teams" which will handle all family court matters, individuals or families assigned to such team. Assignment to teams can be done by portions of the alphabet, or by those persons coming from particular areas or regions of a vicinage. These teams will come to learn more of the total problems of each family and be able to share valuable information and recommendations with any judge assigned to hear a particular type of case. By maximizing the information available to the court, the "one staff-one family" approach helps to improve the consistency and quality of the decision-making process.<sup>160</sup> As helpful as the assigned staff approach is to the

court, it is *not* a complete substitute for the "one judge-one family" principle in contested matters because only the judge has the ultimate decision-making authority. In order to coordinate the teams with the judges, some systems also assign a particular judge to each team.<sup>161</sup>

3. The third principle is to maintain an *aggressive case processing and management system*. With the establishment of comprehensive jurisdiction and the unification of judicial authority and functions must come the establishment of a unified case processing and management system including all types of family court matters.

A unified case processing and management system begins at one central point for the reception, filing, screening, procedural review, and initial assignment of every complaint or petition filed. All staff, including the judges, professional and clerical personnel, must be readily accessible to each other and the files with which they work. They remain subject to the daily communication and control of the central administration for the purposes of case processing and management, even when their offices and courtrooms function in different locations. The authority to direct and control each and every step of the daily processing and management of all family court cases must be clearly placed in one central office, with one family court administrator having the ultimate responsibility, subject to reporting through the established chain of judicial command. All cases should be placed under tight controls after the complaint is filed.

An indispensable part of the case processing and management of every family court is the

<sup>158</sup>Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (June 1992).

<sup>159</sup>In Kentucky, the Jefferson County Family Court project adopted a one judge, one family goal noting: "To promote the principle of one judge, one staff, one family. This principle provides that (with as few exceptions as reasonably possible) the same judge is assigned to hear all matters involving a particular family. Thus, each judge will hear every type of case within the jurisdiction of Family Court. This will eliminate overlapping and alleviate the inconvenience of litigants having to appear in different courts with a risk of inconsistent resolution to family problems. It will eliminate judge-shopping and the manipulation of the system to avoid enforcement of court orders. It will promote judicial economy." *Family Court Feasibility Task Force*, House Concurrent Resolution, No. 30 (1988).

<sup>160</sup>After studying the integrated case management team approach being utilized in the family court in Monmouth County, New Jersey, it was noted:

"Essential to the reorganization was a shift from a specialist to a generalist approach. Specialist team members had to become generalists, taking on wider areas of responsibility. Judges who dealt exclusively or primarily with certain cases (e.g., divorce and separation; abuse and neglect) now would handle all cases relevant to one family. Specialization (typical in New Jersey) was considered a barrier to fully achieving the family court mission."

The regionalized integrated case management teams were key. Each (there were three teams) was to have professional and clerical staff providing support to the judge assigned to the region. It would be led by a team leader assisted by a court coordinator serving as liaison between all parties. The team would be responsible for handling all related matters involving families in the region from beginning to end. This would include activities such as interviewing clients, screening complaints, recommending diversion where appropriate, custody investigations and pre-disposition reports in delinquency cases, and conducting follow-up and monitoring when needed. *Reaching For A "Family" Court*, JDC Clearing House, December 6, 1991.

<sup>161</sup>In Kentucky, the Family Court assigns families to a particular court and staff by using sections of the alphabet. *Family Court Newsletter*, Jefferson County Pilot Project, Vol. 1, No. 1, March 8, 1991.

In New Jersey, Camden and Monmouth counties, families are assigned to teams which cover particular towns and geographic areas.

identification of emergent issues and maintenance of certain priorities for the court disposition of custody, visitation, abuse, neglect, domestic violence, guardianship, and institutionalized juvenile cases. Family problems come to the court in varying degrees of crisis. Priorities for different types of cases have been set by legislation and by directives of the administrative offices of courts. Primarily they involve acute crisis, such as juveniles placed outside their homes, or family members in positions of danger in domestic violence cases, or children caught between contesting parents. Priorities recognize the anxieties of being trapped in these situations. Establishment of a family court system provides a system through which these cases can be given the priority the court system has been mandated to provide. Children who are held in limbo while overburdened court systems postpone and delay their final cases' disposition, present much different and substantially more serious problems than they did at the beginning of the dispute.

In their treatise *Beyond the Best Interests of the Child*,<sup>162</sup> the authors note:

"The courts, social agencies, and all the adults concerned with child placement must greatly reduce the time they take for decision. While the taking of time is often correctly equated with care, reasoned judgment, and the assurance of fairness, it often also reflects too large and burdensome caseloads or inefficiently deployed resources. Whatever the cause of the time-taking, the costs as well as the benefits of the delay to the child must be weighed. Our guidelines would allow for no more delay than that required for reasoned judgment. By reasoned judgment we do not mean certainty of judgment. We mean no more than the most reasonable judgment that can be made within the time available--measured to accord with the child's sense of time. Therefore, to avoid

*irreparable psychological injury, placement, whenever in dispute, must be treated as the emergency that it is for the child.*"\*

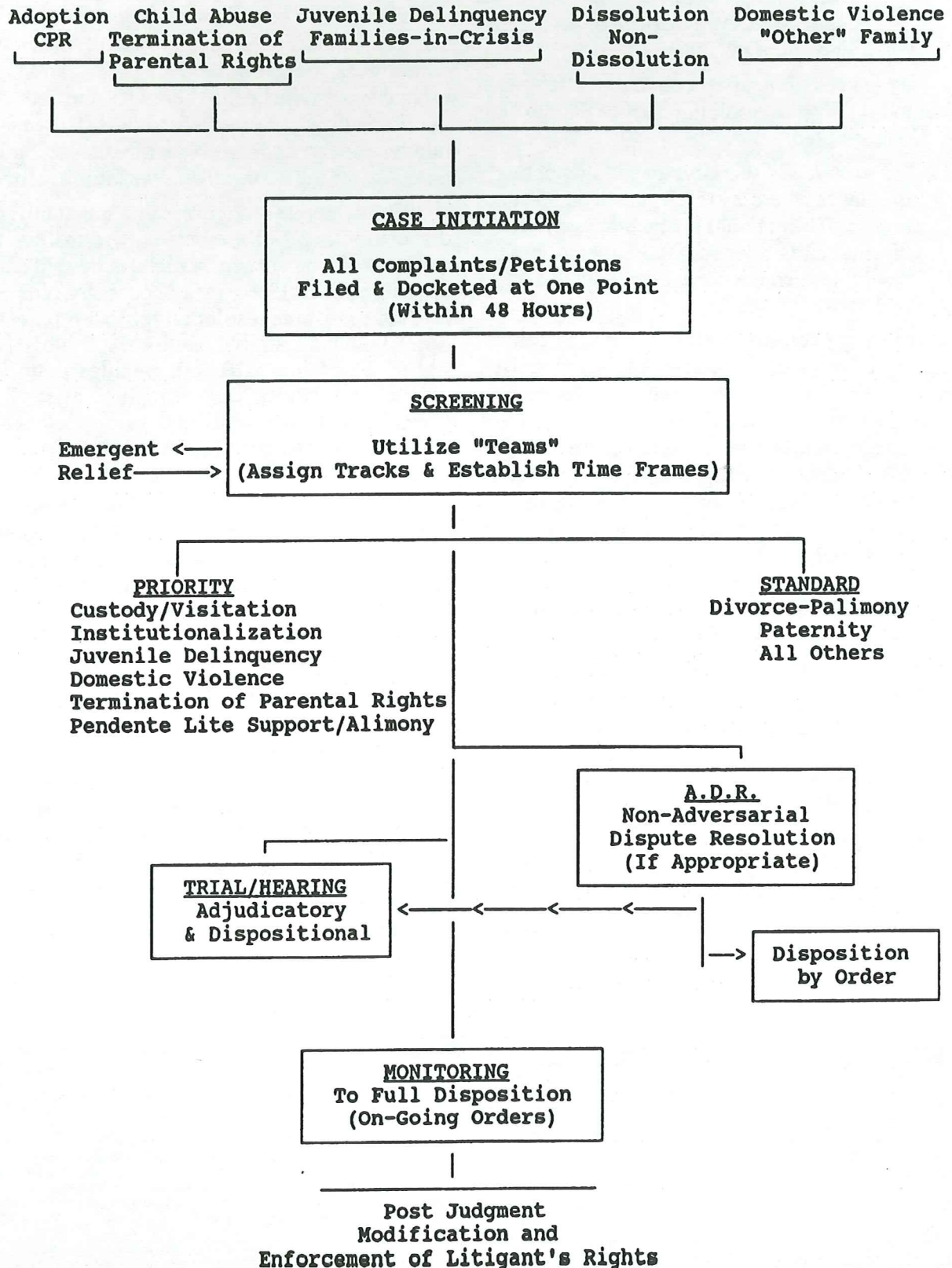
\*Three months may not be a long time for an adult decision maker. For a young child it may be forever." (emphasis supplied)

Every case should be screened and placed on an appropriate track and monitored in accord with clearly established practices and procedures. The monitoring component cannot be overstated. Too often, files are lost and family problems slip through the cracks and remain unresolved in filing cabinets because there was no central control or responsibility for their prompt resolution. Central control of case processing and management does not interfere with the individual calendar control and management of cases assigned to a particular judge. The advantages and disadvantages of central vs. individual calendar control remain unaffected by the establishment of a unified family court central case-processing point for all initial filing and screening. If a vicinage decides to have its calendar controlled individually by the judge to whom a case is assigned, it can continue to do by beginning at a point after the initial filing and screening by the central unit. Likewise, a system of central calendar control may begin its tasks at the same time. A case processing and management flow chart should be established. A suggested form would include:

An effective case management system is more than a replication of an operations manual. It is a combination of carefully planned use of personnel and procedures based, at all times, on clearly established and understood principles. All employees have a need to know the basic reasons why their particular actions are necessary in order to have the most effective family court in their county. The "why?" in the performance of tasks is just as important as the "how to." Since the management of the family court system is so dependent upon outside influences, programs, and agencies, an aggressive case processing and

<sup>162</sup>Freud, Goldstein and Solnit, *Beyond the Best Interests of the Child*, (1979).

### CASE PROCESSING & MANAGEMENT



management system is the only service to the public that can be effectively guaranteed by the full family court.

4. The fourth principle is to maximize the use of *non-adversarial methods* of family dispute resolutions.

On the relationship of courts and alternative methods of dispute resolution Justice Sandra Day O'Connor noted:

"The courts of this country should not be the places where the resolution of disputes begins. They should be the places where disputes end --after alternative methods of resolving disputes have been considered and tried."<sup>163</sup>

As a key feature of the family court, maximizing non-adversarial dispute resolution recognizes counseling and mediation techniques as the best way of dealing with family problems.<sup>164</sup> Families have to continue to interact daily, before and after court hearings; even when they are physically separated they have to maintain on-going interrelationships.<sup>165</sup> The traditional adversarial approach of trial courts creates new barriers to this relationship, rather than breaking down the old barriers. Public accusations in the courtroom, cross-examination, exposing confidences within the family, anxieties caused by courtroom settings and humiliation are all the direct result of in-court

proceedings. Experience has shown that this kind of formal dispute resolution not only creates hostility and anger, but also intensifies the basic problem rather than offering solutions.<sup>166</sup> By maximizing the use of counseling and mediation services, intake conferences, juvenile conference committees, neighborhood dispute teams, and private and public health therapists, the court is a facilitator to help the people exhaust all their own human resources to resolve the matter before entering into the destructive adversarial approach.

This principle recognizes that the courtroom disposition is never the best way to resolve the family problem. The most that can be said about the courtroom is it provides a necessary, alternate method of dispute resolution for that moment in time of the intrafamilial relationship. Judges are not in a position to follow families daily and decide for them the disputes which arise. It is imperative that the families develop methods of resolving their own problems by non-adversarial means.<sup>167</sup>

The most activity in the establishment of alternative dispute resolution (ADR) programs within court systems has been in the area of family law.<sup>168</sup> Notable programs have been established, either voluntary, discretionary or mandatory in relationship with courts nationwide.<sup>169</sup> They are usually designated as "court operated or annexed," "court referred" or "private." This

<sup>163</sup>Address of Justice Sandra Day O'Connor at "Consumer Dispute Resolution Conference, Exploring the Alternatives," Jan. 21, 1983.

<sup>164</sup>The goal is to find the best way, within individual jurisdictions, to deal with children and families who are the responsibility of our courts. The best way often involves developing and using a form of ADR." "Alternative Dispute Resolution: A Juvenile and Family Court Perspective," *Juvenile & Family Court Journal*, Vol. 40 No. 2, at p. 51 (1989).

<sup>165</sup>The parent's and children's needs and abilities change over time. Expecting the court to decide issues about child bearing is unreasonable. Parents have the right to make a large number of decisions about how their children will be raised. Divorce creates a problem because, depending on where the child is at a given moment, the rules of two different households function radically differently. For example, parents may disagree about what privileges and responsibilities the children should have in an environment." Donohue, W., Burrell, N., Allen, M., "Models of Divorce Mediation," *Family and Conciliation Courts Review*, Vol. 27, No. 1, July 1989.

<sup>166</sup>An increasing number of states have recognized the need to maximize the use of nonadversarial techniques to resolve family law matters. In *Maine*, the Final Report Of The Commission To Study Family Matters in Court notes: "Adversariness: Maine has taken significant steps toward reducing the adversary posture of family cases. In 1977, the enactment of the Maine Juvenile Code established a system of juvenile caseworkers to divert juvenile offenders from dispositions involving formal court adjudications. Approximately 44% of each year's juvenile cases are diverted in this way. In 1983, the legislature mandated mediation of contested divorces, annulments, and separations involving minor children. In 1984, the Court Mediation Service resolved more than one half of the domestic cases referred for mediation. In 1985, the District Court began a pilot program in three counties to train and use Court Appointed Special Advocates as representatives of children in child protective proceedings. The successful use of these lay volunteers to protect children's rights has resulted in a current proposal to establish the program in statute and extend its use to all District Courts." *Final Report of the Commission to Study Family Matters in Court* (March 1986).

In *Florida*, the Report Of the Commission on Family Matters noted: "A fully staffed mediation program is essential in these types of proceedings."

In *Virginia*, the study committee noted: "The Family Division would also be better equipped to develop and implement alternative methods of dispute resolution than the present circuit court." *The Adjudication of Family Law Matters in Virginia's Courts*.

The National Family Court Symposium conferees believed "that because of the nature of the conflict and relationship of the parties to each other, proceedings in family court are distinct from other litigation. They involve not only the traditional adversarial model but other nonadversarial approaches such as the effective use of negotiation, mediation, alternative dispute resolution and other informal processes." Katz and Kuhn, *Recommendations for a Model Family Court*, A Report from The National Family Court Symposium of the National Council of Juvenile and Family Court Judges (May 1991).

<sup>167</sup>Mediation further provides parents an opportunity to improve their communication and cooperation skills. It becomes a precedent for problem solving in the future. Divorce mediation encourages parents to end their marriage in an amicable fashion and build a new working relationship as parents for the emotional benefit of their children." Dalton, "Divorce Mediation," *Utah Bar Journal*, December 1990 at 14.

<sup>168</sup>Our courts are not strangers to ADR. The role of the juvenile and family court has always included use of informal processes. Juvenile and family judges have been more interested in the goal of protecting the best interests of children than obtaining the added benefits of docket relief often cited by ADR proponents. Historically, our courts have had greater discretion to develop alternative processes such as adjustment, diversion and the use of mediation and other methods of settlement. These processes provide the appropriate treatment, services, or accountability required for the best interests of the child. Although perhaps not foreseen by its Illinois founders in 1899, ADR was essential to the foundation upon which the juvenile court movement was based. The concept of 'adjustment,' in the sense of diverting a case from a normal adjudicative process, was utilized within the first Juvenile Court Act." "Alternative Dispute Resolution: A Juvenile and Family Court Perspective," *Juvenile & Family Court Journal*, Vol. 40, No. 2 (1989).

<sup>169</sup>The National Center's ADR Program Database indicates that applications of ADR have grown most in the domestic relations area." Pankey, Kenneth, *Alternative Dispute Resolution in Domestic Relations Cases*, National Center for State Courts, Memorandum, November 15, 1990.

indicates whether the program is provided as a direct service of the court or by way of referral from the court or operates independently.<sup>170</sup> "Complementary" dispute resolution (CDR) is the term given court approved programs by the New Jersey Supreme Court to emphasize that they are provided as a compliment to the court system, rather than an alternative to it.<sup>171</sup>

Legitimate concerns over the use of alternative dispute resolution (ADR) have been noted as having the potential to deprive some litigants of "the fundamental rights we now take for granted."<sup>172</sup> In this respect provisions for standards of fairness, including equal access and notice and opportunity for all to participate on a voluntary basis must be included in every ADR program which is approved by a family court. Minimum standards have been proposed by the National Council of Juvenile & Family Court Judges to guarantee the maintenance of "essential fairness" in all ADR programs considering family court matters.<sup>173</sup> It is of primary importance that all pre-adjudicatory efforts to resolve intrafamilial disputes by non-adversarial means must be implemented only on a voluntary basis.<sup>174</sup>

Notable family court ADR programs in each case type include:

- *Custody/Visitation - Mediation*;<sup>175</sup> Educational workshops.
- *Juvenile Delinquency - Intake Conferences*; Juvenile Conference Committees; Youth Court;<sup>176</sup> Station House Adjustments.
- *Divorce - Divorce mediation*;<sup>177</sup> Arbitration;<sup>178</sup> Matrimonial Early Settlement Panels.<sup>179</sup>
- *Status Offenses - Intake conferences*; Crisis Interview Conference.
- *Child Support - Intake Conferences*
- *Child Abuse - Case Conferences*
- *Termination of Parental Rights - Open Adoption*.<sup>180</sup>

The mediation of custody or visitation disputes provides a primary area of nonadversarial resolution of intrafamilial disputes. A majority of the states provide some form of custody/visitation mediation,<sup>181</sup> while such issues must be mediated first as a mandatory requirement by statute in a limited number of states.<sup>182</sup> This extensive experience with custody mediation has resulted in significant claimed advantages.<sup>183</sup> In addition to resolving the immediate dispute, mediation tech-

<sup>170</sup>A program that is "court operated" or "court annexed" is one that is funded and administered by the courts, although its neutrals (mediators, arbitrators, etc.) may be independent of the court. A "court referred" or "court sponsored" program is one that is run independently of the court but depends heavily upon the court for the referral of cases. A "private" program has no strong institutional connection to the court." Pankey, Kenneth, *Alternative Dispute Resolution in Domestic Relations Cases*, National Center for State Courts, Memorandum, November 15, 1990.

<sup>171</sup>The New Jersey Judiciary should provide citizens with a full set of options for resolution of disputes, including traditional litigation as well as various complementary forums, so as to continue to fulfill its commitment to provide the highest quality of justice possible." Task Force on Dispute Resolution, *Supreme Court Report* (Feb. 1990).

<sup>172</sup>Guill, Slavin, "Rush to Unfairness: The Downside of ADR," *The Judges Journal*, Vol. 28, No. 3 (1989).

<sup>173</sup>Court-Approved ADR must guarantee essential fairness protections. . . Concern is often expressed that ADR process is apart from the public legal system and forum and without the procedural and substantive protections granted in a court of law. The above safeguards -- court approval, a record, confidentiality, court evaluation and the continuing option for legal process -- should sufficiently protect all parties participating in ADR." "Court-Approved ADR Issues," *Juvenile and Family Court Journal*, Vol. 40, No. 2 (1989).

<sup>174</sup>The key to providing essential fairness is the assurance that participation in the process itself and acceptance of the result is completely voluntary on the part of all parties. Each party must have the option not to proceed with the process, or not to agree to the result. Each party must have the option, at any time during and after the process to seek formal adjudication." "Alternative Dispute Resolution: A Juvenile and Family Court Perspective," *Juvenile & Family Court Journal*, Vol. 40, No. 2 (1989).

<sup>175</sup>In one reported experience it is claimed that after five years of mandatory custody mediation in the San Francisco Superior Court, no mediated case has come back into court for modification or enforcement. King, "Handling Custody and Visitation Disputes Under the New Mandatory Mediation Law," *2 Cal. Law 40*, 41 (Jan. 1982). To be supplied.

<sup>176</sup>Youths accused of shoplifting and other minor crimes will soon face justice from a jury of their peers. . . A new 'youth court,' with volunteers 12 to 19 years old making up the jury pool, will begin hearing cases." "Youth Court," *United Press International* Jan 10, 1987.

<sup>177</sup>Pearson, Ring & Milne, "A Portrait of Divorce Mediation Services in the Public and Private Sector," *21 Conciliation Cts. Rev.*, 1 (1983)

<sup>178</sup>Why arbitrate a domestic relations dispute? The answer lies primarily in three criticisms of the American judicial system. First, some parties . . . justifiably fear that judges do not have time to examine their cases thoroughly because of crowded dockets and . . . the judges have not been trained to handle intricate issues involving child custody and marital financial areas. Second, some parties fear the power of a judge, whom they have not met . . . to determine the course of their lives based on a limited amount of contact and subjective observation. Finally, some parties wish to avoid the escalation of hostilities which accompanies many trials. . . In light of these disadvantages, arbitration is viewed by many as a reasonable alternative to the judicial system's method of resolving marital and custody disputes." Belinkic, "Matrimonial Arbitration," *65 CTBJ* 309 (1991).

<sup>179</sup>In New Jersey advisory panels of experienced lawyers resolve matrimonial cases presented. N.J. Court Rule 5:5-5.

<sup>180</sup>Open Adoption Grows," *The Courier Post*, Monday, Feb. 24, 1992.

<sup>181</sup>Thirty-six states plus the District of Columbia reported such programs in a 1987 survey of state court administrators conducted by the National Center for State Courts. Myers, Gallas, Hanson, Keilitz, "Divorce Mediation in the States: Institutionalization, Use, and Assessment," *State Court Journal*, Fall 1988, at 17.

<sup>182</sup>California, Delaware and Maine. Cal. Civil Code § 4606 (West 1981); Me. Rev. Stat. tit. 19, §§ 214, 581 & 752 (West Supp. 1985-86); and 13 Del. Code, Rule 470.

<sup>183</sup>People chose to use ADR for many reasons. For some litigants, it offers a way to save time and money or a way to avoid unwanted publicity. For the courts, ADR may help to reduce caseloads or at least reduce the resources that a court must devote to a case. In domestic relations cases, all of the above may apply; however, ADR's popularity in domestic relations cases may stem most from the fact that ADR offers a constructive method of resolving emotionally charged issues in what will usually be ongoing relationships, whether the parties remain married or not." Pankey, Kenneth, *Alternative Dispute Resolution in Domestic Relations Cases*, National Center for State Courts, Memorandum, November 15, 1990.



niques are used to facilitate communication between separated parents as an important part of child development or to minimize the effects of the separation.<sup>184</sup> The use of such techniques should have a broad general application and only be limited at the discretion of the court in fact sensitive cases.

Another nonadversarial technique used in custody/visitation matters involves the increased use of educational workshops or programs designed to acquaint the separating parents of the need for effective communication and cooperation between the parents. Such programs usually involve the viewing of a film, distribution of literature involving the needs of the child and the handling of difficult situations and an opportunity for parents to discuss individual problems with professional advisers.<sup>185</sup>

While the claimed advantages and extent of custody/visitation mediation programs increases steadily, there is a significant criticism of its use in cases involving perceived power imbalances between the adults.<sup>186</sup> Some statutes and court rules<sup>187</sup> limit or prohibit the use of mediation, even of custody/visitation issues, in cases involving domestic violence or spousal abuse. Someone

who has been dominated by another may continue to be controlled or unduly influenced in the mediation sessions.<sup>188</sup> In addition the use of mediation in such cases can diminish the condemnation of the assaultive behavior or even suggest that both parties are responsible for the conflict. Regardless of whether mediation or nonadversarial techniques are used for the custody issues involved, it is clear that the prohibition against the violence should not be a matter of negotiation but clearly condemned by the court in the courtroom. However, this can be accomplished while allowing the parties to meet with trained experts to enable them to provide for effective communication involving the child's needs and development without any threat of further intimidation or violence.<sup>189</sup> In this respect the interest of a child to have a full relationship with both parents and consistent parenting would appear to be in conflict with an absolute prohibition against their communication. Each party should be separately advised as to their opportunity to voluntarily meet with a trained therapist to discuss their future relationship with the child,<sup>190</sup> while at the same time be given assurance that they may be heard in court at any time without any negative inferences being drawn from the refusal to mediate. These

<sup>184</sup>Dr. Judith Wallerstein in her book *Second Chances*, notes:

"If the goal of the legal system is -- and I fully believe that it should be -- to minimize the impact of divorce on children and to preserve for children as much as possible of the social, economic, and emotional security that existed while their parents' marriage was intact, then we still have very far to go.

At a minimum the variety of supports and services for divorcing families needs to be expanded in scope and over time. These families need education at the time of the divorce about the special problems created by their decision. They need help in making decisions about living arrangements, visiting schedules, and sole or joint custody. And they need help in implementing these decisions over many years -- and in modifying them as the children grow and the family changes. Divorcing families need universally available mediation services." Wallerstein & Blakeslee, *Second Chances*, (1989).

<sup>185</sup>The "Children's First" program in Portland, Maine, which is patterned after a similar program in existence in DeKalb County, Georgia, has proved very effective. (Interview with Judge Dana Cleaves, Administrative Judge, Chief Judge of the Portland, Maine Pilot Family Project.)

In *New Jersey*, Chief Justice Robert Wilentz, by a letter of September 28, 1991, to all Presiding Family Part Judges directed that each vicinage present a plan for mandatory custody/visitation mediation. He noted: "All custody/visitation mediation programs should require the parties, in cases identified as appropriate for mediation, to attend one session, be it for educational purposes or for actual mediation (a county may, of course, opt for both a required educational session and a required initial mediation session). If the program mandates only an educational session, the parties' continued participation in actual mediation should be encouraged." Wilentz, Chief Justice, Memorandum to Assignment Judges, *Development of Custody Mediation Programs* (Sept. 28, 1990).

<sup>186</sup>Note, Keenan, L., "Domestic Violence and Custody Litigation, The Need for Statutory Reform," 13 *Hofstra L. Rev.* 407 (1985); Grillo, T., "The Mediation Alternative: Process Dangers for Women," 100 *Yale L. J.* 1545 (1991); Rowe, K., "The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not Be Mediated," 34 *Emory L.J.* 855 (1985).

<sup>187</sup>In *Maryland*, Court Rule § 73A Mediation of Child Custody and Visitation Disputes provides: "The court may not order mediation . . . in any case in which . . . there is a genuine issue of physical or sexual abuse of the party or the child." R. § 73A.

<sup>188</sup>... mandatory mediation can be destructive to many women and some men because it requires them to speak in a setting they have not chosen. . . Voluntary mediation should not be abandoned, but should be recognized as a powerful process which should be used carefully and thoughtfully. Entering into such a process with one who has known you intimately and who now seems to threaten your whole life and being has great creative, but also enormously destructive, power. Nonetheless, it should be recognized that when two people themselves decide to mediate and then physically appear at the mediation sessions, that decision and their continued presence serve as a rough indication that it is not too painful or too dangerous for one or both of them to go on." Grillo, "The Mediation Alternative: Process Dangers for Women," 100 *YLJ* 1545 (1991).

<sup>189</sup>Conflict exists between battered women's advocates who oppose any form of mediation or therapy involving both parties and those who contend that trained and experienced professionals can work effectively with these couples to the benefit of all parties concerned. Eve Lipchik, an experienced therapist notes: "The professionals and politicians committed to keeping women safe from abuse should encourage rather than ignore, innovative treatment alternatives that address the full range of relationships in which abuse takes place. We must avoid forcing real people into oversimplified categories and expand therapeutic options in confronting a mental health problem that was ignored for too long." Lipchik, E., "Spouse Abuse: Challenging The Party Line," *Networker*, May/June 1991, p. 63.

<sup>190</sup>Mediation with abusive couples can only be accomplished successfully with the consent of both parties, with a mediator who is trained in both family violence and mediation techniques, with the use of particular methods to balance the power differential and compensate for the automatic advantage of the abuser, and in conjunction with the abuser's participation in therapy. When conducted properly with certain types of cases, mediation can not only help couples arrive at mutually satisfactory arrangements but it can also help empower the battered woman." Geffner and Pagellow, "Mediation and Child Custody Issues in Abusive Relationships," *Behavioral Sciences and the Law*, Vol. 8, p. 157.

cases are fact sensitive and provide the most difficult areas for nonadversarial dispute resolution within the family law jurisdiction.<sup>191</sup>

Divorce mediation involving economic issues has also increased significantly in the past few years. This involves the submission of financial and economic issues, as well as custody and visitation, to trained mediators or arbitrators.<sup>192</sup> In an increasing number of cases, the parties have opted for the selection of joint appraisers or arbitrators to establish the value of particular items or a matrimonial estate, which evaluation has been previously agreed to be binding upon the parties. In addition, advisory panels had been created in New Jersey in which a group of experienced matrimonial attorneys review memoranda and financial information presented on cases in which they are not involved and make recommendations to the parties in a formalized court established procedure.<sup>193</sup>

Juvenile delinquency cases have provided the greatest number of nonadversarial techniques in the effective diversionary programs existing in most states. From the "station house adjustment" of delinquency matters by the police at the local level, through the use of juvenile conference or neighborhood dispute committees,<sup>194</sup> to the intake service conferences prevalent in most juvenile courts, the use of various techniques and methods is widespread. Innovative programs include "youth juries" or peer group committees which seek to resolve delinquency complaints out of court.

Intake conferences are also frequently used in the nonadversarial resolution of status offenses involving truancy, incorrigibility or runaways. In

this area there is increased emphasis on the removal of such cases from family court jurisdiction whenever possible. They are frequently handled as dependency matters by trained personnel outside the courtroom.

Child support disputes are most frequently resolved out of the courtroom in mediation conferences by use of child support guidelines. Mediations of child support disputes has proven effective in controlled experimental research.<sup>195</sup> Federally mandated programs have required each state to develop such guidelines and provide for a more expedited process in the establishment and enforcement of child support orders.<sup>196</sup>

Child abuse and neglect cases provide somewhat of an enigma with respect to nonadversarial dispute resolution. While the protection of the children becomes paramount in all such matters and the state has a substantial interest in this area, the statutes and policies of child protective agencies are to reunite the family in all cases whenever possible. Rehabilitative services are offered and other measures designed to facilitate the return of the child to the alleged abusing parents. Experience has shown that most child abuse and neglect cases are in fact "settled" by conferences held prior to court appearances with resultant consent orders. Such conferences would allow for the interest of the parents, state agency, and children to be effectively represented to their mutual satisfaction.

The area most unlikely for nonadversarial dispute resolution involves the exercise of the awesome power of termination of parental rights. While it would seem that such cases could not be

<sup>191</sup>In the Domestic Relations mediations program of the Superior Court of the District of Columbia, "program guidelines were drafted. The guidelines provide that both parties must enter the mediation process voluntarily. They permit most domestic relations cases that typically would come before the Superior Court to enter mediation unless one party has been seriously injured by the other, or unless there has been weapon use, a long history of repetitive violence, or a severe lack of parity in bargaining power between the parties." Kessler, Gladys, Finkelstein, Linda, "The Evolution of the Multi-Door Courthouse," 37 *Cath. U.L. Rev.* 577 (1988).

<sup>192</sup>"... a session with an accountant is helpful to discuss ways to maximize the tax benefits and minimize the adverse tax consequences of a dissolution in a manner that is fair and agreeable to both parties. A co-mediation session with a child psychologist or mental health professional can be helpful in formulating a visitation schedule that is appropriate in meeting the emotional needs of children at their particular emotional state of development." Dalton, "Divorce Mediation," *Utah Bar Journal*, December 1990 at 13.

<sup>193</sup>New Jersey Court Rule 5:5-5 provides in part: "All vicinages shall establish an Early Settlement Program, in conjunction with the County Bar Associations, and the Presiding Judges, or designee, shall refer appropriate cases including post-judgment applications to the program based upon review of the pleadings and case information statements submitted by the parties." R.5:5-5.

<sup>194</sup>New Jersey has established Juvenile Conference Committees by Court Rule. R.5:25-1 provides: "The court may appoint one or more Juvenile Conference Committees for the Committee. . . . "The committee shall serve as an arm of the court in hearing and deciding such matters involving alleged juvenile offenders as are specifically referred to it by the court. . . ." R.5:25-1.

<sup>195</sup>While the differences in compliance for those in mediation and nonmediation groups were not significant, it appeared that the patterns for voluntary child support compliance favored the mediation group. Support compliance was better for those who mediated, even among those with a history of nonpayment and among those who had been separated for at least three years." Thoennes, Pearson, Bell, *Executive Summary of the Evaluation of the Use of Mandatory Divorce Mediation* (1991).

<sup>196</sup>Federal Expedited Process: 42 USC 66(a)(2); 45 CFR 302.70(a)(2); 45 CFR 303.101(a)&(b).

resolved by any consensual agreement, the use of open adoption has become more widespread. In such cases the parties may agree to terminate the parental rights of the natural parents and allow for the child to be adopted by an adoptive couple under conditions which provide for the natural parents to maintain some contact and communication with the child. Such arrangements should be carefully considered and used primarily where both the natural and adoptive parents are acquainted and have a significant interest in the child prior to the court hearing.

Use of nonadversarial techniques in the resolution of intrafamilial disputes has proven to be an effective method of determining the issues by agreement while avoiding the disastrous effects of the courtroom. In all cases such approaches should complement, not be in opposition to, the judicial process.

5. The fifth principle of a successful family court is to *provide maximum access to all* members of society. Any family or person, regardless of income or legal representation, sex, race, creed or place of residence, must have access to total family court system as well as the benefit of the services provided.<sup>197</sup>

Access to the family court system involves several points of contact. Initially all parties must have unfettered entry into the judicial system, including all related courts and ancillary services. This must include all pre-adjudicatory services, both nonadversarial, *e.g.*, counseling or mediation, and adversarial *e.g.*, evaluations. The pre-adjudicatory services also include the practices and procedures necessary to obtain emergent relief or priority hearings. Another important

factor in providing full access is the need to provide timely adjudication of the dispute.<sup>197</sup> This involves not only regular case processing and management but also a consideration of the needs of the family for a final determination of issues in relation to varying degrees of crisis. Finally, access to the family court system is never complete until there is an effective enforcement of all its orders and judgments.

Steps which can be taken to maximize access include providing competent and relevant information and procedural advice to all who inquire at a central point or designated case reception unit. This may include providing *pro se* manuals or forms to initiate legal proceedings. It should always include a comprehensive referral service to divert intrafamilial disputes from the court system to appropriate social service agencies and other persons most qualified to resolve the dispute without legal proceedings. For those seeking counsel, a lawyer reference service maintained by the Bar may be considered. The appointment of separate counsel for children or information as to obtaining a court order for counsel fees for impoverished separated spouses may also be provided at this point. Most importantly, every potential litigant must be given a clear understanding of what steps need to be taken to get into the appropriate court with jurisdictional and venue questions resolved.<sup>199</sup> The family court is no place for a bureaucratic runaround or "hot potato" treatment.

Pre-adjudicatory ancillary services should be structured to ensure that they are fully available to all persons, regardless of financial status or geographic location. There are different programs which can provide for private experts for those

---

<sup>197</sup>In Virginia, the Committee studying the family court concluded:

"A judicial system which provides the opportunity to resolve disputes without undue hardship, cost, inconvenience or delay establishes the basis for effective access to justice by all persons. In practical terms for family law disputes, this means a citizen's ability to gain access to the court is assisted by simple procedures; that the judges and other court personnel are courteous and responsive to the public; that legal services are available for the poor and those of modest means; that court fees for access to and participation in it proceedings are reasonable for the matter before the court; that the court has before it at the time the citizen appears all relevant issues requiring resolution; and that the responsibilities of the court are discharged in a timely and expeditious fashion." *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992) (p. 20).

<sup>198</sup>In Virginia, The Advisory Committee concluded:

"In many instances, by the time a family requires the intervention of the court system to resolve its disputes, the conflict which caused the legal action has been underway for a long time. This makes it all the more imperative for the court to discharge its responsibilities in a timely and expeditious fashion. Delay is a barrier to effective justice. . . In family law matters where hurt, anger, and other emotions are experienced daily and young children frequently are caught up in the hostility of the adults in court, time is of the essence." *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia* (June 1992) (p. 25)

<sup>199</sup>*Id.* (p. 20-25).

who are able to afford it, community based treatment and, whenever available, direct services provided by court staff.<sup>200</sup> Often courts are required as a part of *pendente lite* or preliminary motions to assess costs, both legal and expert, against a competing party with superior financial resources.<sup>201</sup> Pretrial applications and motions should be consolidated to avoid unnecessary court appearances or loss of time from work or other interferences which result in less than total participation by each party. It is important for each family court to be satisfied that both parties have received full notice and an opportunity to be heard before granting final relief.

No court is any better than the enforceability of its orders. Full access to family court system involves the use of wage attachments and the automatic scheduling of matters for enforcement of child or spousal support. This must also include procedures for bringing the parties before the court expeditiously whenever visitation is denied. With the advent of computerized operations and other technological advances such family court procedures are more readily available to family court systems.

6. The sixth principle of the comprehensive family court system is to maximize the *use of community services* and trained *volunteers*.

It is important for the family court to *maximize community services, input and public relations*. As noted, the family court is a social service delivery system. The delivery of these social services is best provided by community programs. Since many of the families are not very highly motivated to become involved in social service programs, the best way of insuring that they are going to attend is by providing them programs within their own community. In addition the input of citizens at local and regional levels is very important since they ultimately have to participate in and fund the programs. If the community does not buy into what is being set up

and done, it will find ways of subverting the programs, not the least of which is by inadequately funding the programs or staff.

On the issue of providing expanded services into the community, a recent National Conference on "The Future and the Courts," noted that court services could be expanded to evening hours and weekends. In addition to extended hours of operation, courts of the future will reach out geographically to neighborhoods and areas providing courthouses in more municipalities or regions than just at the county seat ("judgemobiles").<sup>202</sup>

Courts have increased significantly the use of trained volunteers to improve services, minimize costs and maximize community involvement. Nowhere is the movement toward volunteerism more notable than in the courts hearing family law matters.<sup>203</sup> The area of helping children and families draws considerable attention from sensitive persons. The opportunity to provide direct services to persons in need and to witness first hand the impact of such services attracts committed volunteers to family court projects. Carefully selected and properly trained they provide the court with an opportunity to improve the quality of its determinations, as well as filling gaps in the delivery of its services. By focusing on one particular child or family, a volunteer is able to work with a particular problem in greater depth than the judge or professional staff. In addition, volunteers can provide the fresh approach of someone working from outside the system. They often bring out and challenge the inefficiencies within the system, while, at the same time, advocating for the specific needs of their clients. In this respect volunteers from particular communities cannot only call attention to uncovered areas of service delivery, but also become a catalyst to develop the resources necessary to meet the problem. Stated simply, the more a community becomes involved in its problems the more likely it is to correct them.

<sup>200</sup>In *New Jersey*, Chief Justice Robert N. Wilentz recommended various custody/mediations programs such as: In-house mediators which are physically situated in the local court complex, private, professional experts on referral list maintained by the court with the assistance of the local Bar, and community mediation services provided by contract with the county. Wilentz, Chief Justice, Memorandum to Assignment Judges, *Development of Custody Mediation Programs*, Sept. 28, 1990.

<sup>201</sup>*Williams v. Williams*, 59 N.J. 229 (1971).

<sup>202</sup>Dator & Rodgers, *The Future and the Courts Conference* (Exec. Sum.) p. 17 No. 1990.

<sup>203</sup>William, D., "Summer Associate Programs," *New York Law Journal*, June 18, 1990; Melvin, T., "Volunteers Are Helping in Foster Care," *The New York Times*, February 11, 1990.

While the benefits of volunteerism substantially outweigh its disadvantages, one important caveat must be recognized and planned for at the outset. Volunteers on assignment from the family court represent the court and must be held to the same high standard of selection and performance as professional staff. In the eyes of the public, such volunteers, having been designated by the court, are considered as a part of the court and expected to act accordingly. As full members of the family court system, all volunteers must be well-trained and closely monitored to ensure the highest standards of performance, e.g., confidentiality, non-judgmental acceptance and commitment of time. Written standards of performance and manuals should be provided to every volunteer in order to fully inform all involved of the expectations of the court, staff and consuming public. In some states written performance standards have been established by statute, court rules<sup>204</sup> and directives of the Supreme Court or Administrative Office of the Courts.<sup>205</sup> In practice, written standards of performance should be established for all persons involved in family court work, including the judges and staff, as well as the volunteers.

Notable programs have been established throughout the country using volunteers assigned by the family courts to work with children and families. Some of the more renowned programs include:

- *Custody/Visitation* - Mediators and Facilitators,<sup>206</sup>
- *Visitation Supervisors*<sup>207</sup>
- *Children in Court* - Court Appointed Special Advocate (CASA) Programs;<sup>208</sup> Guardian Ad Litem (G.A.L.) Programs<sup>209</sup>
- *Children in Placement* - External Review of Children Placed Outside the Home Including Foster Care and Child Placement Review Boards.<sup>210</sup>
- *Juvenile Delinquency* - Volunteers in Probation Juvenile Conference and Neighborhood Dispute Resolution Committees;<sup>211</sup> Tutors;<sup>212</sup> Peer Group Juries<sup>213</sup>
- *Divorce* - Divorce Mediators;<sup>214</sup> Matrimonial Early Settlement Panelists;<sup>215</sup> Volunteer attorneys serving *pro bono*.<sup>216</sup>

A significant advantage in the use of volunteers in each of these areas is in obtaining the benefit of their talents. Very often, in addition to providing increased availability of time for a particular child or family, volunteers are providing specialized services not otherwise available, e.g., as attorneys, trained mediators and teachers. An increasing number of programs have been established which provide comprehensive training for carefully selected persons in the methods

<sup>204</sup>In *New Jersey* several court rules set forth minimum standards of operation for volunteer programs. See Child Placement Review, R.5:13; Juvenile Conference Committees R.5:25-1.

<sup>205</sup>In *Florida*, by Administrative Order of Chief Justice, (February 18, 1985) "Minimal Standards of Operation" were set forth for the operation of the State of Florida Guardian Ad Litem program.

<sup>206</sup>... At the discretion of the mediator, the parents' lawyers may be excluded from the mediation sessions, although the parents may consult with their lawyers between sessions. The mediation covers physical and local custody issues as well as child support issues. The mediator reviews the parents' financial disclosure forms and uses a formula to help the parents determine appropriate levels of child support in light of their income and assets. The mediator may interview the child and, if appropriate, include the child in some of the mediation sessions. If the parents reach an agreement, the mediator creates a memorandum of understanding embodying the essential terms of the agreement or asks the attorney for one of the parents to draft a settlement documents for review by the mediator and the other parent's attorney." Schepard, A., "Taking Children Seriously: Promoting Cooperative Custody After Divorce," 64 *TXLR* 687 (1985).

<sup>207</sup>Atkinson, Jeff, "It All Comes Down to the Best Interest of The Child," 12 *Fam. Advoc.* 434, (Summer 1990).

<sup>208</sup>"Manhattan Neighborhoods," *Newsday*, December 19, 1990.

<sup>209</sup>Guardians: Volunteer Eager to Defend Abused Children," *American Political Network, Inc.*, January 22, 1992, *United Press International*, July 16, 1990.

<sup>210</sup>Child placement review is the concept that every child in foster care should have his case reviewed regularly by someone other than those who made the placement. . . The citizen review boards offered hope for foster children. For the first time, people who weren't social work 'experts,' but simply mothers and fathers, business people and clubwomen, accountants and school teachers, were getting a close look at what had previously been done behind closed doors. What they found out, and, more important, what they were able to do, or not to do, for New Jersey's 8,000 foster children, was important throughout the state." Leeefeldt, E., *In Search of the Paper Children*, p. 9 (1982).

<sup>211</sup>Second Juvenile Justice Conference Set For Nov. 15, *Massachusetts Lawyers Weekly*, October 14, 1991.

<sup>212</sup>For information on college students tutoring juvenile delinquents see Willis, David, "Hand in Hand," *Courier Post*, Oct. 15, 1991 at 4.

<sup>213</sup>Youths accused of shoplifting and other minor crimes will soon face justice from a jury of their peers . . . volunteers 12 to 19 years old making up the jury pool. . . "Youth Court," *United Press International*, Jan. 10, 1987.

<sup>214</sup>Raggio, G., "Handbook on Divorce Mediators," *New York Law Journal*, November 21, 1990.

<sup>215</sup>... Many dispute resolution programs have been instituted by the courts to encourage earlier settlements and thereby reduce congestion and delay as well as costs to the court and the disputants. Besides increasing efficiency in resolving disputes, court-instituted programs seek to ensure that the quality of justice they deliver equals or betters the quality of traditional court adjudication." Myers, Gallas, Hanson, Akelitz, "Divorce Mediation in the States: Institutionalization, Use, and Assessment," *State Court Journal*, p. 17, Fall 1988.

<sup>216</sup>Handschu, B., "Commitment to Children in Hallmark of Programs in Family Law Section," *New York Law Journal*, January 29, 1992.

of techniques of mediating custody and visitation disputes effectively.<sup>217</sup> Similarly, attorneys frequently provide volunteer legal services or serve on advisory panels, *i.e.*, matrimonial early settlement panels, as a means of providing their *pro bono* obligation as members of the bar. A myriad of volunteer programs for the resolution of juvenile delinquency matters within the community have been established which provide the application of the "conscience of the community" to such charges, as well as assisting the court to clear its calendars.

One of the most significant use of volunteers in family court matters involves the Court Appointed Special Advocate (CASA) and Guardian Ad Litem (G.A.L.) programs. The volunteers who serve as either a CASA or GAL are specially appointed to represent and advocate for the needs of a particular child or family during the course of their involvement with the courts.<sup>218</sup> They represent the unrepresented, while at the same time providing an independent means of investigation which often brings to the attention of the court otherwise hidden facts and interests. In addition, such persons frequently perform specific tasks, *e.g.*, transportation to government offices to obtain services or evaluations, which are otherwise unavailable within overworked bureaucracies. The value of such programs cannot be overstated.

The use of volunteers within the family court to serve on external review boards which oversee all children placed outside their homes by courts and state agencies has proven invaluable.<sup>219</sup> The review of out of home placements by trained persons committed to the principles of permanency planning, but not employed within the system, operates in two ways to reduce the number of children forgotten or set adrift in foster care or institutional placements. In the first instance, by requiring the appearance of case workers and others responsible for the placement before the Boards and a review of their material, a mecha-

nism is set up to hold each caseworker and the system accountable to the extent that they must justify the reasons for continued placement. In addition to the accountability factor, volunteers serving in such review boards provide the fresh approach which is necessary to intervene effectively in chronic situations. The importance of such volunteer boards has been recognized and established by statute and court rule in many states.<sup>220</sup> Their influence on the lives of children in placement is as significant as that of any other part of the family court system.

The recognition and reward of volunteers serving the family court system is an important function of the administration and the judiciary. Certificates of appreciation and recognition luncheons or dinners annually will serve to give public acclaim to these committed volunteers, while at the same time, provide an effective source of public relations and recruitment for future volunteers. The best reward to an individual volunteer for a job well-done is a brief note sharing some expression of appreciation for their efforts by a thankful child or family or judge.

<sup>217</sup>Lucas, W., "Dispute Resolution Comes of Age," *New Jersey Law Journal*, November 7, 1991.

<sup>218</sup>Davidson, H., "The Child's Right To Be Heard And Represented In Judicial Proceedings," 18 *Pepperdine L. Rev.* 255 (1991). See also, Blady, "Special Child Advocates: A Volunteer Court Program," *Children Today*, May-June 1981, at 2 (discussing the benefits of court-appointed special advocate Volunteer Programs in representing children); Comment, "The Non-Lawyer Guardian ad Litem in Child Abuse and Neglect Proceedings," 58 *Wash. L. Rev.* 853, 864-67 (1983) (describing a program using non-lawyer volunteers backed up by lawyers); "Under the nonprofit CASA program -- unique in the Washington area, but one of about 250 nationwide -- judges assign volunteers to follow the cases of neglected, abused, emotionally disturbed, delinquent or otherwise troubled youngsters who have been placed in court custody, and to recommend what steps should be taken regarding their future care." "A Child's Friend in Court: Volunteer Advocates Look Out for Youth," *The Washington Post*, Jan. 7, 1988. Prestigious award given to the State Court Appointed Special Advocates Association and to 14 similar county programs. "Volunteers Honored for Family Court Role," 204 *N.Y.L.J.* 122.

<sup>219</sup>Manhattan Neighborhoods," *Newsday*, December 19, 1990.

<sup>220</sup>*N.J. Court Rule, R. 5:13.*



## Establishing a Family Court

A good starting point for the development of a family court was stated by Chief Judge William Gordon of the Delaware Family Court who warned:

"Too much stress cannot be placed on the benefits of launching a family court with the optimal characteristics. In my experience each step towards the attainment of one of these has a synergistic effect on the attainment of all, and the failure to move forward with one can defeat the fulfillment of the other."<sup>221</sup>

Launching of a family court with the optimal characteristics involves careful study, consideration of the factors involved and preparation. The study includes existing family court systems<sup>222</sup> proposals,<sup>223</sup> court rules and relevant articles and written materials.<sup>224</sup> Consideration of the factors involved include recognizing the political realities, overcoming resistance to change, training judges and staff, and the selection of the appropriate court into which all relevant jurisdictions should be assigned, establishing the court's facilities, collection of the available resources and

setting up a comprehensive evaluative process. Committed leadership by key persons in the state legislature, judiciary, social services agencies, community and child advocacy groups, and other interested persons is an important asset in the creation of an effective family court.

### Forming a Working Committee and Designating Responsibility

The first step is to form a working committee or group and designate responsibility for further study and completed actions by specific dates. Such committees may be formed within the executive,<sup>225</sup> judiciary,<sup>226</sup> the legislature<sup>227</sup> or an interdisciplinary committee comprised of judges, attorneys, legislators, social service personnel and other interested child advocates and committed groups.<sup>228</sup> Often such committees begin with a particular interest group, *e.g.*, the organized Bar, a child advocacy group or a key interested legislator. At times various different committees are working on the same family court project within different disciplines.<sup>229</sup>

Regardless of how the study committees or commissions are formed, they must designate

<sup>221</sup>Gordon, William C., "The Family Court: Advantages and Problems," *Juvenile Justice*, November 1974.

<sup>222</sup>Delaware, District of Columbia, Hawaii, Louisiana, New Jersey, Rhode Island, South Carolina Vermont and pilot programs in Florida, Kentucky, Virginia.

<sup>223</sup>Katz & Kuhn, *Recommendations for a Model Family Court*, A Report From the National Family Court Symposium of the National Council of Juvenile and Family Court Judges, May 1991; *Model Acts for Family Courts and State-Local Children's Programs*, U.S. Department of Health, Education, Welfare (1976).

<sup>224</sup>Gordon, W.C., "The Family Court: Advantages and Problems," 2 *Juvenile Justice*, November 1974; Arthur, L.G., "A Family Court Why Not?," *Minnesota Law Review* 1966; Mulvey, E.P., "Family Courts: The Issue of Reasonable Goals," *Law and Human Behavior* 6, No. 1 (1982); Katz and Kuhn, *Recommendations for a Model Family Court*, May 1991, A Report From the National Family Court Symposium of the National Council of Juvenile and Family Judges, May 1991.

<sup>225</sup>In *Maryland*, Governor William Donald Schaefer established the Governor's Task Force on Family Law in January 1991. After substantial deliberations, including public hearings, the Committee recommended the creation of a family court by implementing legislation. As to its composition and the process involved, the Committee noted: "The following recommendations are the product of the Family Court and Court Services Committee of the Governor's Task Force on Family Law. The Committee was composed of judges, attorneys, legal educators, mental health professionals, mediators, and representatives of public interest groups. This report reflects, as well, the thoughts and concerns of citizens throughout Maryland as presented in six public hearings held throughout the state in late 1991 and early 1992. Repeatedly, those testifying, without any solicitation, expressed their great unhappiness with the current system, and their desire for a more humane process." *Governor's Task Force on Family Law*, Final Report, October, 1992 (Maryland).

<sup>226</sup>In *New Jersey*, in 1982 the New Jersey Supreme Court created a Preliminary Family Part Planning Committee "to make recommendations in the implementation of the family court." "Pathfinders Committee Report," 125 *N.J.L.J.* 41.

<sup>227</sup>In *Florida*, "The Commission on Family Courts," an interdisciplinary commission was established on July 1, 1990 by the legislature and chaired by Justice Ben Overton of the Supreme Court. In *Maine*, in 1985 the legislature established an interdisciplinary "Commission to Study Family Matters in Court," under the chair of a State Senator. ME. Private and Special Law 1985, Chapter 65.

<sup>228</sup>In *Vermont*, an interdisciplinary committee was formed on its own and ultimately was given official recognition and creation by an Act of the legislature and was entitled "The Family Proceedings Advisory Committee." (Interview with Judge Amy Davenport, Vermont Superior Court, assigned to the family court, January 6, 1992.) Judge Davenport presently serves as a family court judge but formerly was a key legislator in spearheading the legislative enactment of the Family Court Act.

<sup>229</sup>In *New Jersey* parallel committees were established within both the legislature and the judiciary. The legislative committees functioned under the chair of two key legislators (one from each political party), while the judiciary committees were under the chair of a Supreme Court Justice. Both the legislative and judicial groups had subcommittees with common members.



particular persons or screening committees to have definite responsibilities. This will include preparing new court rules,<sup>230</sup> training<sup>231</sup> and an evaluative process from the beginning.<sup>232</sup> Some committees employ a professional person or outside consultant, while others invite persons from within and without the state to meet with the committees and offer suggestions and share their experience. Definite meeting dates and a schedule for program study and development should be set at the outset. Specific issues may be the subject of separate papers prepared by subcommittees for presentation to the general committee.<sup>233</sup> Finally, all such working groups should coordinate and set a definite starting date for the implementation of the family court system.<sup>234</sup>

### Selecting the Appropriate Court

The selection of the appropriate court to serve as "The Family Court" in a particular jurisdiction depends to a large extent upon political factors, the necessary steps to overcome resistance to change, and the momentum of the family court movement in each state. From the existing family courts the available alternate structures include:

1. A division of the highest trial court of general jurisdiction.<sup>235</sup>

2. A separate trial court established with limited jurisdiction.<sup>236</sup>
3. A trial court of limited jurisdiction at an inferior level.<sup>237</sup>
4. A combination of existing superior and inferior courts.<sup>238</sup>

The question of whether a court is established at a superior or inferior level involves whether or not its decisions may be appealed to another trial court level, as well as the status of the judges both in salary and term of office and the standard of the facilities provided. The optimal situation would be the establishment of a family court as a division of the highest court of general jurisdiction.

### Overcoming Resistance to Change

Perhaps the biggest problem in establishing a family court system is overcoming resistance to change. Historically the legal system is conservative, based upon traditions, established precedents and practices of longstanding. "We've always done it this way," seems at times to be not only the watch word of the legal profession,<sup>239</sup> but also the guiding principle of the operations of its judges, clerks, clerical personnel and staff. The increased focus upon court reform in the form of restructuring and unifying the family court systems<sup>240</sup> has required those who are advocating

<sup>230</sup>A recommended outline of court rules is included in *Recommendations for a Model Family Court*, Katz and Kuhn, May 1991.

<sup>231</sup>In *Virginia*, the Family Court pilot project provided comprehensive materials and a two day training session required for all judges and staff prior to the implementation date. (Interviews with Judges Dale Harris and Jennine Shannon and Lelia Hopper, Family Court Project Director.)

<sup>232</sup>The Virginia Family Court pilot project provided for evaluation sheets to be filled out on every case handled for further study and reference. While this task was burdensome it provided the basis for an enlightened analysis of the results of the project. (Interview with Judge Dale Harris, Juvenile and Domestic Relations District Court Judge from Lynchburg, Va. and Lelia Hopper, Family Court Project Director.) *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia*, June 23, 1992.

<sup>233</sup>In *New Jersey*, Justice Morris Pashman chaired a "Preliminary Family Part Planning Committee" which prepared issue papers on a number of the anticipated problem areas. The issue papers were then circulated statewide to each county for comment.

<sup>234</sup>It is recommended that such a starting date be at least one (1) year from the decision to commence a family court in order to allow sufficient time for comprehensive planning and preparation. (Interview with Judge Dale Harris, Juvenile and Domestic Relations District Court, Lynchburg Va., January 1992.)

<sup>235</sup>This structure is most often recommended by national authorities and committees studying family courts.

- 1959 Standard Family Court Act; (NCCD) and (NCJFCJ);
- 1973 Task Force on Courts of the National Advisory Comm. on Criminal Justice Standards and Goals, Std. 14.1;
- 1974 Model Acts for Family Courts and State-Local Children's Programs, Dept. Health, Ed., Welfare;
- 1974 American Bar Association Comm. on Standards of Judicial Administration's Standards Relating to Court Organization;
- 1976 Report of the Task Force on Juvenile Justice and Delinquency Prevention of the National Advisory Comm. on Criminal Justice Standards and Goals, Stds. 8.1 and 8.2;
- 1980 Standards for the Administration of Juvenile Justice issued as part of the report of the National Advisory Comm. for Juv. Justice and Delinquency Prevention, Stds. 3.11 and 3.12;
- 1980 Standards Relating to Court Organization and Administration promulgated by the Institute on Judicial Administration;
- American Bar Association Joint Commission on Juvenile Justice Stds. approved by the ABA House of Delegates, Std. 1.1.

<sup>236</sup>In *Vermont*, the Family Court was established as a separate trial court with limited jurisdiction. In practice, it is staffed by Superior (upper) Court Judges since only one Family Court Judge was appointed. (Interview with Judge Amy Davenport, Vermont Superior Court.); In *Maryland* the Family Court Study Committee recommended "that this court be independent and co-equal with the existing Circuit Court." *Governor's Task Force on Family Law*, Final Report (October 1992), § 4, p. 3.

<sup>237</sup>In *Maine*, the Family Court Study Committee recommended the establishment of a family court at the District Court (lower) level. In *Virginia*, a majority of the courts serving in the pilot project were at the Juvenile and Domestic Relations District Court (lower) level. After evaluation of the pilot project, the most recent report recommends establishment of the statewide family court at this level. *Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia*, June 23, 1991.

<sup>238</sup>In *Kentucky*, the Jefferson County Family Court project is a hybrid with 3 Circuit and 3 District Court judges sitting together in a separate area of the courthouse. (Interview with Judge Richard Fitzgerald.) See also, *Family Court Newsletter*, Jefferson County Pilot Project, Vol. 1, No. 1, March 8, 1991.

<sup>239</sup>"Law must be stable and yet it cannot stand still." Pound, R., *Interpretations of Legal History* (1923).

<sup>240</sup>Chief Justice Harry L. Carrico of the Virginia Supreme Court in his State of the Judiciary Report for 1982, requested a study of "the feasibility of creating a family court in Virginia." He noted: "I am aware of the serious problems attendant upon any reorganization of our court system. At the same time, I am sensitive to the responsibility to seek change where the need for improvement is apparent." *The Adjudication of Family Law Matters in Virginia's Courts*, Report of the Family Court Study Committee (1985).

such change to now face the practical problems of implementing their plans.

One of the primary sources of internal resistance to change comes from within the judiciary itself. Most often judges of superior or higher level courts are among the opponents to such change, while those of inferior or lower level courts are the proponents. Such "turf" issues are best overcome by measures which seek to raise the level of all judges to the highest point, rather than water down or diminish their status in any way. The salaries of all trial court judges hearing family court matters must be raised to achieve full parity with those at the highest trial level. With this important step the other objections of upper level judges seem to diminish and fade with the experience of a unified family court. Regardless of the level of the court finally selected, careful attention must be made not to diminish in any way the status of upper court, e.g., Superior Court, Circuit, with their assignment to hear family court matters. This should include no diminution of their staff, offices or physical facilities in order that they be perceived as retaining their position in the judicial hierarchy.<sup>241</sup> In overcoming these threats to the judicial image or fears of loss of important position, it is very helpful to have a Chief Justice and other important persons within the upper levels of the judiciary support the family court concept and note their open public support of its importance.<sup>242</sup> Additional incentives should be established to encourage service in the family court, including stated recognition that "The broad base of judicial experience should include

service in the Family Part as an important factor in [obtaining] positions of leadership throughout the judiciary."<sup>243</sup> A stated policy of rotation of experienced judges into the family court for a minimum of two to three years not only provides the opportunity for meaningful participation in overcoming resistance, but also broadens the base of available judges with developed expertise in the area.<sup>244</sup>

In addition to the judges, internal resistance often surfaces from staff at all levels from clerical to professional, who have developed a specific expertise in an area of hearing particular types of family matters. The prospect of being cross assigned to other, as yet unknown, areas can be viewed by some as an additional burden, not as a challenge. As with the judges, this is particularly true with employees who have been in the same position for a number of years and developed their own "turf" techniques and methods of handling the litigants, attorneys and other persons interacting with the court. As important as it is to communicate with the judges involved, every effort must be made to involve the staff at all levels in the initial decisions in establishing the family court.<sup>245</sup>

Another fertile area for internal resistance to change involves the offices of the clerk of court, county clerk or similar offices charged with the responsibility for filing and initial case processing of different case types from different courts. In many states the clerk of court is a constitutionally created function within the office of an elected county official, while in other courts such clerks

<sup>241</sup>It was noted by a number of judges interviewed (who did not wish to be named) that the upper court judges would not oppose the family court being elevated to the status of the highest trial court as long as they did not have to try any of the cases nor had their position or status minimized or watered down. An example of this occurred in Camden County, New Jersey, when with the establishment of the family court merger between the Superior and Juvenile Domestic Relations Courts, one of the Superior Court judges refused to remain in the resultant Family Division claiming that he didn't "want to have anything to do with Page's dirty little bastards." (Juveniles?)

<sup>242</sup>Chief Judge Chester Chance of the Circuit Court of Florida, sitting in Gainesville, not only formed a family court within his judicial district but he also assigned himself to it to show its importance. (Interviews with Judge Chance and Judge William Gladstone, Family Civil Division Court sitting in Dade County (Miami).)

<sup>243</sup>"Pathfinders Committee Report," 125 *N.J.L.J.* 41, 42. In *Maryland*, while proposing a separate family court, the study committee recognized the importance of this judicial status factor recommending: "Family Court Judges shall have equal status and be compensated equally with Circuit Judges, and be considered for appointment to the appellate courts in the same manner." *Governor's Task Force on Family Law*, Final Report, October 1992, (Maryland).

<sup>244</sup>In *Florida*, in the Family Court established in Gainesville, it was noted that the judges assigned into the court during its establishment found the work to be so rewarding that they did not wish to be rotated out. The Chief Judge, Chester Chance, had to rotate himself out of the court in order to give further opportunity for others to have this experience. (Interview with Circuit Court Judge Chester Chance.) This policy of rotation has also been recommended in *Florida in the Report of the Commission on Family Courts* (p. 5, 6).

In *New Jersey*, the judicial policy of rotation into the Family Court was also recommended by the Pathfinders Committee and adopted by the Chief Justice. This has also been proven to be effective in overcoming resistance to service in the family court, as well as substantially expanding the number of judges who are experienced in its work and wish to serve in that area. "Pathfinders Committee Report," 125 *N.J.L.J.* 41.

<sup>245</sup>In *Virginia*, Judge Dale Harris in Lynchburg assembled and met with her staff prior to making the decision to volunteer to serve as a pilot court in the family court project. They fully discussed the additional problems and work involved, which meant additional cases without additional staff, before making their commitment. In this way Judge Harris was able to develop a team spirit and cooperative effort from the beginning. (Interview with Judge Dale Harris, Juvenile and Domestic Relations District Court, January 1992.)

are appointed by the judiciary or a political authority. Since a comprehensive family court provides for one central point for the reception and filing of all complaints, many view the unified system as a threat to their particular sphere of influence. Often such influence is politically connected to legislators who must support or oppose family court legislation. In this respect, the resistance of court clerks and staff is a combination of both internal and external resistance factors. In overcoming such resistance it is necessary that the lower court clerks or staff be raised or assimilated to the offices of the higher court clerks<sup>246</sup> or those with the greatest recognition as a "court of record." Just as it will not do to have upper court judges lowered in status or demoted in the judicial hierarchy, the same principle applies with the combination or coordination of clerks of different courts.

In addition to internal problems, external resistance to change must be considered from the organized Bar, related agencies and social service deliverers, civil service organizations and trade unions representing court personnel. Resistance within the organized Bar is based primarily upon the uncertainty created by the requirement that certain types of cases, e.g., divorce, will now be heard by a different judge and involve different processes than those familiar to the attorneys. Attorneys provide legal services in part by advising clients of the predictability of specific outcomes to their problems. To the extent that this predictability becomes less reliable by reason of the change in judges and systems, some members of the Bar are understandably opposed to any changes within their familiar judicial system. However, the same attorneys are quick to adjust to new systems and judges whenever they can see shown that this will be in the best interest of their clients.<sup>247</sup>

Of substantial importance to civil service employee organizations and trade unions is that they be assured from the outset that there will be

no diminution in the available positions, salaries or other working conditions. If necessary, written assurances may be provided in enabling legislation to preserve such positions or "grandfather" all such employees into the unified structure. With respect to social service deliverers and related agencies it is necessary to educate their key personnel to the advantages of a consolidation of the social service delivery system as impacted by referrals from the judiciary. Most case workers welcome the opportunity to have one central point with which to refer their clients or obtain referrals from within the judiciary. In practice, the social service system generally supports and are proponents of the family court system to a much greater extent than they object or feel threatened by it.

Overcoming resistance to change involves understanding the true nature of most of the resistance. Professor Paul R. Lawrence of the Harvard Business School, in his classic work on the subject, notes:

"The key to the problem is to understand the true nature of resistance. Actually, *what employees resist is usually not technical change but social change -- the change in their human relationships that generally accompanies technical change. . .*

Management can take concrete steps to deal constructively with these staff attitudes. The steps include emphasizing new standards of performance for staff specialists and encouraging them to think in different ways. . .

The social aspect of the change refers to the way those affected by it think it will alter their established relationships in the organization. . ." (Emphasis supplied.)<sup>248</sup>

The new standards of performance can be created by upgrading the status of service in the family court both within the legal profession and the general public. In addition to raising the level

<sup>246</sup>In Virginia, in 1985 the Family Court Study Committee recommended: "Existing Juvenile and Domestic Relations District Court Clerks will become Deputy Clerks of the Family Division under the supervision of the Circuit Court Clerk." *The Adjudication of Family Law Matters in Virginia's Courts*, Report of the Family Court Study Committee (1985).

<sup>247</sup>In Virginia, an analysis of the evaluation forms in the Family Court Pilot Project throughout the state indicates that while parties and their attorneys could decide to refuse to have their divorce cases transferred from the Circuit Court to a Juvenile and Domestic Relations District Court and "opt out," such decisions decreased substantially after the first six months of the two year project. It was felt that the resistance to such change was overcome by the experience of attorneys that their matters, particularly uncontested divorces, could be heard much more expeditiously and without any diminution in the quality within the new family court. Positive experience is the best method to overcome negative resistance. (Interview with Lelia Hopper, Esq., Family Court Project Director. Ms. Hopper is working on the evaluation of the Virginia Family Court Pilot Project.)

<sup>248</sup>Lawrence, Paul R., "How to Deal with Resistance to Change," 47 *Harvard Business Review* 4-12 (January-February 1969).

of appreciation of their work, expanded participation by employees in the meetings and committees establishing the family court is an affective method of overcoming such resistance. "Without going into all the researchers' decisions based on these experiments, it can be fairly stated that they concluded that resistance to methods changes could be overcome by getting the people involved in the change to participate in making it."<sup>249</sup>

In overcoming statewide resistance to change, the establishment of successful pilot programs by proponents of the family court is an important first step whenever full statewide implementation is not possible.<sup>250</sup> Positive results obtained in such pilot programs can be used as "social proof."<sup>251</sup> In addition, by participating in an experimental family court undecided judges and staff will become committed to its continuance.<sup>252</sup> By further understanding the dynamics of the conflict, proponents of the family court realize that the real opposition may be different from its expression.<sup>253</sup>

### Developing and Marshalling Resources

The Supreme Court of Florida, in an Opinion by Justice Ben Overton, ordered plans submitted for the establishment of a Family Division in each Circuit Court. The court recognized the need for each court to have the necessary resources noting:

"In order for a family division to operate effectively, it needs: (1) court-connected mediation services; (2) home assessment services for custody cases; (3) sufficient

staff to coordinate the family divisions operation; and (4) sufficient staff to operate enforcement of support services."<sup>254</sup>

Just as Justice Overton publicly implored the Florida State Legislature to provide the funds necessary to develop resources, so must judges and interested persons at the local level use their positions of leadership to initiate such programs. The family court judge is a publicly recognized community leader in the area of society's response to the problems of its families. This leadership role must be fully utilized to develop needed services and facilities to meet the needs of the family court.<sup>255</sup> Many judges throughout the nation have been the initiating, guiding, or supporting force behind innovative programs. Such judges have not only fully utilized the office for the benefit of those unable to provide for themselves, but also improved the quality of judicial life by lessening the frustration of not having needed services available. Even if the costs are presently too high to implement the judge's recommendation immediately, most public officials welcome the court's valuable input as a source of good ideas for plans for the future improvement of the communities.

At times obtaining services involves only collecting, coordinating or networking already existing programs or agencies. This includes cataloguing or listing the services, facilities and agencies, both public and private, that are in a position to provide social services to the court by

<sup>249</sup>*Id.* at 7.

<sup>250</sup>*Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia (1992)*

<sup>251</sup>In analyzing the psychology of compliance Dr. Robert B. Cialdini notes "different tactics that compliance practitioners employ to produce yes," one of which is "social proof." He defines "... the principle of social proof. It states that one means we use to determine what is correct is to find out what other people think is correct. . . . The tendency to see an action as more appropriate when others are doing it normally works quite well." Cialdini, R., *Influence, The New Psychology of Modern Persuasion*, p. 117 (1984).

<sup>252</sup>This is the principle of "consistency." Dr. Cialdini notes, "Once we have made a choice to take a stand, we will encounter personal and interpersonal pressures to behave consistently with that commitment." *Id.* p. 66. This principle was confirmed in practice in Virginia, in the Report on the Family Court Pilot Project which surveyed the participating Judges, finding: "When the entire sample and general opinions are considered, the judges surveyed clearly support a Family Court. Eighty-two percent responded that a Family Court would be an improvement over the present system. . . . The biggest change in reported opinion was a shift in favor of a Family Court. . . . Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia, June 23, 1992.

<sup>253</sup>In his paper Professor Greenhalgh presents a model listing seven factors to consider in diagnosing the nature and extent of the conflict involved. Two of the factors presented relevant to the family court debate include the interdependence of the parties to the point where the gain of one party is not accomplished at the expense of the other and the advantage of involving key trusted prestigious and powerful third parties, e.g., Chief Justice, legislative leaders, at the meetings. With respect to the latter, Professor Greenhalgh notes "People tend to become emotionally involved in conflicts. Such involvement can have several affects: it can distort their perception of the situation, give rise to nonrational thought processes and arguments, lead them to take unreasonable stances, impair communication, and tempt them to make personal attacks. . . . The presence of a third party, even if the third party is not actively involved in the dialogue, can constrain these effects. People usually feel obliged to appear reasonable and responsible in the presence of a third party because people care more about how they are evaluated by the neutral than by the opponent . . . the more prestigious, powerful, trusted, and neutral the third party, the greater is the constraining effect. Greenhalgh, Leonard, "Managing Conflict," *Sloan Management Review*, 45-51 (1986).

<sup>254</sup>In making this order Justice Overton was following the recommendations of the Report of the Commission on Family Courts. He noted:

"We find that it is essential that the family division receive proper resources to fulfill their responsibilities, including: court connected mediation; domestic violence assistance programs; guardians ad litem to represent dependent children and children in contested custody cases; home assessment services; sufficient staff to operate enforcement of support services; and case coordination/receptionist staff." *In Re: Report of the Commission on Family Courts*, 588 So.2d 586, 16 F.L.W. § 609 (1991).

<sup>255</sup>"Family courts can move toward a more active role as a watchdog over community services. Community conditions and pressures which affect family breakdown cannot be altered by the court . . . but gaps in service can be highlighted by an active family court staff. A family court judge can encourage the creation of needed services, and present facts about the absence of such services and the consequences to children and the community as a result." Mulvey, Edward P., "Family Courts, The Issue of Reasonable Goals," *Law and Human Behavior* 6, No. 1 (1982). (Emphasis supplied.)

way of referral.<sup>256</sup> Such lists should be made readily available, not only to the judges and staff, but also to the members of the Bar and general public in order to encourage their direct use of the services. Coordination among these persons and agencies can best be achieved by an established program of "networking," which involves setting up regular meetings among the service providers and the court in order to facilitate the prompt delivery and avoid duplication.

The development of staff resources is an important consideration in the planning phase. As a general rule the judge is but the tip of the iceberg in an effective family court, with a significantly greater number of dedicated staff providing a majority of the services necessary for resolution of the disputes presented. Whenever additional cases or workloads are being shifted from one court to another, there needs to be an equalization of the staff to workload ratio by reassignment or additional employment. "Recruit", "Rely" and "Reward" are the key words in building a committed family court staff. The recruitment can be done by noting the importance of the court staff whenever judges or other leaders are speaking to interested persons. Reliance upon their reasonable recommendations provides for the individual recognition necessary to develop self esteem and confidence. Rewarding their efforts involves not only consideration of salary increases at the time of budget requests, but also sharing letters of commendation and positive expressions of satisfaction in their work with the employees and others in the office.

## Evaluation

A frequently overlooked but important con-

sideration in the establishment of a family court is to build in an initial and ongoing evaluation process. As with any new ideas or substantial changes in established practices, problems, large and small, will arise which require relative degrees of attention. In addition to internal meetings to review, adjust, tryout and accept or discard new techniques, the best method to insure quality control is by providing at the outset for an evaluative component. In addition to the value of establishing ongoing evaluation processes for quality control, the collection of relevant data is valuable in assessing future responses by the family court and others to human behavioral problems.<sup>257</sup>

The evaluative component can be obtained in different ways. Internally it can be established by assigning the responsibility to a particular staff person or retained consultant.<sup>258</sup> Externally, faculty from local law schools or universities can also be enlisted to provide appropriate study and evaluation. Evaluative procedures need to be established in the beginning in order to provide for necessary data collection, as well as noting significant changes in the ongoing practices and procedures.<sup>259</sup> Interim advice and preliminary evaluative findings can be shared with the judges and persons involved in the family court project to facilitate immediate adjustments and changes.<sup>260</sup>

Regardless of the method of evaluation chosen, *i.e.*, internal, external or a combination, the importance of establishing such procedures from the beginning cannot be overstated. Just as resistance to the initial change from diverse levels within the judicial system is resisted, such resistance can build up to changes made sometime after the new family court has been established.

<sup>256</sup>In the report from the National Family Court Symposium, the authors note: "In a well-run family court, referrals should be made within the court to the appropriate office, bureau, clinic or program where the necessary expertise exists. The proper use of referrals thus eliminates duplication of efforts and an unnecessary commitment of resources." Katz and Kuhn, *Recommendations for a Model Family Court*, May 1991.

<sup>257</sup>As a sociologist, I believe that, in the long-run, there is much to be recommended in the establishment of family courts. Eventually, when more is known about human behavioral problems, especially as they relate to family conflict, family courts should have little difficulty in justifying their own existence. In the immediate future, and for the present, family courts also serve a useful experimental purpose, and it is on this basis that they must be assessed. . . . In general, an examining group should endeavor to compare or contrast *demonstrated results* of various aspects of a family court against those in a comparable area which does not maintain a court of this kind, with the degree of difference balanced against the financial outlay as the criterion." Kephart, W., "The Family Court: Some Socio-Legal Implications," *W.U.L.Q.* (1955): 62-73.

<sup>258</sup>Lelia B. Hopper was selected as consultant to serve as Project Director to the Virginia Family Court's Pilot Project. Ms. Hopper is working with staff from the Executive Offices of the Supreme Court to prepare a required report for the judiciary and the legislature. (Interview with Lelia B. Hopper, Family Court Project Director.)

<sup>259</sup>In *Virginia*, ongoing data compiled or changes in operating practices were noted in interim evaluative reports. (Interview with Lelia Hopper, Project Director.)

<sup>260</sup>In *Kentucky*, the evaluative component was provided by enlisting the aid of Louise Graham, Esq., a professor at the University of Kentucky Law School. Professor Graham has conducted extensive interviews and data and shared her preliminary analysis with the Chief Judge and other members of the court and staff periodically. This has resulted in a more objective analysis of problems from the point of view of the consuming public and attorneys. By utilizing interim advice, corrections can be made before they become institutionalized or irretrievably established. (Interview with Louise Graham, February 1992); see also, Graham & Brock, *Year End Report Family Court Development Project*.

By that time substantial disparity may be noted statewide and the necessary corrective action necessary made more difficult by failure to provide for initial evaluation.<sup>261</sup> Whenever the evaluative component reports significant problems or lack of the observance of minimum standards, it becomes the important responsibility of the organization and administration to monitor the performance of each trial court and insist upon the maintenance of the highest quality for "our most important court."

---

<sup>261</sup>In *New Jersey*, no evaluative procedures were built into the family court, even though considerable efforts were undertaken to plan and prepare for its inception. Some five years later, the Chief Justice appointed the Pathfinders Committee to study in-depth the family court operations. By that time substantial problems had arisen to the point where the Committee noted that there was a decided lack of statewide leadership and direction and the delivery of services to the public. "Substantial disparity exists from county to county. Not only is there a lack of uniform observance of court rules and directives, but also the policy and practices in each county differ significantly. Too often the disposition of serious cases involving children and families, i.e., domestic violence, custody and visitation disputes, and juvenile delinquency dispositions, depends far more on the practices of the county of venue than any other factor." "Pathfinders Committee Report," 125 *N.J.L.J.* 41. Thereafter, a "Pathfinders II Committee Report" was necessary in order to establish minimum standards and operating procedures.



---

## Conclusion

---

Philosopher H. L. Menckin once observed "There is always an easy solution to every human problem; Neat-Plausible and Wrong!" The accuracy of this statement is most apparent when complex human problems are presented for determination in a fragmented and inconsistent legal system. The movement toward the unification of these legal systems into a "Family Court" coincides with substantial changes both within the nature of the families presented and the ever increasing demands for judicial resolution of their problems. Courts need to actively seek new methods and techniques, such as expanded intake functions and nonadversarial resolution, not only to meet these increases in volume, but also to provide a more efficient, just and enforceable solution. The danger of failing to seek a better way by establishing a unified system is that the judicial response will even become more fragmented and present greater barriers and obstacles by focusing on resolution by numbers of cases, rather than a more permanent "holistic" approach.

An effective organized and administered family system is one that is based upon established principles and goals, with broad-based jurisdiction, and the recognition of its importance both within the legal profession and consuming public. With the recognition of the substantial power of this court comes the need for its actions to be undertaken only after a finding of a legal basis to act.<sup>262</sup> Accountability for the awesome judicial power requires that the court act in a comprehensive manner in providing social services either

directly or by way of referral. This accountability involves not only the enforcement of dispositional orders requiring the parties and dysfunctional families to respond, but also the agencies and service providers to function effectively and the court to hold itself responsible for its case processing and management systems. Once the standards for operation of the family court have been clearly established, they must be observed and monitored by a statewide organization to ensure full compliance.

While the establishment of a new family court is difficult, with problems overcoming resistance to change and political considerations, the experience of existing systems, both recent and long-term, provides an invaluable resource. With careful planning and preparation, including full participation and involvement of judges, staff, and interested and affected persons in all branches of government and the community, a family court of high quality is fully attainable in all court systems. Even those courts which are unable to effectuate unification will benefit from consideration of the application of the principles involved. If the focus on the family court movement results only in enlightened awareness of the need to carefully select and train judges and staff, or establish or increase the use of nonadversarial techniques, or provide greater access or improve coordination and networking of resources etc., these results will be well worth the efforts. To go further and establish a full comprehensive family court provides the most effective judicial response to intrafamilial problems.

---

<sup>262</sup> A court cannot intervene in someone's life except in accord with legal processes. Above any institution of government, a court must itself demonstrate respect for law and not indulge in the hypocrisy of making the execution of the court's great power dependent upon the untrammled authority of each judge -- a trust that is placed in no individual by the law itself, nor should it be." Gordon, William, "The Family Court: Advantages and Problems," 2 *Juvenile Justice* November 1974 (emphasis supplied).





# BIBLIOGRAPHY

## AUTHORITIES

- "A Child's Friend in Court: Volunteer Advocates Look Out for Youth." *The Washington Post*, 7 January 1988.
- "Alternative Dispute Resolution: A Juvenile and Family Court Perspective," 1989 *Juvenile & Family Court Journal*, Vol. 40.
- The Adjudication of Family Law Matters in Virginia Courts*, Report of the Family Court Study Committee (1985).
- Annual Report of the New Jersey Judiciary*. 1989-90.
- Arthur, L., "A Family Court-Why Not?" 51 *Minn. L. Rev.* 223-232 (1966).
- Atkinson, Jeff, "It all Comes Down to the Best Interest of the Child." 12 *Fam. Advo.* 34 (Summer 1990)
- Baker, *Family Equity at Issue. A Study of the Economic Consequences of Divorce on Women and Children*, Alaska Bar Assoc. (1987).
- Bartke, Zurralec, "The Low, Middle and High Road to Marital Property Law Reform in Common Law Jurisdictions," *Community Property Journal* 201 (Summer 1980).
- Belinkie, "Matrimonial Arbitration," 65 *CTBJ* 309 (1991).
- Black's Law Dictionary*, 4th Ed., St. Paul: West Publishing Co. (1968).
- Blady, "Special Child Advocates: A Volunteer Program," *Children Today*. May-June 1991: 2.
- Carrico, Harry L., The Honorable Chief Justice. *State of the Judiciary Report*. 1992.
- Chance, C., Chief Judge of the 8th Circuit Court. Gainesville, Florida. Interview, 27 January, 1992.
- Cialdini, R., *Influence, The New Psychology of Modern Persuasion*. N.Y.: Quill, 1984
- Cleaves, Dana, Administrative Judge Superior Court, Portland, Maine. Interview January 1992.
- Corbett & King, "The Family Court of Hawaii," 2 *Family Law Quarterly* 32-40 (1968).
- Corcos, "The Child in International Law: A Pathfinder and Selected Bibliography. 23 *CRWJIL* 171 (1991).
- "Court-Approved Alternative Dispute Resolution," *Juvenile & Family Court Journal*, Vol. 40, No. 2, (1989)
- Crane, Daniel, President, Mass. Bar Assn. Interview March 1992.
- Courts Exercising Family Court Jurisdiction*. (A publication of the National Center for Juvenile Justice) (August 10, 1990).
- Dalton, "Divorce Mediation," *Utah Bar Journal*, December 1990 at 13.
- Dator & Rodgers, *Alternative Futures for the State Courts of 2020*. 1991.
- Dator & Rodgers, *The Future and the Courts Conference* (Exec. Sum.) November 1990 at 17.
- Davenport, Amy, Presiding Judge of Family Court, White River Junction, Vermont. Interview 6 January 1992.
- Davidson, Howard A., "The Child's Right to be Heard and Represented in Judicial Proceedings," 18 *Pepperdine L. Rev.* 255-277 (1991).
- Dean, W., "Summer Associate Program," *New York Law Journal* 18 June 1990.

- Note, "Domestic Violence and Custody Litigation, The Need for Statutory Reform," 13 *Hofstra L. Rev.* 407 (1985).
- Donohue, W., Burrell, N., Allen, M., *Models of Divorce Mediation, Family and Conciliation Courts Review*, Vol.27, No. 1 (July 1989).
- Ellman, Ira Mark, Kurtz, Paul M., Stanton, Ann M., *Family Law*. Charlottesville: The Michie Company, 1986.
- Family Court Feasibility Task Force*, House Concurrent Resolution, No. 30 (New Jersey) (1988).
- Family Court Newsletter*, Jefferson County, Pilot Project, Vol. 1, No. 1, March 8, 1991.
- Family Part Operations and Organizations*. (Unpublished Internal Report of the New Jersey Administrative Offices of the Courts) (Dec. 1983) 44-46.
- Final Report of the Commission to Study Family Matters on Family Court*. (Maine) (March, 1986).
- Fitzgerald, Richard, District Court Judge Assigned to Family Court Project, Louisville, Kentucky. Interview January 1992.
- Freeman, Martha, *Final Report of the Commission to Study Family Matters in Court*. State of Maine 112th Legislative 2nd Reg. Sess. (March 1986).
- Freud, Anna, Goldstein, Joseph, Solnit, Albert J., *Beyond the Best Interests of the Child*. New York: The Free Press, A Division of Macmillan Publishing Co., Inc., 1979.
- Foster, Freed, "Life with Father," 11 *Fam. L.Q.* 321 (1978).
- Gannett News Service* 16 December 1991.
- Geffner, Pagellon, "Mediation and Child Custody Issues in Abusive Relationships," *Behavioral Science and the Law*, Vol. 8.
- Glick, Lin, "Recent Changes in Divorce and Remarriage," 48 *J. Marriage & Family* 737 (1986).
- Gordon, William C., The Honorable Chief Justice. "The Family Court; Advantages and Problems," *Juvenile Justice* 2. (Nov. 1974).
- Governor's Task Force on Family Law*, Final Report (Maryland) (1992).
- Grenhalgh, L., "Managing Conflict," *Sloan Management Review*, 45-51 (1986).
- Grillo, T., "The Mediation Alternative: Process Dangers for Women," 100 *Yale L.J.* 1545 (1991).
- "Guardians: Volunteer Eager to Defend Abused Children," *American Political Network, Inc.*, January 22, 1992. *United Press International*, July 16, 1990.
- Guill, Slavin, "Rush to Unfairness: The Downside of ADR," *Judges Journal*, Vol. 28, No. 3 (September 1989).
- Harris, Dale, District Court of Lynchberg, Virginia. Interviews July 1991 and 3 January 1992.
- Handschu, B., "Commitment to Children is Hallmark of Programs in Family Law Section," *New York Law Journal* 29 January 1992.
- Herman, McKenny, and Weber, "Mediation and Arbitration Applied to Family Conflict Resolution: The Divorce Settlement," 34 *ARB.J.* 18 (1979).
- Hoffman, Duncan, "What are the Economic Consequences of Divorce?," *Demography* Vol. 25, No. 4 (Nov. 1988).
- Hopper, Lelia, Family Court Project Director, Administrative Office of the Supreme Court of Virginia, Richmond, Virginia. Interview 10 January 1992.
- House Concurrent Resolution, *Family Court Feasibility Task Force*, No. 30 (1988).
- Hurst, H., "Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary," 13 *Juvenile & Family Court Journal* 773 (1986).

- Jacobs, "Faulting No-Fault," 4 *A.B.F. Research Journal* 773 (1986).
- Katz, Sanford N. and Jeffrey A. Kuhn, *Recommendations for a Model Family Court. A Report From The National Family Court Symposium of the National Council of Juvenile and Family Court Judges*, May 1991.
- Keenan, L., "Domestic Violence & Custody Litigation, The Need for Statutory Reform," 13 *Hofstra L. Rev.* 407 (1985).
- Kephart, W., "The Family Court: Some Socio-legal Implications," 62 *W.U.L.Q.* 73 (1955).
- Kessler, Gladys, Finkelstein, Linda, "The Evolution of the Multi-Door Courthouse," 37 *Cath. U. L. Rev.* 577 (1988).
- Kimmelman, I., "Chancery: Introduction and Perspective," *New Jersey State Bar Journal* (Summer 1977).
- King, "Handling Custody and Visitation Disputes Under the New Mandatory Mediation Law," 2 *Cal. Law.* 40-41 (Jan. 1982).
- Lawrence, Paul R., "How to Deal with Resistance to Change," 47 *Harvard Business Review*, 4-12; 166-176 (January-February 1969).
- Leefeldt, E., *In Search of the Paper Children*. New Jersey: The Center for Analysis of Public Issues, 1982.
- "The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not be Mediated," 34 *Emory L.J.* 855 (1985).
- Lipchik, Eve, "Spouse Abuse Challenging the Party Line," *Networker* May/June 1991.
- Lucas, W., "Dispute Resolution Comes of Age," *New Jersey Law Journal* 7 November 1991.
- "Manhattan Neighborhoods," *Newsday* 19 December 1990.
- Martin, Steven, Administrative Judge for Trial Courts for the State of Vermont, Vermont Superior Court, Barre, Vermont. Interview January 1992.
- Me. Private & Special Law 1985, Chapter 65.
- "The Mediation Alternative: Process Dangers for Women," 100 *Yale L. J.* 1545 (1991).
- Melli, M., "Construction of a Social Problem: The Post-Divorce Plight of Women and Children," *A.B.F. Research Journal*, No. 4, p. 759 (Fall 1986).
- Melvin, T., "Volunteers Are Helping Children in Foster Case," *New York Times* 11 February 1990.
- Model Acts for Family Courts and State-Local Children's Programs*. U.S. Department of Health, Education, Welfare.
- Mulvey, Edward P., "Family Courts, The Issue of Reasonable Goals," 6 *Law and Human Behavior* 49-61 (1982).
- Murphy, "Eroding the Myth of Discretionary Justice in Family Law: The Child Support Experiment," 70 *NCLR* 209 (1991).
- Myers, Gallas, Hanson, Akeilitz, "Divorce Mediation in the States: Institutionalization, Use, and Assessment," *State Court Journal* Fall 1988.
- Comment, "The Non-Lawyer Guardian ad Litem in Child Abuse and Neglect Proceedings," 58 *Wash. L. Rev.* 864-67 (1983).
- "Open Adoption Grows," *The Courier Post*, Monday, Feb. 24, 1992.
- O'Conner, Justice Sandra Day, *Consumer Dispute Resolution Conference, Exploring the Alternatives*. Jan. 21, 1983.
- "Pathfinders Committee Report," 125 *N.J.L.J.* 41-52 (1990)

- Pankey, Kenneth, *Alternative Dispute Resolution in Domestic Relations Cases*. National Center for State Courts, Memorandum. November 15, 1990.
- Pearson, Ring & Milne, "A Portrait of Divorce Mediation Services in the Public and Private Sector," 21 *Conciliation Cts.* 1 (1983).
- Pearson, "Child Custody: Why Not Let the Parents Decide?," 20 *Judges J.* 10 (Winter 1981). *The Philadelphia Inquirer* 15 December 1991.
- Poznanski & Bassett, "A Family Court for Michigan?," 66 *Mich. Bar Journal* 657-66 (1987).
- Pound, R., *Interpretations of Legal History*. New York: Macmillan, Cambridge Studies in English Legal History, 1923.
- Pound, R., "The Place of the Family Court in the Judicial System," 5 *Crime & Delinquency* 161 (1959).
- "The Quebec Experience: Codification of Family Law and A Proposal for the Creation of a Family Court," 44 *La. L. Rev.* (1984).
- Rainey, J., "Plan Would Streamline Domestic Litigation," *Los Angeles Times* 12 March 1989.
- Raggio, G., "Handbook on Divorce Mediation," *New York Law Journal* 21 November 1990.
- "Reaching For A 'Family' Court.," *JDC Clearinghouse*. December 6, 1991.
- Report of the Commission on Family Courts*. (Florida) September 12, 1991.
- Report on the Family Court Pilot Project by the Family Court Pilot Project Advisory Committee to the Judicial Council of Virginia*, (1992).
- Rowe, K., "The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not be Mediated," 34 *Emory L. J.* 855 (1985).
- Schepard, A., "Taking Children Seriously: Promoting Cooperative Custody After Divorce," 64 *TXLR* 687 (1985).
- Scott, E., "Rational Decision-Making About Marriage and Divorce," 76 *Va. L. Rev.* 9 (1990).
- Second Juvenile Justice Conference Set for Nov. 15. *Massachusetts Lawyers Weekly* 14 October 1991.
- Shannon, The Honorable Jennine. Juvenile and Domestic Relations Court for Albamarle County, and Charlottesville. Interview July 1991.
- Simross, L., "Consumers; Tempering Custody Trials Tribulations," *Los Angeles Times* 18 March 1990.
- Soler, M., "An Introduction to Children's Rights," 74 *American Bar Association Journal* 52 (1988).
- Stack, "Who Owns the Child?: Divorce and Custody Decisions in Middle-Class Families," 23 *SOC. PROBS.* 505, 506 (1976).
- Standard Family Court Act*. A Publication of the National Council on Crime and Delinquency (NCCD), in cooperation with the National Council of Juvenile and Family Court Judges.
- "Standards for the Administration of Justice," issued as a part of the *Report of the National Advisory Committee on Criminal Justice Standards and Goals* (Standards 3.11 and 3.12).
- Standards Relating to Court Administration*. American Bar Association, Judicial Administration Division, Standards of Judicial Administration. Vol. 1, 1990.
- State of the Judiciary Report* 1982
- Supreme Court Committee on Matrimonial Litigation, Phase D, Final Report, July 1981.
- Supreme Court of New Jersey, Task Force on Dispute Resolution, Final Report (February 1990).
- Sweet, R., "Deinstitutionalization of Status Offenders: In Perspective," 19 *Pep. L. Rev.* 389 (1991).

Szymanski, Linda, National Center for Juvenile Justice, *Courts Exercising Family Court Jurisdiction*. August 10, 1990.

Task Force on Courts of the National Advisory Commission on Criminal Justice Standards and Goals. Task Force on Dispute Resolution. Supreme Court Report (New Jersey) (Feb. 1990).

Thoennes, Pearson, Bell, *Executive Summary of the Evaluation of the Use of Mandatory Divorce Mediation*. 1991.

"Volunteers Honored for Family Court Role," 204 *N.Y.L.J.* 122.

Wallerstein, Judith & Blakeslee, Sandra, *Second Chances*. New York: Ticknor & Fields. 1989.

*Webster's Ninth New Collegiate Dictionary*. 1989 ed.

Weitzman, L., *The Divorce Revolution*. New York: The Free Press, A Division of Macmillan Publishing Co., Inc., 1979.

Wilentz, Chief Justice. Memorandum to Assignment Judges, *Development of Custody Mediation Programs*. Sept. 28, 1990.

Willets, Guy, Administrative Office of the Courts, State of New Jersey, May 8, 1991 (unpublished).

William, D., "Summer Associate Programs," *New York Law Journal*, June 18, 1990.

Willis, David, "Hand in Hand," *Courier Post*, 15 Oct. 1991: 4.

"Youth Court," *United Press International*, 10 Jan. 1987.

# CASES

*Abbott v. Burke*, 100 N.J. 259 (1985).

*Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

*Edgewood Independent School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989).

*In Re Baby M.*, 109 N.J. 396, 56 U.S.L.W. 2442, 77 A.L.R.4th 1 (1988).

*In Re Gault*, 387 U.S. 1 87 S.Ct. 1428, 19 L.Ed.2d 527 (1967).

*In Re: Report of Commission on Family Courts*, 588 So.2d 586, 16 FLW § 609 (1991).

*In Re Termination of Parental Rights of Krista Marie Jones*, 538 A.2d 1113 (1988).

*In Re Winship*, 397 U.S. 358 (1970).

*Kent v. U.S.*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).

*Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974).

*Pauley v. Kelly*, 255 SE 2d 859 (W. Va. 1979).

*Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

*Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d. 599 (1982).

*Serrano v. Priest*, 487 P.2d 1241 (1972).

*State in the Interest of S.T.*, 233 N.J. Super. 598 (App. Div. 1989).

*Williams v. Williams*, 59 N.J. 229 (1971).

# STATUTES AND RULES

ALA. Code §12.150.  
ARIZ. REV. STAT. ANN. tit. 25.  
CAL. CIVIL CODE § 4606 (1983).  
D.C. CODE ANN. §16-2301 (1970).  
DEL. CODE ANN. tit 10 § 902 (1971).  
DEL. CODE ANN. § 925 (15).  
13 DEL CODE, RULE 470.  
GEN. LAWS § 8-10-3 (1961).  
HAWAII REV. STAT. ANN. tit. 31, § 571 (1965).  
KY. REV. STAT. ANN. § 600.010.  
LA. REV. STAT. ANN. § 2A:4A-20 (1984).  
Maryland Court Rule § 73A.  
MD. CODE ANN. § 3.802.  
ME. REV. STAT. tit. 19, §§ 214, 581 & 752.  
(West. Supp. 1985-86).  
N.H. REV. STAT. ANN. § 169.B.1.  
N.J. STAT. ANN. § 2A:17-56.26 (West 1987).  
N.J. STAT. ANN. § 2A:4A-20 (West 1987).  
N.J. STAT. ANN. § 2A:4A-38(k) (West 1991).  
N.J. STAT. ANN. § 2A:4A-40 (West 1987).  
N.J. STAT. ANN. § 2C:25-15(a) (West 1991).  
N.J. STAT. ANN. § 30:4C-58 (West 1991).  
N.J. Court Rule 5:1-2 (1990).  
N.J. Court Rule 5:3-3(d) (1990).  
N.J. Court Rule 1:33-6.  
N.J. Court Rule 5:5-5.  
N.J. Court Rule 5:25-1.  
N.J. Court Rule 5:13  
NEV. REV. STAT. § 3.223.  
OKLA. STAT. ANN. tit.1275.4.  
PA. STAT. ANN. tit. 23 § 1006.  
R.I. GEN LAWS § 8-10-3 (1961).  
S.C. CODE REGS. 14-21 (1968).  
U.S. CODE tit. 42 § 66(a)(2)  
UT. CODE ANN. tit. 30, § 30-3-11.1.  
VT. STAT. ANN. tit. 4, § 451 (1990).



## ACKNOWLEDGMENTS

The valuable time and thoughtful comments of many judges and other persons working in the area of family law and court was most helpful in the preparation of this thesis. I sincerely appreciate the assistance of Judges Chester Chance, Dana Cleaves, Amy Davenport, Richard FitzGerald, Dale Harris, Steven Martin, Jennine Shannon as well as Lelia Hopper, Esq. and Louise Graham, Esq.

This thesis has profited greatly from the thoughtful suggestions and comments of professor Elizabeth Scott of the University of Virginia Law School.

The "first shall be last" (Matthew 19:30). The untiring efforts and assistance of Mrs. Gail Schlessinger, Patricia Ronayne, Esquire and my wife Cora Lee Page has proved invaluable. Not only in typing and retyping etc. but also in keeping me on course during my hours off the bench.

This paper is revised from the approved master's thesis of Judge Robert W. Page submitted to the University of Virginia Law School, Graduate Program for Judges, May 1992. It may not be reprinted or republished without permission of the author and the National Council of Juvenile and Family Court Judges.

### IDENTIFICATION STATEMENT

*The Juvenile and Family Court Journal* (ISSN 0161-7109) is published quarterly for \$60 per year by the National Council of Juvenile and Family Court Judges, University of Nevada-Reno Campus, 1041 North Virginia Street, Third Floor, Reno, Nevada 89557. Periodicals postage paid at Reno, Nevada and additional mailing offices. POSTMASTER: Send address changes to Juvenile and Family Court Journal, P.O. Box 8970, Reno, Nevada 89507.

**Juvenile & Family Court Journal**  
**PUBLICATIONS POLICY GROUP**

**Judge Roy B. Willett**

President  
Roanoke, Virginia

**Judge John Farr Larson**

Chairman  
Salt Lake City, Utah

**Judge William D. Staley**

Vice-Chairman  
Papillion, Nebraska

**Dean Louis W. McHardy**

Executive Director  
Reno, Nevada

**EDITORIAL STAFF**

**Marie R. Mildon**

Editor

**Prof. Douglas E. Abrams**

University of Missouri  
Columbia School of Law  
Assistant Editor

**Cheri Briggs**

Production Editor

**Judge Lindsay G. Arthur**

Senior Judicial Scholar  
Minneapolis, Minnesota

**Officers, 1992-1993:** Roy B. Willett, president; Ninian M. Edwards, immediate past president; James M. Farris, president-elect; Carmen A. Ferrante, first vice-president; David E. Grossmann, second vice-president; John S. McGroarty, third vice-president; Thomas E. Hornsby, treasurer; Stephen B. Herrell, secretary.

**Board of Trustees:** Michael J. Anderegg; John F. Butler; Virgil Costley, Jr.; Leonard P. Edwards; William E. Gladstone; Ernestine S. Gray; Bill E. Haynes; Anthony J. Heckemeyer; Thomas E. Heydinger; John D. Kopfler; J. Dean Lewis; Robert R. Mallard; Sharon P. McCully.; Charles M. McGee; David B. Mitchell; James W. Payne; Frances Pitts; Gerald E. Radcliffe; Gerald E. Rouse; Raymond E. Shawcross; Robert J. Smith; Merton B. Tice, Jr.; Michael A. Town; and Paul R. Wohlford.

**Publications & Public Relations Committee:** J. Peter Ault; Raymond Bell; Lowell D. Castleton; Luan Cooperrider; R. Kenneth Elliott; Andrew B. Gallagher; Everett S. Jacobs; Jerry L. Mershon; John C. Minney; Sterling B. Sainsbury; Jannene Shannon; James J. Walsh.

*Juvenile & Family Court Journal* invites articles on the nation's juvenile justice system, juvenile and family courts, and treatment and control of juvenile delinquency. Letters and manuscripts may be sent to the editor.

Permission to reprint material from the *Juvenile & Family Court Journal* may be granted upon written application to the editor. Copyright 1993 by the National Council of Juvenile and Family Court Judges.

Views expressed in the *Juvenile & Family Court Journal* are not taken as the policy of the National Council of Juvenile and Family Court Judges, unless clearly indicated.

Address all communications to: Editor, *Juvenile & Family Court Journal*, University of Nevada, P.O. Box 8970, Reno, Nevada 89507 (702) 784-6012.

This publication is available on microfilm from University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

**National Council of Juvenile and  
Family Court Judges:  
Serving Judges, Youth and the Community**

The National Council of Juvenile and Family Court Judges has been dedicated, since its founding in 1937, to improving the nation's diverse and complex Juvenile Justice system. The Council understands that an effective Juvenile Justice system must rely on highly skilled Juvenile and Family Court Judges, and has directed an extensive effort toward improving the operation and effectiveness of juvenile and family courts through highly developed, practical and applicable programs and training. Since 1969 the Council, through its Training Division, the National College of Juvenile Justice, has reached more than 260,000 Juvenile Justice professionals with an average of 100 training sessions a year - a record unparalleled by any judicial training organization in the United States.

The Council recognizes the serious impact that many unresolved issues are having upon the Juvenile Justice system and the public's perceptions of the problem as they affect, through legislation and public opinion, the Juvenile Court.

Serving as a catalyst for progressive change, the Council uses techniques which emphasize implementing proven new procedures and programs. Focus on meaningful and practical change and constant improvement is the key to the Council's impact on the system.

The Council maintains that Juvenile Justice personnel, and especially the nation's Juvenile and Family Court Judges, are best equipped to implement new concepts and other proposed improvements. The most effective method of bringing about practical and necessary changes within the Juvenile Justice system is through that system, and particularly through the judges themselves. Continuing, quality education is a keystone in producing this change.

The Council facilities, located at the University of Nevada, Reno, include modern classrooms and a law library. The Council uses its own housing facility to provide economical lodging and meals for both faculty and participants. These facilities offer an attractive environment for Judges to explore practical solutions toward the betterment of Juvenile Justice. The Council, with its National Center for Juvenile Justice in Pittsburgh, maintains a staff of more than 50.

For further information on the Council's activities, projects, and publications, write:

**NCJFCJ  
P.O. Box 8970  
Reno, Nevada 89507**



**1041 North Virginia Street, Third Floor**  
**Reno, NV 89557**  
**Phone 702-784-6012**  
**Fax 702-784-6628**