



JOURNAL

JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

VOLUME 2 ❖ 2000

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COMMUNITIES

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MISSION STATEMENT

The *Journal of the Center for Families, Children & the Courts* is a periodical dedicated to publishing a full spectrum of viewpoints on issues regarding children, families, and the interplay between these parties and the courts. Focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California.

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ISSUES FORUM

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Editor's Note

The Judicial Council of California is pleased to present the 2000 issue of the *Journal of the Center for Families, Children & the Courts*. The journal's new title reflects

an important change that came about this year: the merger of the Center for Children and the Courts with the former Statewide Office of Family Court Services. With this realignment, the new Center for Families, Children & the Courts continues to pursue its mission of improving court proceedings involving children and families with expanded resources and more effective coordination.

**Courts Responding to Communities:
the responsiveness of courts to the
needs of the communities they serve**

The journal's goal is to disseminate information concerning children and families in the California court system to the legal and social work communities and the public. Although focusing on issues of national

importance, the journal encourages a dialogue for improving judicial policy in California. The journal's editorial board is composed of a distinguished group of judges, academics, attorneys, and others from across the United States. All share an interest in improving court proceedings for children and families. The journal is published annually, with each issue addressing a specific aspect of the judicial process as it affects children and families.

The theme of this edition is *Courts Responding to Communities*: the responsiveness of courts, especially juvenile and family courts, to the needs of the communities they serve. The Judicial Council and the California courts, like their peers nationwide, have made it a priority to solve problems by cooperating with communities to devise new solutions, working with community organizations, and combining judicial and community resources. This effort has led to a number of innovative programs, including unified problem-solving courts; collaborations among courts, prosecutors, defense attorneys, probation departments, and social service providers; and court-based services for unrepresented litigants. The difficult and emotionally wrenching problems of family and juvenile law seem well suited to such collaborative solutions.

To increase awareness of the variety of possible responses and the complex challenges courts face, the journal has compiled articles by judges, attorneys, scholars, service providers, and system users—all participants in and observers of court and community collaborative efforts. Robert Wolf tells the story of the Manhattan Family Treatment Court, designed to address the frequent overlap of drug abuse and family problems. Julia Weber offers a general account of domestic violence courts and identifies important considerations for their improvement. Deborah Chase, Commissioner Sue Alexander, and Judge Barbara J. Miller describe the community court model and apply its principles to develop a prototype family community court. Next, Frances Harrison, Deborah Chase, and Thomas Surh discuss the expansion of the court's role in its assistance to unrepresented parties through the Family Law Facilitator program. Carol Flango rounds out the discussion by providing an overview of the structure and concerns of a family-focused court and suggesting principles of evaluation.

The second section of the journal is a forum for addressing important and timely issues relevant to children and families in the court system that fall outside the focus topic's scope. Here, Dr. David Arredondo and Judge Leonard Edwards examine the ways in which courts can deal with theoretical concepts in psychological expert testimony in child custody and visitation cases. Judge Cindy Lederman, Neena Malik, and Sharon Aaron share their thoughts and experiences on their collaborative program to reduce and prevent co-occurrent domestic violence and child maltreatment. In the third section, Perspectives, Helen Cavanaugh Stauts traces the evolution and federalization of America's system of child welfare provision. As a final note, Joshua M. gives his perspective on the benefits of his involvement in a community-based juvenile diversion program.

We hope that this journal continues to fulfill its mission as a useful information and research tool and provider of provoking perspectives. We are very excited about this important endeavor and welcome comments and suggestions for improvement.

—Audrey Evje



Contributors

Sharon M. Aaron, M.S.W., currently serves as consultant to the Miami–Dade County Dependency Court Intervention Program for Family Violence. In her former capacity as advocacy director, Ms. Aaron designed and implemented the advocacy intervention component of the program. Ms. Aaron now directs a national initiative funded by the Centers for Disease Control and Prevention that includes identification of intimate partner violence in health-care settings and has prevention and intervention components. In addition, Ms. Aaron is chair of the Dade County Alliance Against Domestic Violence and serves on the research committee of the Miami–Dade County Domestic Violence Fatality Review Team.

Hon. Sue Alexander is a family law commissioner in Oakland, California. She holds an M.F.C.C. degree and is a specialist in family law and in estate planning, trust, and probate certified by the State Bar of California, Board of Legal Specialization.

David E. Arredondo, M.D., is the medical director of EMQ Children and Family Services and directs SOLOMON, an organization (childrensprogram.org) that provides pro bono psychiatric consultation to the juvenile and family court judiciary and trainings for the juvenile justice and child welfare systems. SOLOMON reviews research on a broad range of topics with the primary goal of transferring knowledge of childhood development, mental health, and developmental traumatology to practitioners in the field. Principal concerns are the high number of mentally ill youth who are not receiving services and the disproportionate impact of these circumstances on economically disadvantaged youth and their families. Dr. Arredondo is a clinical instructor in the Department of Psychiatry and Behavioral Medicine at Stanford University School of Medicine. He is a graduate of Harvard College and Harvard Medical School and a Diplomate of the American Board of Psychiatry and Neurology.

Deborah J. Chase, J.D., M.A., is a family law facilitator for Alameda County. She is a family law specialist certified by the State Bar of California, Board of Legal Specialization. She has a master of arts degree in clinical psychology and is presently completing her doctorate.

Hon. Leonard P. Edwards was appointed to the Superior Court of California, County of Santa Clara, in 1981 and has spent the majority of his judicial career on the juvenile court bench. He currently serves as supervising judge of the juvenile dependency court. Judge Edwards is vice-president of the National Council of Juvenile and Family Court Judges, chair of the Santa Clara County Domestic Violence Council, and a member of the Judicial Council of California. He and his wife, Professor Inger Sagatun-Edwards, are co-authors of *Child Abuse and the Legal System* (Wadsworth 1995).

Contributors, continued

Carol R. Flango, M.A., is a court research associate in the Research Division of the National Center for State Courts. Since joining the NCSC in 1985, Ms. Flango has worked on the Court Statistics Project and other research projects relating to state court organization, the effectiveness of civil protection orders, adoption information improvement, central registries for child abuse and neglect, and integration of child and family legal proceedings. Among her current responsibilities, she directs projects in the family and appellate areas. She has authored several articles on families and the courts, a book on adoption, and was the lead author of *How Are Courts Coordinating Family Cases?* (NCSC 1999). Ms. Flango is a Fellow of the Court Executive Development Program.

Frances L. Harrison, family law facilitator for San Diego County, was previously a family law attorney in private practice for 14 years. She is a specialist in family law certified by the State Bar of California, Board of Legal Specialization. Ms. Harrison is a 1981 magna cum laude graduate of the University of San Diego School of Law, where she served as articles editor for the *San Diego Law Review*. She is the author of an article on child custody move-away cases, "Marriage of Burgess: The Supreme Court Disapproves a Decade of Appellate Analysis and Reasoning" (19 TRIAL BAR NEWS).

Hon. Cindy S. Lederman is administrative judge of the Miami-Dade County, Florida, juvenile court. Before her elevation to the circuit court, she was a leader of the team that created the Miami-Dade County Domestic Violence Court and served as that court's first administrative judge. Judge Lederman, along with Susan Schechter, conceived and developed the Dependency Court Intervention Program for Family Violence in her courtroom. Judge Lederman was also a member of the National Research Council's Committee on Family Violence Interventions. She now serves on the Board of Children, Youth, and Families of the National Research Council and Institute of Medicine as well as on the National Research Council's Juvenile Crime Panel. Judge Lederman has received numerous honors, including a fellowship from Zero to Three: The National Center for Infants, Toddlers, and Families in their "Leaders of the 21st Century" initiative.

Neena M. Malik, Ph.D., is assistant professor of psychology at the University of Miami in Coral Gables, Florida. She is a Solnit Fellow for Zero to Three: The National Center for Infants, Toddlers, and Families. She conducts research and intervention with children and families at risk of or exposed to violence.

Hon. Barbara J. Miller was elected to the Superior Court of California, County of Alameda, in 1996. She is currently the supervising judge at the Hayward Hall of Justice. Judge Miller initiated the community court model for the Hayward Domestic Violence Court, over which she presided until January 2000. Prior to her current assignment, she heard criminal cases for two years in Hayward and family law cases for six years in both Oakland and Hayward.

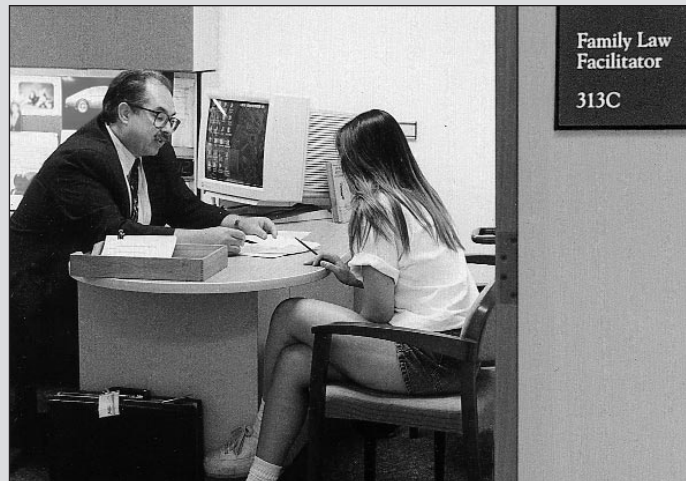
Helen Cavanaugh Stauts is an attorney with Sierra Adoption Services (SAS) in Northern California. Specializing in funding and services for the child with special needs, she also organizes and teaches educational seminars for foster parents, adoptive parents, and child welfare professionals. Other publications include “Understanding AAP: A Parent and Worker Guide,” “Who Will Speak for This Child,” and “Lay Person’s Guide to Completing California Adoption Forms,” available for order from the SAS Web site (www.sierraadoption.org).

L. Thomas Surh is a family law facilitator for Alameda County. He is a graduate of Boalt Hall School of Law and for the past 25 years has been a legal aid attorney, a county bar administrator, and a solo practitioner in the areas of family law, immigration law, and juvenile dependency trials and appeals.

Julia Weber, J.D., M.S.W., is a family violence specialist with the Judicial Council of California’s Center for Families, Children & the Courts. She previously worked as a mediator and children’s attorney and served as project coordinator for the Family Violence Council in St. Louis, Missouri. Ms. Weber has taught courses on violence against women and race, gender, and law.

Robert Victor Wolf is the director of communications at the Center for Court Innovation, the research and development arm of the New York State Unified Court System. A former newspaper reporter, columnist, and editor, he has written extensively about the criminal justice system. His work has included writing and editing the content for criminal justice–related Web sites, including communityjustice.org. He is also the author of two books for young adults, *Capital Punishment* (Chelsea House 1997) and *The Jury System* (Chelsea House 1999).

**COURTS
RESPONDING TO
COMMUNITIES**



Photograph by Jason Doiy

Conference of Chief Justices Conference of State Court Administrators

CCJ Resolution 22 COSCA Resolution 4 In Support of Problem-Solving Courts

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators appointed a Joint Task Force to consider the policy and administrative implications of the courts and special calendars that utilize the principles of therapeutic jurisprudence and to advance strategies, policies and recommendations on the future of these courts; and

WHEREAS, these courts and special calendars have been referred to by various names, including problem-solving, accountability, behavioral justice, therapeutic, problem oriented, collaborative justice, outcome oriented and constructive intervention courts; and

WHEREAS, the findings of the Joint Task Force include the following:

- The public and other branches of government are looking to courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process;
- A set of procedures and processes are required to address these issues and problems that are distinct from traditional civil and criminal adjudication;
- A focus on remedies is required to address these issues and problems in addition to the determination of fact and issues of law;
- The unique nature of the procedures and processes encourages the establishment of dedicated court calendars;
- There has been a rapid proliferation of drug courts and calendars throughout most of the various states;
- There is now evidence of broad community and political support and increasing state and local government funding for these initiatives;
- There are principles and methods grounded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of the trial court performance standards and the public trust and confidence initiative; and
- Well-functioning drug courts represent the best practice of these principles and methods;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators hereby agree to:

1. Call these new courts and calendars "Problem-Solving Courts," recognizing that courts have always been involved in attempting to resolve disputes and problems in society, but understanding that the collaborative nature of these new efforts deserves recognition.
2. Take steps, nationally and locally, to expand and better integrate the principles and methods of well-functioning drug courts into ongoing court operations.
3. Advance the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts.
4. Encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.
5. Support national and local education and training on the principles and methods employed in problem-solving courts and on collaboration with other community and government agencies and organizations.
6. Advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts in the general court systems of the various states.
7. Establish a National Agenda consistent with this resolution that includes the following actions:
 - a. Request that the CCJ/COSCA Government Affairs Committee work with the Department of Health and Human Services to direct treatment funds to the state courts.
 - b. Request that the National Center for State Courts initiate with other organizations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the 10 Key Drug Court Components, published by the Drug Courts Program Office, which define effective drug courts.
 - c. Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem-solving courts.
 - d. Convene a national conference or regional conferences to educate the Conference of Chief Justices and Conference of State Court Administrators and, if appropriate, other policy leaders on the issues raised by the growing problem-solving court movement.
 - e. Continue a Task Force to oversee and advise on the implementation of this resolution, suggest action steps, and model the collaborative process by including other associations and interested groups.

*Adopted as Proposed
by the Task Force on
Therapeutic Justice of
the Conference of Chief
Justices in Rapid City,
South Dakota, at the
52nd Annual Meeting
on August 3, 2000*

Fixing Families

The Story of the Manhattan Family Treatment Court

This is no ordinary day in court. For one thing, the jury box is overflowing with people, many of them clutching bouquets of flowers. And the gallery is packed. There are television cameras, too, plus a large table near the judge's bench full of cake and soda. But the most unique feature is the children. They're doing their best to be quiet, with their hands in their laps, but periodically one chases another down an aisle, another shouts a greeting to a familiar face, and an infant cries for a moment before a bottle or a soothing bounce restores calm.

There is no trial today, no special hearing, no stream of arraignments. Today is graduation day. The 22 people sitting in and around the jury box are parents who lost their children because they were abusing drugs. But they don't abuse drugs anymore. They've gone through drug treatment, learned parenting skills, and had vocational training as part of a unique judicial experiment, the Manhattan Family Treatment Court. They are the second group to graduate from the court, which was created in March 1998 in response to long-standing problems that many urban family courts face: parents who don't follow through on court orders to participate in drug treatment and children languishing in foster care for years on end.

The Manhattan Family Treatment Court has so far been remarkably successful, sending hundreds of parents into long-term drug treatment, building their skills as parents, and reuniting drug-free parents with their children in record time. In New York City's child welfare system, the average foster-care stay is about four years—an eternity in the life of a child. The family treatment court has reduced the average stay to about a year for children whose parents have successfully completed the court's program. In cases where parents haven't been successful, the court has taken an average of 13 months to begin termination of parental rights or permanently place the children in the home of a relative—far more quickly than in the past.

But the court is not just about numbers. It's about changing lives, a reality reflected again and again in the words of the 22 parents who graduate today. Says one: "My life has changed in that I don't live in darkness anymore. I don't feel destitute. Today I can smile from my heart and know that living a life without drugs is a beautiful life. I owe this to God and the court for giving me the opportunity to be a better mother."

This article tells the court's story—from its planning through its first two years of operation—in the words of the people who run it and participate in it. Its story provides valuable lessons for anyone grappling with some of the seemingly intractable problems that arise when drug addiction and families collide.



Robert Victor Wolf

Center for Court Innovation

The Manhattan Family Treatment Court was launched in March 1993 in response to long-standing problems that many urban family courts face: parents who don't follow through on court orders to participate in drug treatment and children who languish in foster care for years on end. The court—using a combination of rigorous judicial monitoring, sanctions and rewards, and enhanced links to supportive services—has been remarkably successful. It has sent hundreds of parents into long-term drug treatment, helped build their parental skills, and reunited drug-free parents with their children in record time. This article tells the court's story—from its planning through its first two years of operation—in the words of the people who run it and participate in it. The court's experience provides valuable lessons for anyone grappling with some of the seemingly intractable problems that arise when drug addiction and families collide. ■

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THE CRACK EPIDEMIC

The family treatment court's story begins with crack cocaine. Beginning in the early 1980s, the crack epidemic fueled a huge rise in child protective cases. By the end of the decade, neglect filings, which previously had been only a small percentage of New York City's family court caseload, had quadrupled.¹ By the mid-1990s, three-fourths of suspected child abuse and neglect cases in the city involved substance-abusing parents.²

This flood of cases "strained the resources of child protective agencies," New York State Chief Judge Judith S. Kaye said in a speech in 1997. "The highly addictive nature of crack demanded intensive services, yet gaps in service delivery and case supervision were rampant. As a result, more children entered foster care, more stayed longer, and more saw adoption as their only hope of a permanent home. The family court thus also found itself engaged in human recycling—placing a child born with a positive toxicology for cocaine in foster care one year, followed by another 'positive tox' sibling placed in care the next."³

The sad reality was that more and more children every year were going into foster care while proportionally fewer were getting out. Between 1985 and 1991 the number of children in foster care nearly tripled in New York City, from about 17,000 to 50,000, while the average length of stay in foster care leapt from 1.81 years in 1985 to 4.5 years by 1997.⁴

The protracted stays in foster care were a clear sign that the system was failing. Caseworkers from the Administration for Children's Services (ACS), the city's child protection agency, removed children from the homes of substance-abusing parents and made referrals to drug treatment. Judges backed up the caseworkers with court orders requiring parents to complete drug treatment as a condition of their children's return. Yet despite ACS's and the court's good intentions, there was little monitoring except at court appearances, which could be up to a year apart. "Caseworkers would make a referral for drug treatment and leave it up to the parent to follow up," says Judge Gloria Sosa-Lintner, a family court judge since 1988 and the founding judge of the Manhattan Family Treatment Court. "It's like telling someone who's very sick to go on their own to see the doctor. They may get there, or they may not."

Cases remained open for years with little progress toward resolution. "What had been happening with most drug cases, and most cases for that matter, was that they would drag on with long periods between court appearances, and no progress was being made toward permanency for the child," explains Ray Kimmelman, an attorney with ACS. "It was sort of potluck what would happen on any court date. The judge would ask, 'What's happening with services?' And ACS would say the mother has not complied and the judge would adjourn it for another day. Cases would drag on and on until we finally gave up and had to file a termination-of-parental-rights petition."

Judges were forced to make heart-rending decisions about a family's fate: Should a parent's rights be terminated, or should the parent be given another chance to

become sober? Should a child be freed for adoption or wait another year on the dimming hope his parent might get clean? These decisions were made more difficult when key information was missing. Often a case had been transferred among so many lawyers and caseworkers that it was impossible to know with confidence how and why parents had failed to comply with the court's orders: Was it because they were truly beyond reform, or had the system failed to get them the help they needed?

Blaming ACS, the agency charged with linking parents to drug treatment and other services, became a popular pastime. Yet the problem was clearly systemic. Everyone was stretched too thin. What was needed was a way to help respondents get off drugs and become competent parents, but that required time, money, and expertise, which the parents' attorneys, ACS caseworkers, and the court—already overwhelmed by the swollen caseload—lacked. Meanwhile, the ones who suffered the most—the children—were the least capable of doing anything about it.

THE SEARCH FOR A SOLUTION

In 1997, Chief Judge Kaye launched a statewide initiative to revamp family court. The initiative, called the "Family Justice Program," opened family court to the public and called for fundamental changes in the family court structure. As part of her plan, Judge Kaye asked the Center for Court Innovation, the court's research and development arm, to develop a new kind of family court that could better handle cases of child neglect involving charges of drug abuse. That effort began in early 1997, even before the enactment of the federal Adoption and Safe Families Act, which required states to implement regulations to speed permanency decisions for children in foster care.

The New York State Unified Court System had tackled similar problems in the past with its Center for Court Innovation. By the time it began working on the Manhattan Family Treatment Court, it had already developed a range of successful problem-solving courts, including the award-winning Midtown Community Court, which focuses on quality-of-life crimes in the heart of Manhattan, and the Brooklyn Treatment Court, which links felony drug offenders with substance abuse treatment.

At the planning table in Spring 1997 were top family court judges and their law clerks; Judge Sosa-Lintner, who had been chosen to preside over the newly formed court; court clerks; and planners from the Center for Court Innovation. But quickly the planning group expanded to include administrators and attorneys from ACS, the Juvenile Rights Division of the Legal Aid Society (which represents children), and the Assigned Counsel Panel (a collection of private attorneys paid by the court to represent parents).

Expanding the planning group proved crucial. "We realized that without the sign-on of participating agencies like Legal Aid, ACS, and the Assigned Counsel Panel, it wouldn't work. So we began the first of many, many meetings that we like to think of as true collaborative efforts," says Rosemarie Wyman, then-law clerk to Judge Michael Gage, administrative judge of the New York City family court at the time. "At first people wore their own hats, and then over time there came to be a real feeling that we are

in this together and we must work together. People became much more forthcoming about problems they anticipated with the court or other concerns they might have.”

OUTLINING THE PROBLEM

Before developing a new court model, planners carefully outlined what they felt was wrong with the current system. Among the problems they identified were:

- **Lack of information.** Most cases passed through at least several ACS caseworkers, so it was nearly impossible to know which caseworker was in charge at any given time. The system diffused responsibility among so many caseworkers that no one person could be relied on for accurate and up-to-date information.
- **Lack of accountability.** ACS or the foster-care agency with which it had contracted often did not follow up on social service referrals or see to it that visitation plans were fulfilled. Moreover, parents could give almost any excuse for why they had not entered treatment or why the treatment failed, and the court had no way to assess their veracity.
- **Delay.** Court dates could be anywhere from three months to a year apart. “Everyone was frustrated because there was always a lapse in time before we found anything out. A judge orders treatment but the parent doesn’t go. That takes a few months. Then another referral is made and for some reason that doesn’t work out. Months can go by before anyone knows,” recalls attorney Pauline Gray of the ACS Division of Legal Services.
- **Lack of services.** Although ACS was charged with making referrals to social services, overburdened caseworkers sometimes lacked the knowledge and resources to make appropriate referrals and follow through to see they were carried out. “In my experience, [ACS] caseworkers are overwhelmed and lack the skills to identify what a parent really needs and locate a program that meets those needs,” says Ron Richter, who heads up the Manhattan Juvenile Rights Division of the Legal Aid Society. “It was frustrating to me because I had clients who wanted to return home to their parents, and the parents were strung out year after year after year, and the agency would say, ‘We’re making referrals, we’re making referrals . . .’ There was a devastating lack of connection between parents and appropriate services, and nobody was doing anything about it. It was maddening, it was sad.”

THE DRUG COURT MODEL

Faced with the challenge of working with drug abusers in family court, planners looked to the model of a “drug court,” a judicially supervised treatment program that has had a solid track record of helping offenders achieve sobriety. The nation’s first drug court was started in Florida in 1989, but by 1997 there were hundreds of drug courts in operation around the country.

New York City’s first drug court experiment, the Brooklyn Treatment Court, was launched in April 1996 and had already shown in its first year that it could success-

fully get felony offenders off drugs through a rigorous course of court-mandated drug treatment and close court supervision, including frequent visits to the court for drug testing and intensive case management.

Like all drug courts, the Brooklyn Treatment Court is informed by an understanding of the process of recovery from drug addiction. As such, it doesn't instantly kick participants out if they relapse. Rather, it accepts that relapse is sometimes a part of the recovery process. To teach participants that their actions have consequences, the court responds to relapses with graduated sanctions—for example, having participants spend two full days observing in court and then writing an essay about it. The court also uses rewards—applause in the courtroom, less-frequent court appearances—to encourage those who are doing well.

Interestingly, the Brooklyn Treatment Court's own experience indicated the possible need for a drug court in the family court setting. About 14 percent of the Brooklyn court's participants had already lost custody of children before entering the treatment court. The question then arose, If the parents had been placed in a drug court earlier—well before their drug abusing led to a felony drug arrest—would they have been able to keep their children?

ANSWERING A NEED

The drug court model addressed many of the problems in the family court system that planners had identified. The model improved accountability by requiring participants to return frequently to the court for drug testing, and by using sanctions and rewards. Frequent court appearances and intensive case management helped supply the court with accurate and up-to-date information. And participants received better services with the help of court caseworkers, who thoroughly assessed their needs and then referred them to appropriate services.

Placing drug-abusing parents in a drug court seemed a natural fit, yet planners weren't convinced it would work. Drug courts were created in criminal settings. Would they work as well in a family-court setting, which has different procedures and measures of success? In a criminal drug court, for instance, the ultimate reward is a clean criminal record; but in family court, the final reward is usually family reunification. Furthermore, to "graduate" from a criminal drug court, all you need do is follow the court's orders and stay clean and sober for a sufficient length of time. But in family court, "drug free" can't be the only measure. Respondents must also be what the court calls a "good-enough parent." That means having hard-to-measure qualities like parenting skills and an ability to manage anger, plus adequate housing and a source of income. There are other considerations as well, depending on the case. For instance, the court will not return a child to a home that has a history of domestic violence unless the abuser is no longer present.

One of the biggest differences between a civil family court and a criminal court is leverage. New York City's family court lacks the coercive power of a criminal drug court, which can use jail as a tool to support treatment—either as a sanction when a participant is chronically noncompliant or as punishment when a defendant fails the

program entirely and a criminal sentence is imposed. In theory, a family court judge can put respondents in jail, but as a matter of practice it's never done in New York City.

A criminal drug court can also hold defendants in jail until arraignment, which ensures that case managers can at least approach them to explain the drug court option. But in family court, respondents are not held pending their first appearance. (In practice, this has meant that 20 percent of the parents who are initially deemed eligible to participate in family treatment court never show up, so they never learn what the court has to offer.)⁵

Court Coordinator Raye Barbieri observes that family treatment court wouldn't be able to attract parents if jail were ever an option for those failing in treatment, especially if traditional family court in New York City, as a matter of judicial custom, never exercised that option. "If we exposed our voluntary participants to jail, we wouldn't have any participants," Barbieri says. Further, notes Emily Sack, a deputy director at the Center for Court Innovation, "we felt we didn't want to create a situation where they'd be facing a much larger penalty than they'd face in other parts of the family court."

Planners ultimately decided that the drug court model—adapted to a civil setting—was the right way to go. Family court may not wield jail as a "stick," but the promise of family reunification had been and would continue to be a strong incentive for parents to cooperate. Parents know that if they succeed in rehabilitation, their children will be returned to them, and if they don't, their rights as parents will be irrevocably severed. As family treatment court graduate Steven Kemp, 37, says, "When you go through what I went through—to have them physically take your kids away—that's motivation enough. You don't wish it on your worst enemy."

CRITERIA FOR PARTICIPATION

One of the early questions planners had to answer was, Whom would the court admit? Some at the table suggested accepting, at least until the court gained more experience, only the so-called cream of the crop—those clients who were new to the family court system and relatively new drug abusers, such as women who for the first time had a child born with a positive drug toxicology. But people representing the experience of the Brooklyn Treatment Court cautioned that "it isn't always first-time people who do better in treatment. The Brooklyn Treatment Court found that folks who have a more serious drug problem and have hit bottom sometimes do better," Sack explains.

Planners ultimately tried to balance these two views by picking parents who, as Judge Sosa-Lintner puts it, "had some chance of success without limiting it to those with positive tox babies." They also decided to focus on neglect cases only—as opposed to more serious cases involving abuse, which were thought to exceed the rehabilitative scope of a treatment court. The neglect allegations, of course, had to include drug abuse, but other forms of neglect, such as medical or educational neglect, could also be part of the case. They also placed other limits: no allegations of domestic violence, no overt signs of mental illness, no more than one other child already in foster care, and then not for more than three years. Planners decided that as the court gained in

experience it would broaden its criteria in phases to accept more participants and more complicated cases. (In a later phase, for instance, the court began taking cases involving allegations of domestic violence and extended the foster-care limit to five years.)

RECONCILING DIFFERENT VIEWS

The planning phase lasted a year, during which time a long list of issues was worked out, from graduation criteria to staffing to the frequency of court appearances. But the process wasn't easy. One of the biggest challenges for planners was reconciling the disparate views and interests of the many players in a family court. Unlike a criminal court, in which the primary players are the prosecution and the defense, child protective cases in family court have three "sides"—the respondent, the child, and ACS, all of whom have their own attorneys and agendas; in addition, caseworkers at ACS and at individual foster-care agencies who directly supervise foster-care placements are major players in each case.

At first, there were some who doubted that an experimental treatment court could be fair to all sides. Attorneys for the children thought the court was being "designed to go easy on the respondents," says Brad Martin, an attorney with the Juvenile Rights Division of the Legal Aid Society. "I think people from my office expected, incorrectly as it turned out, that the kids from the beginning of the case would be home with the parents, that they'd never be removed." The parents' attorneys took the opposite view: that the court would drive the case like "a runaway train toward termination and adoption," Barbieri recalls.

Parents' lawyers were also dubious of the court's value to their clients. On the one hand, supportive services to help their clients get off drugs and be reunited with their children were an obvious plus. On the other, what if the parent failed in treatment after repeated tries? The only practical defense in proceedings to terminate parental rights is that "[ACS] didn't do enough to reunite the family," explains attorney Edwinna Richardson, who represents parents. In family treatment court, however, parents were going to be given intensive assistance, "making it impossible to establish that the agency didn't work diligently," Richardson says.

With the passage of the Adoption and Safe Families Act, which required states to implement regulations to expedite permanency decisions for children in foster care, attorneys like Richardson decided that their clients needed all the help they could get. "The truth is that parents are going to have to rehabilitate quickly or they'll lose their children," Richardson observes. And after working with the court for two years, "I have reconciled myself that the best way parents will have a chance to get their children back is if they participate in the family treatment court. It's not very difficult to terminate parental rights to begin with, and under the new laws this is the only place we have a chance to have parents reunified with their children."

ADMISSION OF NEGLECT

Planners decided that respondents would have to admit to the substance abuse charges against them (typically child neglect due to substance abuse) as a requirement

for entering the treatment court. This was done not only to save time (because hearings to reach a finding of neglect could easily take more than three months), but also to increase the chances of a participant's success in treatment.

The Brooklyn Treatment Court found that placing participants in drug treatment immediately—at most a few days after arrest—increased the likelihood that they would succeed in treatment. So the Brooklyn court has participants, as a requirement of admission into the program, admit guilt upfront. Their sentences are deferred and the cases are subsequently dismissed upon successful completion of the treatment program. Failure in the program brings a prearranged jail sentence. With the plea agreement behind them, the adversarial elements of the case are eliminated and everyone can focus on the participants' recovery.

Admissions are also a clinical requirement for treatment. "Clinically you can't engage someone in the treatment process until they've admitted they have a drug problem," explains Barbieri, who worked in the Brooklyn court before she became coordinator of the family treatment court.

The idea of parents' admitting blame within days of their first court appearance was at first hard for parents' attorneys to accept—after all, no attorney wants a client to automatically cede any rights. Yet they ultimately agreed to the plan because they recognized that they could advise clients facing weak cases to decline participation in family treatment court.

Richardson and her peers on the Assigned Counsel Panel were also concerned about court caseworkers' assessing their clients' suitability for the program. What if the parents make admissions that could be used against them later if they decide not to participate in the treatment court? And what if their clients say something with criminal repercussions—what would prevent the district attorney from getting this information? The parents' attorneys finally went along when, after much negotiation, it was agreed that the assessment would be kept confidential and not be used against respondents if they opted out of the family treatment court.⁶

RESOURCE COORDINATOR

In March 1998, the Manhattan Family Treatment Court opened for business. And while its courtroom on the ninth floor of the Manhattan Family Court's black granite office tower looks much like any other in the building, it is immediately apparent to an observer that what goes on here isn't business as usual.

While in many courtrooms long pauses are customary as people shuffle through stacks of folders for information and unanswered questions lead to adjournments, Resource Coordinator Scott Brown hands everyone in the treatment court an update on each respondent on the day's calendar. The updates list the respondents' days clean, their progress in treatment, the results of drug tests, information about their drug treatment programs, the status of their visits with their children, and any issues of concern—basically all the information needed to make sure each appearance is productive.

Brown amplifies the written update by telling the judge at the beginning of each respondent's appearance the recommendations of treatment providers and court staff regarding sanctions and rewards, phase advancements, treatment, and the delivery of other services.⁷ After the hearing he updates providers and court caseworkers on the judge's decisions. "As resource coordinator, I'm the eyes and ears for the clinical team in the courtroom," Brown says.

The resource coordinator spares case managers the need to appear in court, allowing them to devote all their time to working with clients. Without the resource coordinator, case managers would be placed in the awkward position of "telling" on their clients. "When you look at the client-and-case-manager relationship, it's probably not the best thing to go to court and drop the hammer on the client or sing his praises to the judge and then six months later have to do a 180," Brown observes.

Brown also works closely with two liaisons from ACS. The liaisons are based at the court and stand in for individual ACS caseworkers during court appearances. The liaison position was created to make sure the court always has the most current information from ACS and foster-care agency caseworkers. The liaisons also convey court orders back to ACS.

ACS attorney Pauline Gray says the wealth of information in the courtroom makes her "feel more comfortable with the decisions that are made. Because of frequent court appearances, it's very obvious what the plan should be. There are no adjournments for adjournment's sake. You always have enough information to go forward."

THE JUDGE

The treatment court is in session four afternoons a week. Judge Sosa-Lintner, who juggles a caseload in traditional family court as well, was its sole presiding judge for nearly two years. Sosa-Lintner, who didn't know anything about drug courts when first assigned to the project in the preplanning stage, is now clearly used to her role as judge, cheerleader, and critic.

She adapts her tone and demeanor to each respondent, smiling as she congratulates a parent who is doing well and then a few minutes later becoming stern as she questions a mother who has apparently lied about her drug use. The mother, who tested positive for alcohol, claimed that she hadn't had a drink but admitted to taking four Tylenol 3s because of surgery-related pain. "Do you have any idea how you could take four Tylenol 3s and not test positive for opiates, but test positive for alcohol?" Judge Sosa-Lintner asks. "You better watch what you take and learn to tolerate pain more."

The judge doesn't hesitate to spell out the consequences to parents who are backsliding, pointedly reminding them that they can lose their children forever if they don't sober up. To one mother she says flatly, "You have to decide if you want your children back home or if you want to do drugs. Your kids are young, but they're not that young ... you don't want them to end up in the foster-care system, do you?"



*Judge Gloria Sosa-Lintner
of the Manhattan Family
Treatment Court*

Parents, even those who have relapsed, say they like Judge Sosa-Lintner's style. "She knows me upfront," says Lillian Harris as she waits to see the judge. Harris, who was about to be ordered into a new treatment program after a relapse, says that when she entered court, "I was just mean and arrogant" and rebelled against the court and treatment. At one point, Judge Sosa-Lintner ordered her to write an essay about her anger. "Now I'm learning to be more friendly," Harris says.

DEALING WITH RELAPSE

Despite Judge Sosa-Lintner's stern approach, she and Judge Sheldon Rand, who began sharing the treatment court's calendar with her in January 2000, understand that treatment is a long process and that relapse is, in many cases, inevitable. "The reality is that some of our clients do well for a while and then relapse. My experience has been that the judges in family treatment court tend to give the parents more chances than other family court judges because they're more knowledgeable about drug addiction," Richardson, who represents parents, says. "And they're seeing a case very frequently, so they're more familiar with each parent, whereas other judges will see parents every year or every few months at the outset of a case and won't have a personal connection."

Judge Sosa-Lintner also offers generous encouragement to those who succeed. After their first 90 days sober, she typically gives respondents a journal in which she writes a congratulatory inscription. The judge is not alone in offering congratulations, however. Sometimes, at the judge's urging, everyone in the courtroom breaks out into applause. And sometimes, on their own, courtroom players offer words of support. At the conclusion of an appearance by a mother who had trouble staying sober but now had 65 "clean" days under her belt, ACS attorney Pauline Gray told the judge, "I'm glad that she's back on track."

VISITATION

Judge Sosa-Lintner says that she isn't ordering anything different from what judges in other family courts order. What's different is that through frequent court visits she's ensuring that her orders are enforced. "I'm guaranteeing compliance, and I do it by having them in the courtroom," she says.

Judge Sosa-Lintner is concerned not only with the respondents' sobriety, but also with the status of the children. Is the foster-care placement working out? Are the children getting the supportive services they need? And, at the top of her list, are visitations being carried out as prescribed by her orders?

Unlike other family courts, family treatment court micromanages visitation schedules. "Typically, visitation schedules are left to ACS to figure out. We do it on the record because information gets lost otherwise," Barbieri explains. If there is a problem with visitation—perhaps a residential drug program does not let a participant leave for visits, or perhaps the parent is simply failing to show up—the frequent court appearances ensure that the judge promptly hears about the problem.

Statutes require a minimum of biweekly supervised visits. But the treatment court tries to move quickly to weekly visits when they are clinically appropriate. For the children's attorneys this took some getting used to. "It was a bit of an attitude shift for us," law guardian Brad Martin concedes. "They move very quickly toward long visits, unsupervised visits, weekend visits. We had to swallow hard and go along with it."

THE CLINICAL OFFICE

Much of what goes on at the family treatment court takes place three stories below the courtroom in the court's clinical office. It's there that parents are first given a thorough psychosocial assessment, both to determine eligibility and to develop an initial treatment plan. Once they are in the program, participants regularly visit the clinical office to meet with their case managers, get referrals to social services, and provide urine samples for drug tests. The clinical office also hosts a support group for parents once a week.

As part of the court's monitoring process, parents must meet with their case managers before every court appearance. In advance of these appointments, case managers talk with the off-site treatment counselors to find out how the parents are doing. The treatment providers also regularly fax over progress reports that include attendance records and drug-test results.

Parents are tested every time they come to court. Positive test results inevitably lead to discussions about what in the parents' life led them to use drugs. "The case managers probe to find out what the issues are," Brown says.

FAMILY GROUP CONFERENCING

The court hired a family facilitator in December 1999 to help involve extended families in permanency planning. "Family is broadly defined," says the facilitator, Lisa Horlick. "It can be a sister, mother, brother, father, roommate, girlfriend—basically anyone concerned about the children. Families are sometimes overlooked, and yet they're a resource for permanency planning."

The family conferences have three main goals: to identify ways to support ongoing sobriety, to develop family support for speedier reunification, and to think about ways to prevent children from later developing their own substance abuse problems. Horlick says the conferences provide "a window into the family's life outside of family court, which gives us a way to make a more accurate assessment of their needs."

In one family conference, a mother talked with her two sisters about her drug problem. The sisters didn't understand why the mother had trouble putting down drugs and were very angry that she had relapsed. Horlick talked to them about the nature of drug addiction and the role the sisters might play if the children were returned to the mother. "The family was able to offer love and support, but they also came to an understanding that they might offer respite care for the children if the mother was feeling overwhelmed," Horlick says. "That way, they could play a part in relapse prevention, be her support team."

In another conference, a mother met with her 16-year-old daughter. Horlick helped them talk about the daughter's fears about returning home and discuss what rules would be in the home, including what the girl's curfew would be and the chores she would be expected to do. Horlick also gave the daughter a questionnaire that could help the court identify services, such as summer camp or tutoring, that might help make the reunification process easier. "We want to make transitions smoother to help keep at-risk kids out of trouble and to avoid a relapse by the parent," Horlick explains.

TEAM APPROACH

The court has tried to create a team out of the court's many players. Even when the project was still in development, planners were careful to allow everyone a chance to express his or her thoughts and then move ahead only after all those involved had reached at least a tentative consensus.

The court hosts troubleshooting meetings once a month. Representatives from the court, ACS, the various attorneys, and the judges attend. Matters like changing the admission criteria, altering the court's hours, or experimenting with warrants have topped the agenda at various meetings.⁸ Because everyone is permanently assigned to the court (or, in the case of members of the Assigned Counsel Panel, spend a significant amount of their time there), they have a depth of experience that allows them to speak knowledgeably about court operations. It also helps save time in the courtroom. "You don't waste time with attorneys advocating for positions that are not reasonable," Gray observes. "We have a lot of cases every day, and having a fixed staff helps it go quickly."

For some, the idea of working so collaboratively in a courtroom was an entirely new concept. "The whole idea of a team goes against my instinct as a defense attorney," Richardson says. "Frankly, my client could care less about what the team thinks. And technically my obligation is to the client. But even though the team concept has always seemed a bit mushy to me, the reality is that the goals we all have are fairly similar—almost always it's to reunify the family."

One of the payoffs of the team approach is a more efficient calendar. Judge Sosa-Lintner has instructed attorneys to confer among themselves before each case and bring before her only the issues she needs to focus on. For example, Michael Wroblewski represented a woman with 200 days clean, who had been reunified with her children on a trial basis for 60 days when she relapsed. Wroblewski, with attorneys from ACS and Legal Aid, worked out an arrangement that allowed her to keep the children but required her to be in treatment five days a week. Thus, the issue didn't have to be debated before the judge. As it turned out, the mother got back on the sober path and ultimately graduated from the program.

PARENTS' PERSPECTIVE

For many parents family treatment court is an easy choice. "They told me what the process was and, in comparison to what I knew of from hearsay about regular court,

it was not something I had to think about. I chose family treatment court right away," explains a 35-year-old female graduate, who asked that her name be withheld. When she entered court, she was still in denial about her drug abuse, even as she admitted in court that she had a problem. "When I started, I was still thinking pot wasn't drugs," she says. ACS opened her case after she had been arrested for smoking marijuana on a street corner with her 2-year-old son at her side. "I was thinking, 'I'm going through all this for a joint?'"

Cynthia Bruno, another graduate, had similar thoughts at the outset: "I thought the system was wrong for taking my son. He was clean, had enough clothes, and got to school on time, but then I realized it was only a matter of time before he wouldn't be clean and wouldn't have enough clothes and, God forbid, got hurt."

Like Bruno, most parents come to see that, in fact, they do have a drug problem. And while many get through treatment without a relapse, others backslide. When that happens, participants are usually glad they're in the treatment court. "I was coming for six months and my urine tests were still dirty. I was smoking crack, but they didn't give up on me," Kindel Williams, 34, says. "They always continued to encourage me to find some other way of looking at treatment."

Williams started in an outpatient program, but it didn't work. "I didn't bother to go," she says. While she was using, she got pregnant, which marked a turning point. "I knew I didn't want this child getting hooked up with the system." The court placed her in a residential parent-child program for eight months, and Williams finally sobered up. When she was discharged, the court linked her with a babysitting service so she could continue to attend the program as an outpatient. Williams has done so well that she also works at the program on a part-time basis.

Now, almost two years after entering the court, Williams is thinking about pursuing trial custody of her first child, a daughter currently living with a relative. Williams says she feels lucky that she ended up in family treatment court. In addition to giving her a number of chances, the court offered "consistency, which is what you need when you try to overcome addiction," Williams says.

Many parents say they welcome the court's close scrutiny. Steven Kemp, the 37-year-old father of a 1-year-old girl and a 4-year-old boy, says he liked the frequent court dates. "I enjoyed going to court because the judge could see I was improving every time. It gave me motivation," explains Kemp, who "graduated" from the court in March 2000.

And while program graduates say the court's support has helped them get sober, the biggest factor that helped them quit drugs, many say, was their kids. "When my kids were removed it was devastating," Lisa Heard, a graduate, says. "I swore I'd never go through that again."

CHALLENGES

Of course, the court has experienced challenges in its first two years. In some instances, family court clerks did not understand some of the screening criteria and referred inappropriate cases or failed to send appropriate ones. Despite admission

criteria against it, occasionally the court has admitted a parent with a serious mental health problem, which has posed a challenge for placement, since few programs treat both mental illness and drug addiction.

The program has also pointed up deficiencies elsewhere. While the creation of the ACS liaison has greatly improved the agency's communication with the court, there are still internal communication problems to be worked out, ACS attorney Ray Kimmelman says. "Each of our cases involves a caseworker in a private agency plus a caseworker at ACS in a field office plus the liaison who stands up in court. We still sometimes have problems with sharing information as to how visits are going and how the drug treatment program is going and if there are relatives who can take the kids. These are the systemic problems that show up in every case, but in family treatment court it shows up in even greater relief because you don't have weeks and weeks between appearances to fix the problem."

The court has also had to deal with limited resources. Because of a growing caseload in family court and the departure of a judge, the entire family court calendar in Manhattan has been readjusted. Judge Sosa-Lintner's time in the treatment court was reduced from 50 percent to 20 percent so she could take on more of the crushing caseload in regular family court. And although she was joined by Judge Rand, he, too, can give only 20 percent of his time. "In essence, we have fewer judicial resources than when we started," Barbieri says. Despite that, the court has been able to increase its caseload, and planners expect that it will soon be expanded to a full-time courtroom.

NEW ROLES

Perhaps one of the greatest challenges is the need for court players to adapt to new roles. The judges have seen the most changes in their work. Judge Sosa-Lintner has gone from being a lone figure on the bench to a team player by joining in the troubleshooting meetings, hosting informational lunches with treatment providers, and giving presentations about the court to ACS workers, foster-care associations, and local bar associations.

Other judges sometimes criticize her for "coddling" drug abusers and running a court that is too "social work oriented," she says. "There's a perception the court is holding hands too much, but the respondents will learn a lot better if you hold their hand. We're not coddling, we're monitoring, we're keeping control of the situation. You can't fix a problem if you don't know about it for three months."

But the judges aren't the only ones in new roles. Everyone has had to make adjustments. The children's attorneys, for instance, now have more time to counsel their clients. "Our role is often to secure compliance with court orders and hold the commissioner of child welfare's feet to the fire," Ron Richter, a law guardian, says. "In family treatment court, because cases are on so frequently and because the court staff is also advocating for the family's needs, there's less of a role for us to play in terms of compliance and more of a role for us to play as legal counselor for the children. We see the children more often, and we have a greater role in picking service providers and working out visitations."

LOOKING TO THE FUTURE

The Manhattan Family Treatment Court has demonstrated that a drug court can work in the family court setting. With intense court monitoring and links to supportive services, the court has been able to rehabilitate drug-abusing parents and reunite, after its first two years, 30 respondents with 72 children. The respondents had an average of 439 days sober upon “graduation,” and the average length of time their children spent in foster care was 11 months—far less than the citywide average of four years. This represents a savings in financial as well as human terms, since the city has so far saved hundreds of thousands of dollars in foster-care expenses. By the start of its third year, the court had worked with 277 respondents representing 243 families and 453 children. With an average of 68 percent of its clients in compliance with court mandates, the court is poised to reunite many more parents with their children in the near future.

The court expects in its third year to face a new challenge: difficult decisions about termination of parental rights. During its first two years, 28 parents failed. But all the cases were clear-cut: the parents had either dropped out of the program altogether or had been unable to put together even a bare minimum of sober days. Now, as the mandates of the Adoption and Safe Families Act come into play, the court will begin to grapple with cases that fall in a grayer area, involving parents who have had longer stretches of sobriety and shown a great deal of effort but still haven’t been able to make enough progress to be reunited with their children. “There are parents who haven’t been able to put together more than two or three months of sobriety,” Barbieri explains. “What makes it difficult is the relationship with the client and the emotional investment the team has made in the person, but like the judge says, at some point you have to fish or cut bait. Ultimately, the child’s developmental clock has to prevail.”

While the Manhattan Family Treatment Court continues to develop and meet new challenges as they emerge, plans are under way to begin replicating the model in other parts of New York City’s family court, starting in the borough of Queens, where a planning team has already been named. For other jurisdictions interested in the treatment court’s model, lack of resources is a likely obstacle. Treatment courts require extra staff and more time from the schedules of judges, lawyers, and other court players because of the intensity of the case management and the frequency of court visits. But when grappling with tight budgets, jurisdictions should also weigh the financial savings from shortened stays in foster care and, even more importantly, the savings in social capital when fractured families are made whole.

For people long familiar with business as usual, the Manhattan Family Treatment Court has drawn no shortage of praise.

Edwinna Richardson, a lawyer who represents parents, calls it “a bright light in my family court life. Some of my colleagues are still skeptical and laugh at me, and think it’s not a real court, but I say, ‘I’m sorry, I have many parents who’ve gotten their kids back.’”

Ron Richter, the law guardian, calls it “a ray of sunshine in my eight years of experience in family court.” He continues: “The most compelling advantage to the whole

model is that children's attorneys are able to observe parents become an advocate for their child. You start out with a parent who doesn't know what's going on, and over time, week by week and month by month, they become transformed. You're seeing them so frequently you're actually watching the improvement before your very eyes. It makes you a lot more confident in the parents who are participating successfully, and that encourages reunification. You have a much better sense of the person because you see them so much, and you're getting updated reports constantly."

But the speakers most persuasive about the work of the treatment court are the parents themselves. A mother of two children, ages 2 and 4, wrote in her "graduation application" about the lessons she's learned since entering the court: "I have come a long way now since last year. I have maintained myself to stay sober, and I learned that no matter how much pressure you have in your life, you have to deal with it the right way and that drugs are not the answer. My children are very special to me and I love them very much. Now I think about my future with them. I'm very thankful to this court for giving me a second chance, for giving me the benefit of the doubt."

Another graduate wrote that she appreciated the court because "they want you to get your family back. I feel good that they encourage my sobriety and they support you, make you feel good about being clean and staying that way. I have an older daughter [who] was very ashamed of me and now she is very proud of me and my relationship with her is very good and I treasure that."

And still another graduate—a mom with three kids—wrote: "When my children [were] removed ... I thought I would die. I had a [hole] in my heart no other mother could possibly feel. ... I took it as an act of God stopping me from hitting rock bottom. It was a strange blessing. The only choice I had was family treatment court, because if I had gone to trial God knows how long my beautiful boys would have been in the system. ... All I can say is, thank God for family treatment court, I could not have done it without them."

1. Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Our Courts Are Run*, Tobriner Lecture, Hastings Law School (Nov. 3, 1997).

2. *Id.*

3. *Id.*

4. *Id.*

5. Even though about 20 percent of people never show up, this is significantly lower than the usual family court average, which is about 35 percent. Raye Barbieri, coordinator of the Manhattan Family Treatment Court, thinks this is because ACS and the court's case managers do extra outreach to bring parents in. "We badger a lot," Barbieri says.

6. Although the district attorney could potentially seek the information by subpoena, the parents' lawyers decided not to let this possibility stand in the way of the court's creation. They vowed to protest vigorously if there was a problem. And, in two years, there hasn't been. "The reality is the family treatment court has been very protective of our clients' rights," Richardson says.

7. Participation in the treatment court is divided into three phases. Participants complete Phase One after they have gone 120 days without using drugs and have met other requirements, like eight satisfactory supervised visits with their children and regular attendance in court. Participants appear in court every two weeks in Phase One, but in Phases Two and Three, participants return to court only once a month. In the later phases, parents not only work on their sobriety but also take parenting skills classes and participate in educational or vocational programs.

8. The family treatment court briefly experimented with issuing warrants to bring in parents who missed court dates. The warrants were in effect only during court hours to ensure that parents were brought to court immediately and not held in jail. In addition, a stay was issued for five days so that the parents' attorneys could have time to track down their clients themselves. But the warrant experiment failed when the police, short of resources and occupied with what they felt were more urgent matters, failed to execute them.

NOTES

Domestic Violence Courts

Components and Considerations

In May 2000, the Judicial Council of California released a legislatively mandated descriptive study of the state's domestic violence courts.¹ While the study revealed certain common practices among domestic violence courts, it also revealed that this is an emerging field that has yet to produce a particular model of court practice or procedure. By focusing on those courts indicating that they assign judicial officers to a special domestic violence calendar, exclusively or as part of a mixed caseload, and regardless of the specific models and practices they followed, the California study determined that at the time of the report the state had 39 domestic violence courts in 51 of its 58 counties.² In a 1998 survey that identified courts employing "specialized process[ing] practices for domestic violence cases," the National Center for State Courts found that there were more than 200 such courts throughout the United States.³

Although many different civil and criminal courts handle domestic violence cases, interest in establishing specialized domestic violence courts is increasing as the judicial system and legislatures continue to explore better ways of addressing intimate partner violence.⁴ Consequently, this is a particularly important time to carefully consider domestic violence court practice and procedure so that innovations reflect an understanding and commitment to safety, accountability, and guiding legal principles. This article further explores issues raised in the California study and considers what obligations domestic violence courts have to litigants and the larger community.

DOMESTIC VIOLENCE COURTS: WHAT ARE THEY, AND WHAT DO THEY DO?

Although there is no single definition of a "domestic violence court," the specialized approach many courts are taking to handle domestic violence matters has received increased attention in recent years.⁵ Various jurisdictions have established "domestic violence courts" that hear either criminal or civil matters or a combination of both. Some communities have also established juvenile domestic violence courts that address perpetration of violence by those under 18. While there is significant variation in how these courts are structured, they have a number of important similarities that enable domestic violence courts to identify themselves as separate and distinct from other courts. Whether calendars are civil or criminal, in domestic violence courts particular attention is paid to how cases are assigned, the need to screen for related cases, who performs intake-unit functions, what types of services are provided to victims and perpetrators, and the importance of monitoring respondents or defendants. This article addresses those courts seeking to be identified in the community as domestic violence courts.

In some jurisdictions, all domestic violence matters of a particular type—for example, felony assault and battery cases—may be handled by the specialized calendar. In other places, domestic violence matters may be combined in a court that handles both criminal and civil domestic violence matters on the same docket. Throughout



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Domestic violence courts represent one of the more recent judicial innovations aimed at addressing cases that appear in criminal, juvenile, and family law courts throughout California and nationally. This article expands upon issues raised in a recent descriptive study of California's courts and considers various tensions that arise as notions of safety and accountability intersect with legal concepts. Those establishing domestic violence courts are encouraged to consider a number of questions about various aspects of court process and procedure. By so doing, courts and policymakers can more effectively address the question of what responsibility domestic violence courts have to the larger community. ■

the country, domestic violence courts handle a wide variety of cases including criminal misdemeanor and felony assault and battery, child custody, juvenile and other family law matters, and civil restraining orders. This wide variety has developed in large part because domestic violence may be an issue in any of these subject-matter areas. Most nonspecialized courts, however, do not have ways of identifying “domestic violence cases” or methods of ensuring that court personnel know when related cases are active or pending in the court system.⁶ Therefore, one of the features of many domestic violence courts is a screening process that allows court personnel to identify related cases as well as to initially identify a case as one involving domestic violence.⁷

By definition, specialized courts require dedicated resources, especially facility space and specialized court personnel. For many communities, the lack of these particular resources serves as one of the significant obstacles preventing the establishment of domestic violence specialty courts.

WHY SHOULD COURTS FOCUS ON DOMESTIC VIOLENCE?

Domestic violence is a serious public health problem that requires intervention from a variety of institutions. Recent research indicates that 25 percent of women and 7.6 percent of men surveyed have experienced some form of physical assault or rape by an intimate partner during their lifetimes.⁸ In 1993, California’s Statewide Office of Family Court Services’ Statewide Uniform Statistical Reporting System (SUSRS) reported that in 62 percent of the 2,735 families participating in court-based child custody mediation, at least one parent stated that there had been physical violence at some point in the relationship with the other parent.⁹ Additionally, in half of all mediating cases, a domestic violence restraining order had been granted at some point.¹⁰ At least one parent in 49 percent of all families seen in mediation also reported that their children had witnessed incidents of violence in their families.¹¹ For many people, the court is one of the community institutions to which they turn for assistance when they experience intimate partner violence.

However compelling the statistics, they are not the only reason courts need to focus on domestic violence. Deborah Epstein provides two reasons domestic violence should be prioritized in efforts to reform courts: first, “domestic violence is rarely a one-time event, and without effective intervention, it typically increases in frequency and severity over time.”¹² Courts are well positioned to offer immediate, strong, and enforceable responses to violence that may make it less likely that further violence will

occur. Second, children are often harmed by adults who are battering other adults and may also be affected by the violence being directed only at another adult in the family.¹³ Many states have enacted legislation requiring that courts focus on the best interest of children and have specifically noted that violence and abuse are contrary to the best interest of children.¹⁴ Additionally, the fact of violence, if not acknowledged or addressed, can create an unsafe environment for court-connected personnel as well as litigants. Screening for domestic violence, combined with immediate and appropriate referrals, can enhance the safety of parties and court personnel. So, given that courts need to be addressing domestic violence, what is the most effective way for courts—specifically, emerging specialty courts—to respond?

EMERGENCE OF DOMESTIC VIOLENCE COURTS

There may be a tendency to relate the emergence of domestic violence courts to the establishment of other specialty courts, such as drug courts. Both specialty courts represent recent judicial innovations designed to better respond to significant individual and community problems.¹⁵ Both often use a “team approach” involving the judge, prosecutor, defense counsel, treatment or intervention provider, and probation or correctional personnel.¹⁶ By considering them as close developments, however, we may neglect the particular context in which domestic violence courts have developed and the unique considerations that must be taken into account in addressing intimate partner abuse and violence.

For example, in domestic violence matters, unlike most drug court cases, the court must contend with both a victim and a perpetrator and, frequently, their children. Knowing this, the judge has the challenge of fashioning a response that holds the perpetrator accountable while simultaneously enhancing the victim’s safety, since the litigants may be dependent upon each other for financial support or have reason to be in contact in the future. Treatment programs that address a range of issues are often considered appropriate in drug court and in domestic violence court. However, if a domestic violence court utilizes interventions that focus on treatment at the expense of accountability, it is possible that the dangerousness associated with domestic violence will be minimized. Additionally, as Andrew Klein has noted:

[O]ne reason drug courts are successful is that apart from anything else, they represent a sane alternative to draconian minimum mandatory drug laws. No one, I think, could realistically describe enforcement of domestic violence laws as draconian.¹⁷

The nature of domestic violence and the significant role courts can play in intervening in domestic violence cases require that careful consideration be given to what makes these courts different from other courts generally and other specialty courts specifically.

COORDINATED COMMUNITY RESPONSES

In an effort to expand the number of institutions that are responsive to domestic violence concerns, battered women's advocates have been working for years with community institutions to improve the way in which police departments, hospitals, mental health services, and courts work with victims and their families.¹⁸ These efforts have in large part been focused on improving coordination and communication, because up until recently, in almost all jurisdictions, there was a significant lack of coordination and systemic response to intimate partner violence that probably put many victims at greater risk.¹⁹ The lack of communication, coordination, cooperation, and understanding among various agencies meant that there were few standards, little consistency, and even less institutional accountability to the community. To counter these deficiencies, efforts to establish "coordinated community responses" developed and were perceived as one significant way to address these problems. The Duluth Abuse Intervention Project, which includes a strong arrest, prosecution, and probation component combined with victim services, is one of the most well known examples of a coordinated community response.

As is true currently with domestic violence courts, coordinated efforts take a variety of forms. Hart identifies the following approaches:

- Community partnering, which involves creation of work plans and utilizes coalitions
- Community intervention projects, which differ from community partnering largely insofar as they provide direct services to batterers from entry through exit from the justice system
- Task forces or coordinating councils, which generally provide assessments of community needs and recommendations for changes
- Training, technical assistance projects, and community organizing initiatives²⁰

Often, coordinated efforts emerge as a result of high-profile domestic violence cases; other times they result from political pressure or increased awareness of domestic violence as a result of research or policy changes. Given the legal recourse they provide, courts were always con-

sidered an essential component of a successful coordinated community response. In some communities, judicial leadership has resulted in formation of coordinating councils, and other coalitions or councils have benefited from the participation of judicial officers and other court-connected personnel.

Ideally, a successful, coordinated community effort sends the message that victims will be protected and that battering is dangerous and needs to be stopped. Because courts can offer legal remedies that can enhance safety (restraining orders and parenting plans) and increase accountability (contempt charges, arrest, prosecution), they are vitally important. However, to be most effective, courts need batterer intervention programs, probation departments, shelters, counseling services for victims, and supervised visitation programs. If those services are unavailable or not part of the coordinated effort to prevent violence, even the most committed court will have a difficult time addressing domestic violence.

Coordination within courts is just as important as coordination between community organizations and courts. Proponents of effective court practice note the importance for victim safety of coordinating cases within the justice system and have recommended that "family violence coordinators" be hired to work within court systems to coordinate and manage court processes.²¹ Therefore, dedicated domestic violence courts have, in large part, grown out of the push for coordinated community responses and those efforts geared specifically at improving court practice.

As more courts consider participating in coordinated community responses by establishing domestic violence courts, it may be useful to consider two important questions:

- Given that we are in a period of transition and experimentation, how can courts integrate various guiding principles of intervention to handle domestic violence matters most effectively?
- If a community declares itself as having a domestic violence court, what responsibilities does that court have to litigants and the community at large?

This article draws upon the thinking generated by advocates and researchers to suggest that when courts make the decision to establish or identify themselves as "domestic violence courts," they have a particular set of obligations that need to be addressed. By carefully considering that responsibility and the tensions that domestic violence courts will experience, communities may be more likely to produce courts that are responsive and representative of more effective responses to domestic violence.

GUIDING PRINCIPLES OF INTERVENTION

The movement to end domestic violence has consistently advocated adherence to two central principles of intervention: (1) enhance victim safety and (2) ensure batterer accountability. Regardless of whether a doctor, family member, employer, or law enforcement officer is intervening, these two principles are considered paramount. The consequences of ignoring either victim safety or batterer accountability may be dire. For example, focusing only on punishing or rehabilitating a perpetrator of a domestic violence crime may unintentionally place a victim at greater risk of additional harm if professionals do not take into consideration the effects on the victim of the criminal procedure. Likewise, if interventions only focus on individual victim safety and fail to hold batterers accountable for their behavior, it is unlikely that the batterer will stop being abusive or violent. While these principles may seem obvious on their face, in practice addressing both these concerns can be challenging and require a great deal of thought and planning.

For many years, victim advocates have sought to ensure that courts utilize these guiding principles in intervening in domestic violence cases. Courts have not always been perceived as being sensitive to the significant impact they have on victim safety or batterer accountability. In fact, the law historically provided little or no recourse for those experiencing intimate partner violence.²² Today, while significant statutory improvements and improved court practice combine to create more legal remedies and better outcomes, some courts are still criticized for not consistently being responsive enough to both safety and accountability.

Moreover, the judicial system has its own set of “guiding principles” that may at times appear to be at odds with those evinced by the domestic violence advocacy community. In a criminal law context, for example, “getting tough” on domestic violence has in many jurisdictions meant adoption of a “no-drop policy” supporting prosecution of perpetrators regardless of whether or not a victim agrees to cooperate with the process.²³ One could argue that this approach recognizes that the dynamics of domestic violence are such that perpetrators may try to coerce their partners into not cooperating with prosecutors. By developing an approach that makes victims less responsible for pursuing the case, the focus is more appropriately placed on the criminal behavior and the accused. However, this approach may also elevate perpetrator accountability over and above victim safety, as it ignores the fact that a victim may not want to participate in criminal justice proceedings out of genuine concern for her

well-being.²⁴ Therefore, the criminal court that wants to focus on a strong response to illegal behavior regardless of whether it occurs within the context of an intimate partner relationship and seeks to be responsive to victim safety has the responsibility of ensuring that victim services are available, responsive, and accessible. By doing so, it is more likely to be integrating each guiding principle.

In child custody matters, family courts have been guided by another set of principles that may conflict with victim safety. For example, frequent and meaningful parent-child contact is often encouraged,²⁵ but it also can interfere with a parent's safety if it requires contact with an abusive spouse. Similarly, courts utilizing the best-interest-of-the-child standard may have significant discretion in determining how to weigh evidence or allegations of acts of domestic violence in awarding custody. Those states that have implemented rebuttable presumptions in this context have indicated the significant role evidence of domestic violence should take in this process.²⁶ Nonetheless, there is generally significant room for courts to determine various outcomes in handling these matters.

Given the discretionary nature of the principle, in considering a child's best interest in the face of evidence of domestic violence, a court may come to a variety of conclusions. This reality can lead to one of the most problematic outcomes for mothers who are accessing domestic violence courts in family matters: the “bait-and-switch” phenomenon. In this scenario, a mother experiencing domestic violence seeks recourse in the family court. The court, faced with the need to make a decision regarding child custody, considers both parties' behavior and decisions within the context of the relationship. At this point, it may become clear that the mother has stayed in the relationship in the face of violence and abuse. Even though her decision to access the court suggests an interest in separating from the violence, court-connected personnel and judicial officers may still be asking themselves the ever-present question: Why does she stay?

If judges or court personnel answer that question by focusing on the victim, the case may end up being referred to dependency court or child protective services and be considered as a “failure-to-protect” matter.²⁷ From the court's standpoint, there may be genuine concern about a child's well-being for a number of reasons. For example, the court may have evidence of an abused parent's drug use, a victim/mother may have failed to appear for a restraining order hearing, or the court may want to enable the family to avail themselves of the additional resources for families in court. However, in this scenario, from the standpoint of the victim the guiding principle of “best interest of the child” ultimately pits the state against a

mother who *chose* to access the court system. The system at this point is positioned to intervene and focus not on the domestic violence that has been perpetrated, but on what is perceived by the court as the mother's inappropriate response. In other words, the mother has come to the domestic violence court to report domestic violence, the court says it focuses on domestic violence, and yet, from the woman's standpoint, the focus switches to her ability to prevent the batterer from harming the children. From there, it quickly becomes an assessment of the best interest of her children that does not include an understanding of the dynamics of domestic violence. Not only will this type of outcome pose a problem in individual cases, but it may also create a situation in which help-seeking by the community decreases. Courts need to figure out how to be cognizant of this problem and, through training and development of protocols, implement practices that reflect an understanding of the need to support the best interest of children by integrating notions of safety for victims and accountability for perpetrators into decision making.²⁸

A third area in which principles of intervention may conflict is the role that therapeutic jurisprudence may play in domestic violence specialty courts. By definition, domestic violence generally involves criminal acts between intimates, which may pose something of a conundrum for courts.²⁹ In addressing the criminal aspect of a case, the court may neglect the fact that the parties may have a history and perhaps a future together, especially if they have children. At the same time, if the court places undue emphasis on the fact that the litigants have had a relationship, the seriousness of the criminal behavior and the accountability of the perpetrator may be inappropriately minimized. The possibility of this happening is of greatest concern when notions of therapeutic jurisprudence are inappropriately applied to domestic violence courts. Like drug courts, domestic violence courts may have therapeutic benefits insofar as court intervention can in many instances improve people's lives. However, the danger lies in the possible minimization of the need for a strong law enforcement response in domestic violence cases.³⁰ Ordering perpetrators into batterer programs (not anger management or couples counseling³¹) and referring survivors to victim services or other assistance does not in and of itself represent a "soft" approach to domestic violence. Research on effective responses to battering suggest batterer intervention and court oversight combine with responsive law enforcement efforts to affect outcomes.³² Consequently, courts need to carefully consider the relationship of legal rules and procedures to the fundamental goals of increasing victim safety and ensuring batterer accountability.

DOMESTIC VIOLENCE COURTS: COMPONENTS AND CONSIDERATIONS

In considering how notions of safety and accountability might most effectively be integrated into specialty courts, it is useful to address each component of domestic violence courts: case assignment, screening, intake, service provision, and monitoring. Each of these aspects of domestic violence courts is considered and discussed in greater detail in the remainder of this article. The table on page 28 provides a way of analyzing these components and various considerations, posing questions that courts may contemplate as they assess their ability to provide safe and accountable procedures.

CASE ASSIGNMENT

One of the distinguishing features of domestic violence courts is the assignment of cases to specialized judges and the use of specialized personnel.³³ Some courts use a "combined calendar" in which both civil and criminal domestic violence matters are heard. Other courts assign a certain segment of domestic violence cases (for example, all felonies) to a particular judicial officer. There are family courts that reserve a portion of the calendar each week for hearing child custody matters that involve domestic violence restraining orders and others that hear all domestic violence child custody matters. Which cases are assigned to which courts has significant implications for domestic violence victims, perpetrators, and children involved in these proceedings.

For several reasons, there are potentially tremendous benefits in assigning cases to a dedicated calendar. First, the specialized personnel assigned to these calendars become intimately familiar with the complexities of domestic violence matters. Judicial officers, law enforcement personnel, and social services staff who work in these courts develop an expertise or specialty that can provide significant satisfaction as they employ their knowledge and experience in administering the court. Second, there is greater likelihood of consistency in orders. If the court becomes specialized and demonstrates an understanding of the complexities associated with these cases, it is more likely that the community will perceive that consistency as the court taking domestic violence matters seriously. Third, it may be more efficient for the various service providers who appear in domestic violence court to know that on a particular day and at a particular time a specific group of professionals will be addressing domestic violence-related cases. Otherwise, representatives may find themselves waiting as non-domestic violence cases are handled just in case a matter requires their expertise.

Domestic Violence Courts: Components and Considerations

	Separate Courts	Process and Procedures	Outcomes	Addressing Safety and Accountability	Effects on Community Relations	Effects on Court Personnel
Case Assignment to a Domestic Violence Court or Specialized Calendar	Is the separate court comparably funded?	Are cases moving at a pace that is responsive to victim safety and conducive to holding batterers accountable? Are orders more consistent? Are appropriate local service providers available to assist litigants?	Are outcomes measured in the separate domestic violence court, and if so, how? Are reports of "success" accurate?	Are protocols in place for case assignment so that information sharing supports the nonoffending parent and addresses victim and child safety?	Does the community perceive that the court takes domestic violence seriously? Do local service providers find the dedicated court responsive, accessible?	Are backup personnel available for court-connected professionals and judicial officers? Is there mentoring/support for judicial officers and personnel? Is it more or less appealing to be assigned here?
Screening for Domestic Violence and for Related Cases	Is screening done on only those cases assigned to the separate court?	Is screening for domestic violence and for related cases done throughout the life of a case?	Are screening mechanisms being reviewed to determine effectiveness?	Is screening resulting in discovery of related cases? Are more consistent orders resulting?	Is it clear to the community why screening for domestic violence and related cases is beneficial?	Are court personnel being trained and supported to screen?
Intake Unit	Is there a specialized intake unit with trained personnel?	Are intake personnel well trained on procedures that enhance safety?	Are outcomes being measured?	Is the intake unit well versed in protecting confidential addresses and taking other precautionary measures to protect safety?	Is the intake unit perceived as being accessible?	Do specialized personnel have backup?
Service Provision	Are safe, appropriate, and accessible resources available in the separate courts? Do litigants in non-domestic violence courts receive similar assistance if needed?	Are services mandatory where appropriate and available/optional where mandatory services would not be appropriate?	Are services accessible financially, physically, culturally, and linguistically?	Are the programs to which the court makes referrals safe and accessible, and do they reflect best practices?	Are services developed/offered in conjunction with the local community?	Are opportunities available for multidisciplinary teams, cross-training, coordination between services?
Monitoring	Is monitoring different in the domestic violence court than in other courts? If so, is it more or less strict?	Who provides monitoring, the court or probation?	Is monitoring increasing compliance with court orders? decreasing incidents of battering and abuse?	Does the monitoring agency consider victim safety? Are standards in place and are they followed?	Are monitoring systems set up to coordinate with local batterer and victim advocacy programs?	Are resources available for frequent monitoring?

In this way, community relations may be improved as the court can offer a more efficient and organized opportunity for service providers to assist the court.

The very act of creating a separate domestic violence court simultaneously creates one of the biggest potential benefits and one of the biggest potential disadvantages. In criminal matters, by separating domestic violence from other criminal cases, the judicial system is drawing attention to the fact that domestic violence is different from other crimes. The differences are significant insofar as the criminal justice system has traditionally been focused on addressing crimes between strangers, not people who may continue to have a relationship or who have children in common. There can be a great deal of value for victims if a criminal court understands this difference and provides court-connected services and personnel that can identify resources and respond accordingly.

However, separate courts may be a result of what has been described as an “overreaction to . . . uniqueness.”³⁴ Durham posits that compelled testimony and “victim-in-charge” policies, developed specifically to address the particular characteristics of domestic violence cases, create a situation in which the focus is on the victim or survivor and not on the perpetrator. She suggests that, in order for courts to be effective, support for the victim must be provided, the criminal justice must be accessible, and domestic violence must be treated as a crime and “the abusers as criminal.”³⁵ If the perception is that domestic violence courts are more likely to use “diversion” or “counseling” instead of holding batterers accountable for their behavior, the community will eventually lose faith in the courts’ ability to effectively address domestic violence. If the focus of the criminal justice system moves away from accountability, then it will not be useful or offer an improved process for addressing domestic violence. The danger in establishing separate courts is that domestic violence will be handled “differently”—i.e., less seriously. If “differently” means more attention is paid to the obstacles and barriers to accessing the system, safety and accountability are more likely to be addressed; if “differently” means more lenient, then it is less likely that the courts will be perceived as safe and well positioned to address accountability.

THE NEED FOR RESOURCES

It is important that, in considering how cases get assigned to particular calendars, domestic violence courts pay careful consideration to the arguments that are made to support their establishment. Given the limited resources available to most courts, it may be tempting to make the argument that cases will move more quickly or require fewer judicial and other resources in a specialized court.³⁶

In some instances, this may be accurate and beneficial for the parties and the court. However, it is also true that domestic violence courts may require significant resources. For example, a reallocation of personnel and facility space or an increase in both may be necessary. In making the case for domestic violence courts, policymakers must return to the guiding principles of intervention and consider whether in all cases faster case processing is better for victim safety and batterer accountability. Without data to describe and justify a particular approach, it is difficult to draw conclusions. However, the temptation to argue on behalf of domestic violence courts by downplaying the need for resources needs to be avoided in order to prevent the perpetuation of limited resources for these cases.

Along the same lines, it is important to consider whether or not the very act of separating domestic violence courts from other courts will create a situation in which the domestic violence court is unable to receive the funds it needs to carry out its functions. While many courts struggle with limited resources, there are any number of reasons a separate domestic violence court might find itself in a situation in which it has even fewer resources than already-strapped courts. Despite the number of people appearing on family matters (which often involve allegations of domestic violence), family courts tend to have the fewest resources.³⁷ Those establishing domestic violence courts therefore need to ensure that, by separating domestic violence matters from other matters, the specialty courts do not become marginalized or under-resourced. By assigning domestic violence cases to a separate calendar and not funding the specialty court accordingly, courts risk lending support to the notion that domestic violence court is a less desirable assignment than other criminal or civil calendars. Given the various resources that are needed in these cases, separate courts that are inadequately funded are unlikely to be able to respond to domestic violence in a way that is accountable to the larger community.

Personnel resources must also be considered. As domestic violence courts make use of specialized personnel, it is important that (1) training be available for all court personnel and (2) plans be made for inevitable absences and personnel changes. Because domestic violence will not always be immediately identified and all domestic violence matters will not automatically find their way to domestic violence court, it is useful to have as many court-connected personnel trained to recognize and respond appropriately when these issues present themselves. Additionally, assigning specialized personnel to a domestic violence docket requires the availability of backup personnel. Too often a change in leadership or assignment creates a crisis in the court and the community

because the particular approaches used by that judicial officer and associated court personnel are not institutionalized. Some of that can be avoided if provisions are made for the inevitable absence or unavailability of specialized personnel.³⁸

EFFECTS ON COURT PERSONNEL

It is also important to consider the effect a specialized assignment may have on people who may be working with domestic violence cases exclusively. While there is significant concern among some judicial officers that the emotional and complex nature of these cases may contribute to personnel experiencing “burnout,” court personnel also report that they derive significant satisfaction from working on a dedicated domestic violence calendar.³⁹ To avoid burnout, those jurisdictions that have a consistent team of people working in the dedicated court may be able to form a network of colleagues who can assist in the administration of the specialty court. Others may benefit from increased contact with the community through participation on domestic violence coordinating councils. Still others find satisfaction from consulting with a multidisciplinary team of people working to find solutions that benefit entire families and enable the development of a more systemic approach to the seemingly intractable problems many families present.

OUTCOMES

Realistically assessing outcomes is one of the more challenging aspects of domestic violence courts as it is tempting to want to argue that domestic violence courts produce better outcomes. While this may be true, there are a number of questions concerning what constitutes a “better outcome” and how that can best be measured. Some may suggest that using recidivism rates—for example, whether a family appears again in the same court—is a useful way of measuring outcomes. However, not seeing a family in court again may be just as much about their feeling that the court was not responsive as it is about the court intervening successfully. Likewise, measuring success by looking only at whether the batterer successfully completes a batterers program without having a sense of whether or not a victim feels more autonomous and safe may produce exaggerated notions of success. Given the limited resources available to domestic violence courts, many are relying on anecdotal information to measure effectiveness and report a variety of positive outcomes.⁴⁰ It is critically important that in assessing effectiveness, emphasis be placed on whether victims are, or feel, safer as a result of court intervention. This guiding principle should be employed not only in implementing court processes but also when evaluating outcomes. Additionally, resources need to be made

available to courts for data collection and research so that they may be in a better position to evaluate effectiveness with victim safety in mind. Many courts are keenly aware of the limited knowledge they have about their impact and would welcome the opportunity to better understand their processes and procedures.

SCREENING FOR DOMESTIC VIOLENCE AND RELATED CASES

In domestic violence courts, “screening” may refer to either assessing cases for the occurrence of domestic violence or searching for related cases. Screening for the occurrence of domestic violence is most often done by court-connected personnel (mediators, investigators, or evaluators). This type of screening requires well-trained personnel, adoption of protocols and methods for screening, and significant clarity about the purpose of the screening process. This approach accurately assumes that not all domestic violence matters will be obvious and that domestic violence issues may still be relevant, especially in child custody matters, even when a case is not initially identified as such.

Whether or not a particular court has the resources to screen adequately has significant implications for those experiencing or perpetrating domestic violence. Today, parties are often unrepresented and many families have matters pending in more than one courtroom.⁴¹ Parties may not reveal information about domestic violence or related cases out of concern or misunderstanding about what may happen or out of lack of understanding of the court system. At the same time, if a judicial officer or other court-connected personnel, such as a family court services mediator or child custody evaluator, is unaware of related pending cases, it is possible that the family will emerge from the court system with conflicting and possibly unworkable court orders. In that case, it is unlikely that the court will be perceived by the community as accessible or responsive.

An even worse case scenario may be imagined when information is shared about related or pending cases but no protocols are in place to address concerns of safety and accountability. In those cases, it may be that information sharing contributes to, rather than prevents, a victim's sense of confusion and distrust of the judicial system. The most profound example of this is apparent in the situation described earlier: a victim of domestic violence comes to court seeking protection and recourse as a result of an assault or battery. As a result of screening, additional details on the matter may be gathered and the screener may believe a referral to juvenile court is necessary. If the purposes of the screening were identified initially, the court may be more likely to avoid the situation in which

the victim feels undermined after having shared information in the screening process. For example, the court might clearly state on written questionnaires or intake forms that screening will be done for the purpose of assessing risk to children or to provide more appropriate services. While providing notice does not in and of itself preclude the possibility of a victim of domestic violence being referred to services or other court proceedings (inappropriately, perhaps, from her standpoint), it may prevent petitioners from being surprised by the process or outcome. Other purposes of screening include assessing whether parties can meet together in mediation or evaluation sessions or to determine capacity to negotiate on behalf of oneself in a custody mediation.

INTAKE UNITS

Intake units in domestic violence courts relate closely to screening as it is through the intake unit that much of the initial screening takes place. Some courts have established specialized units staffed by personnel with experience in working with victims and perpetrators. The intake unit may serve as “the first point of contact for victims of domestic violence”⁴² and staff may help petitioners better understand the court process. Difficulties may arise if these intake units do not include specially trained personnel or individuals who are sensitive to the complexities of these cases. In some jurisdictions, intake staff assist litigants in filling out forms, provide an orientation to the legal system, or escort parties to court and through the courtroom process.⁴³

A lack of resources may compel some jurisdictions to consider assigning someone with less domestic violence experience to the intake unit and in so doing run the risk that it is inhospitable to litigants. This can directly affect safety, for if victims perceive the court as inaccessible, they are less likely to reappear or get the help they need when they do initiate or participate in court proceedings.

Personnel training is crucial. For example, it is essential that staff understand the importance of maintaining confidential addresses and that they have information about additional community resources. Intake units need to be physically, culturally, and linguistically accessible so that people from a variety of communities will be able to utilize the court.

In many ways, the intake center is the center of the domestic violence court and has the greatest potential to shape litigants’ experiences. As has been noted,

An effective domestic violence intake center must serve as the point of entry for all domestic violence complainants in civil and criminal cases. It should be designed to provide comprehensive services through a coordinated effort of staff.⁴⁴

SERVICE PROVISION

One of the more universal features of domestic violence courts is the increased accessibility of social or community services for petitioners and respondents.⁴⁵ Many non-specialized courts invite representatives from local counseling and housing services to be available in court when the calendar is called so that individuals may be provided with immediate assistance. Others provide referrals to court-connected personnel, such as child custody mediators or evaluators, who may be able to provide direct assistance or more individually tailored referrals to community agencies. But as a result of the volume of cases and limited resources, not every case is assessed individually, so that those appearing in court may or may not receive tailor-made responses to the host of difficulties they may present. Domestic violence courts, however, tend to offer a range of services for children, parents, victims, and batterers.⁴⁶

People appearing on other calendars may need a variety of services that might be offered only in the domestic violence court. For example, community agencies, including supervised visitation services, counseling programs, and services specifically for children, may have representatives available in domestic violence court to provide information, referrals or direct service. One of the issues to consider in establishing a domestic violence court handling family matters is that if individuals can get certain community services only in domestic violence court, what kind of impact will that have on litigants who are appearing on more general calendars? High-conflict families who may not be experiencing “domestic violence” may still need similar resources; thus, it is worth considering whether cases have to be identified as domestic violence matters in order for certain services to be offered.

One of the challenges associated with service provision in domestic violence courts, civil or criminal, is the question whether mandatory services are appropriate and for whom. Currently, many states require those found to have perpetrated domestic violence to attend a batterers’ program.⁴⁷ In most places, these programs provide for group sessions that may last for one year or longer and provide information to the court about compliance with court orders and completion of program requirements. While “success” is defined and measured in a variety of ways by different programs, there is “fairly consistent evidence that [batterers’] treatment ‘works’ on a variety of dimensions and that effects of treatment can be substantial.”⁴⁸ Such services are likely to be more beneficial when they follow recognized standards and are culturally and linguistically accessible.

On the other hand, while victims might find counseling programs worthwhile, mandating that victims attend

counseling programs carries significant risk. Any effort to ensure that victims of domestic violence receive assistance must be done in the context of understanding that intimate partner violence involves power and control. When a victim of domestic violence becomes involved in the court system, court-connected personnel need to intervene in a way that acknowledges that in many cases the victims themselves have the greatest understanding of what is necessary for their safety and that of their children. This approach acknowledges and supports the autonomy of adults who happen to have been victimized and can contribute to the process of recovery and empowerment. Court personnel may be able to provide more effective assistance with safety plans and appropriate referrals when they recognize that mandating certain courses of actions for victims may place them in greater jeopardy.⁴⁹

If services can be offered to support individuals and families, they should be developed primarily by local domestic violence victim service organizations. Courts, especially domestic violence courts, need to be clear about their role and have an understanding of the significant impact they can have on victims and batterers if they send the message that coming to court *seeking protection* means being required to participate in various programs. Such an approach may have the unintended effect of reinforcing the batterer's belief that the victim is responsible for the violence and that his role is relatively inconsequential, or that if they are both ordered into counseling, they are equally culpable. Courts need to resolve how to best provide services that are accessible and attractive to those who may benefit from them without using the power and control tactics with which the victim is already familiar.

Social service agencies should also be considered in terms of their willingness and ability to comply with local rules, standards of practice, professional ethics, and other recommendations for best practices. Even if courts do not perceive that they have a formal relationship with local social service agencies, for litigants the distinction between "court-connected" and "court-referred" may be inconsequential. Domestic violence courts should become familiar with the various resources that exist. One way of doing this is for courts to participate on coordinating councils and local coalitions so that personnel learn about local organizations. Additionally, by subscribing to newsletters and staying current on social science information, court personnel may be better equipped to discuss best practices with local agencies and emerge as leaders in the area.

MONITORING

In many ways, once a court has issued an order in a case, the court has completed its job and must leave the enforcement of that order to other players, such as police

or sheriff departments. There are instances, however, in which courts stay involved in cases even after orders have been made. In these instances, the challenge for the court is how to create orders that will be complied with while at the same time not creating a situation in which courts are serving as long-term case managers. For many years, probation departments have provided supervision or monitoring. Today, many communities use a combination of batterer intervention service providers and probation to monitor batterer compliance with court orders. If a violation occurs, the batterer may find himself back in front of the judge on a probation revocation hearing. Other approaches include frequent monitoring by the judicial officer as well as probation and batterer intervention programs. In these courts, probationers are expected to appear regularly for 30-, 60-, and 90-day meetings with the judicial officer assigned to hear the matter. Recent research indicates "a substantial increase in compliance" with batterers' program requirements when mandatory court monitoring is in place.⁵⁰

Domestic violence courts also need to take into consideration what happens when individuals, court-connected personnel or litigants, fail to appear. When a calendar is being called, generally there are people in the room at all stages of the process. If the message is that one can fail to appear with few repercussions or that probation officers or other monitoring agencies may not be present, it is less likely that perpetrators will take the authority of the court seriously. How the judicial officer chooses to handle such occurrences can have significant impact on the perceived effectiveness of these courts.

INTERVENING EFFECTIVELY

As one of the judicial system's most recent responses to domestic violence, domestic violence courts represent a potentially significant method of handling civil and criminal cases. By identifying domestic violence as a serious community issue that requires dedicated resources, specialized courts can send a strong message about the importance of addressing domestic violence effectively and consistently. However, in order to do so, domestic violence courts need to adhere to the guiding principles of intervention and focus their efforts on enhancing victim safety and ensuring batterer accountability. Domestic violence courts can be faced with a variety of competing notions of intervention. However, by becoming aware of the need to proceed with caution and to carefully consider the implications of identifying itself as a "domestic violence court," the court may be perceived by the larger community as accessible and responsive. At the same time, courts and legislatures need to recognize that success may result in increased caseload and more demands on

the system. Additional resources need to be allocated to support courts handling domestic violence cases and to supporting additional research so that over time, judges, court-connected personnel, and policymakers can develop an even better sense of the most effective and responsive ways for courts to intervene in domestic violence matters.

NOTES

1. JUDICIAL COUNCIL OF CALIFORNIA, *DOMESTIC VIOLENCE COURTS: A DESCRIPTIVE STUDY* (2000).
2. *Id.* at 10.
3. Amy Karan et al., *Domestic Violence Courts: What Are They and How Should We Manage Them?*, 50 *JUV. & FAM. CT. J.* 75 (Spring 1999).
4. Courts state a variety of reasons for establishing domestic violence courts. Some indicate that they felt a need for more consistency and predictability while leaving room for judicial discretion. Others indicate that a dedicated docket provides support for victims because there is an advocate in the courtroom and it is “good for ‘baby’ [junior] prosecutors who are dealing with the nuances of domestic violence for the first time.” Susan R. Paisner, *If It’s Friday, It Must Be Domestic Violence Court*, 6 *DOMESTIC VIOLENCE PREVENTION* 3 (June 2000). Legislators have indicated their belief that domestic violence courts are effective as well. *See* 1998 Cal. Stat. 703 (mandating the domestic violence court study and stating that “[t]he Legislature finds and declares that domestic violence courts have been proven to benefit victims of domestic violence and to provide for the efficient handling of domestic violence cases”).
5. *See* Karan et al., *supra* note 3, at 75; Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 *FORDHAM L. REV.* 1287 (2000).
6. Karan et al., *supra* note 3, at 75.
7. Victims of domestic violence may not initially reveal experiences of abuse out of fear, concern for their safety and that of their children and other family members, concern that they will not be believed, or lack of understanding of what information the court will find most relevant. Additionally, recent research indicates that of those surveyed and reporting physical assault by an intimate partner, approximately 73 percent of women and 86 percent of men did not report the assault to the police. In the same study, approximately one-third of women and one-quarter of men said “they did not want the police or courts involved,” indicating, as the study’s authors note,

that “many victims of intimate partner violence—men and women alike—do not consider the justice system a viable or appropriate intervention at the time of their victimization.” *See* PATRICIA TJADEN & NANCY THOENNES, *EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY*, NCJ Doc. No. 181867, at 51 (U.S. Dep’t of Justice 2000). One of the benefits of a specialized intake unit is that personnel can assist individuals in presenting their story in an appropriate manner to the court so as to provide a greater likelihood that interventions may be effective.

8. *Id.* at iii.

9. Charlene E. Depner, *Court-Connected Mediation of Child Custody and Visitation: Statewide Statistics From the Family Court Services Uniform Statistical Reporting System*, Presentation at Domestic Violence Training for Child Custody Evaluators, Monterey, Cal. (Dec. 15–17, 1997).

10. *Id.*

11. *Id.*

12. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 *YALE J.L. & FEMINISM* 7 (1999).

13. *Id.* at 8.

14. *See, e.g.*, CAL. FAM. CODE § 3011 (West 1994 & Supp. 2000) (requiring that courts consider any “history of abuse by one parent or any other person seeking custody against any of the following: (1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary; (2) The other parent; (3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship”); *see also* CAL. FAM. CODE § 3020(a) (West 1994 & Supp. 2000) (declaring that “perpetration of child abuse or domestic violence in a household where a child resides is detrimental to a child”).

15. According to the U.S. Justice Department, “drug courts leverage the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, and case management.” U.S. Dep’t of Justice, at www.ojp.usdoj.gov/dcpo/ (visited Aug. 2, 2000).

16. David Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, *NAT’L INST. JUST. J.* No. 240 (July 1999).

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17. Andrew Klein, *Letter*, NAT'L BULL. DOMESTIC VIOLENCE PREVENTION (Mar. 1999).
 18. For a discussion of the purpose, goals, and elements of a successful coordinated community response, *see* Barbara Shaw, *Planning a Coordinated Community Response, in* FAMILY VIOLENCE: BUILDING A COORDINATED COMMUNITY RESPONSE: A GUIDE FOR COMMUNITIES 11 (American Medical Ass'n 1996).
 19. Barbara Hart, *Coordinated Community Approaches to Domestic Violence*, Presentation at the Strategic Planning Workshop on Violence Against Women, National Inst. of Justice, Washington, D.C. (Mar. 31, 1995).
 20. *Id.* at 3–4.
 21. NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *FAMILY VIOLENCE: IMPROVING COURT PRACTICE: RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES* 39 (1990).
 22. *See* Tsai, *supra* note 5, at 1289 (citing several examples, including *State v. Rhodes*, 61 N.C. (Phil. Law) 349 (1868), in which the North Carolina Supreme court “addressed the question of whether a husband could be punished for unprovoked and moderate correction of his wife, and stated that ‘we will not interfere with family government in trifling cases’ where ‘personal conflicts inflicting only temporary pain . . . are not comparable with the evils which would result from raising the curtain, and exposing to public curiosity and criticism, the nursery and the bed chamber.’”).
 23. *See* Gena L. Durham, *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, 71 S. CAL. L. REV. 652 (1998) (discussing the pros and cons of a “no-drop” prosecutorial policy and the view that “[t]he major problem with the compelled testimony policy is that it sets up an adversarial relationship between the victim and the prosecutor”).
 24. Not that the two are always incompatible; in fact, one can rarely be accomplished without the other. If procedures are in place to support a victim's safety, it is more likely that courts will get better information and be able to more effectively hold perpetrators accountable.
 25. Note that some states have approached this potential conflict by addressing both issues simultaneously. *See, e.g.*, CAL. FAM. CODE § 3020(b) (West 1994 & Supp. 2000) (stating that “[t]he Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy except where the contact would not be in the best interest of the child . . .”); *see also* CAL. FAM. CODE § 3020(a) (stating that “the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child”). Section 3020(c) notes that where (a) and (b) are in conflict, “any court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.” CAL. FAM. CODE § 3020(c).
 26. *See, e.g.*, CAL. FAM. CODE § 3044 (West 1994 & Supp. 2000) (creating a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a party seeking custody and found to have perpetrated domestic violence within the previous five years is detrimental to the child's best interest).
 27. *See* Somini Sengupta, *Tough Justice: Taking a Child When One Parent Is Battered*, N.Y. TIMES, July 8, 2000, at A1 (discussing the Bronx Family Court's approach in cases in which one parent has been a victim of domestic violence and children have been removed from parental care); *see also* Epstein, *supra* note 12, at 35 (discussing how an “integrated court system” can lead to more victims being charged with child abuse or “failure to protect”).
 28. The National Council of Juvenile and Family Court Judges recommends that in promoting “stability and permanency for children,” courts and child welfare personnel should “try to keep children affected by maltreatment and domestic violence in the care of their non-offending parent (or parents) whenever possible.” They note that “[m]aking adult victims safer and stopping batterers' assaults are two important ways to remove risk and thereby create permanency for children.” NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE AND CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE* 19 (1999).
 29. For a comparison of court treatment of domestic violence and date rape as two examples of crimes in which the parties know each other, *see* Durham, *supra* note 23, at 657.
 30. Therapeutic jurisprudence “proposes that we be sensitive to . . . consequences, and that we ask whether the law's antitherapeutic consequences can be reduced and its therapeutic consequences enhanced without subordinating due process and other just values.” Rottman & Casey, *supra* note 16, at 9. Drug courts are the most familiar example of a therapeutic approach. The question for domestic violence courts is, Does a therapeutic approach hold perpetrators accountable for violent crimes? Generally, drug courts are applying these principles to those

found guilty of nonviolent offenses. If domestic violence courts are perceived as specialty courts that emphasize a “therapeutic approach” to violence, they may be viewed as treating domestic violence as a “non-crime” or a lesser offense that does not warrant the restrictions placed on those found guilty of violent crimes perpetrated against strangers. The danger for battered women is that battering and abuse will be perceived as a family problem that can best be solved through counseling, alternative dispute resolution, and educational programs. While it is likely that there are therapeutic benefits to successful domestic violence courts, this in no way implies that domestic violence should be taken less seriously.

31. Regarding batterers’ treatment, *see* NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE 50 (1990) (noting that “[i]nappropriate approaches might be those which orient themselves toward the couple before dealing with the offender’s criminal behavior; focus on anger control without dealing with the underlying issues of self-esteem, power and control; or approaches which put the needs of the offender above the needs of the court system for accountability and safety”). As the council observes, “[s]uch approaches not only will be ineffective in dealing with the battering behavior, they put the victim at substantial risk of revictimization.” *Id.*

32. Edward W. Gondolf, *Mandatory Court Review and Batterer Program Compliance*, 15 J. INTERPERSONAL VIOLENCE 437 (Apr. 2000).

33. *See* Karan et al., *supra* note 3, at 76. In this context, “specialized” generally refers to those with specific training in domestic violence issues.

34. Durham, *supra* note 23, at 643.

35. *Id.* at 657.

36. For example, 30 of 39 domestic violence courts described in the California domestic violence courts study indicated that “more efficient use of resources” was one of their goals in establishing a domestic violence court. Clearly, using resources more efficiently is probably beneficial to victims and others accessing the court. The problem arises when there is little acknowledgement that in order to handle domestic violence cases more *effectively*, additional resources may be necessary. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 1, at 19.

37. *See* JUDICIAL COUNCIL OF CALIFORNIA, ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS 179 (1996) (discussing the “devaluation of family law” and the finding of the Advisory Committee on Gender Bias and the Courts that “[t]he family law court has been relegated to an inferior status among the

other departments of the court ... [and] [t]he proportion of the court’s resources devoted to family law is not commensurate with its volume, complexity, or importance to the parties and society”). Domestic violence courts, like family courts, involve a disproportionate number of cases with women and children seeking or requiring protection or assistance from the court.

38. The policies and procedure manual for domestic violence courts of Mecklenburg County, North Carolina, notes that judges “should schedule their vacations and other absences from court for weeks when they are not assigned to Domestic Violence Court.” In cases in which this is not possible, the manual states, “another Domestic Violence Court judge should cover for the absent judge.” Domestic violence court judges are required to “be interested in this subject, knowledgeable about its dynamics and the courtrooms’ procedures, and committed to the goal of reducing domestic violence in our community.” DOMESTIC VIOLENCE COURTS: POLICIES AND PROCEDURES, Manual Domestic Violence Task Force, 26th Judicial Dist., Mecklenburg County 4 (Oct. 1997).

39. Jeffrey Bostwick, Comments at Panel Discussion on Domestic Violence Courts, Family Violence & the Courts: A Coordinated Community Response, Judicial Council of California (May 18–19, 2000).

40. For example, Greta G. Holloway, an assistant state’s attorney in Montgomery County, Maryland, believes that a dedicated domestic violence docket offers various benefits, including more victim support, and that the domestic violence court’s approach has been successful. She goes on to note, in response to the question “how she would precisely define ‘success,’” that “no one has died.” Paisner, *supra* note 4, at 4. The Brooklyn Domestic Violence Court indicates that the “probation violation rate for defendants sentenced in 1998 is nearly half the typical rate for this population,” [that] “victim advocates assigned to the court have made contact with virtually all victims ... and [that] the Court has achieved an average dismissal rate of 4.7 percent over its first two years.” Center for Court Innovation, Demonstration Projects, Brooklyn Domestic Violence Court, at www.courtinnovation.org/demo_04bdvc.html (visited Aug. 2, 2000).

In Florida, based on a survey of judges and state’s attorneys, the staff of the state’s Senate Criminal Justice Committee found that people were “mostly positive about domestic violence courts,” although “defense attorneys took a largely negative view.” They also found that “domestic violence courts, especially those which combine the civil and criminal components, increase administrative efficiency ... [and] that the difficult family and abuse issues make domestic violence specialization beneficial to

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the administration of justice." FLORIDA'S CORRECTIONS COMM'N, AN OVERVIEW OF FLORIDA'S CRIMINAL JUSTICE SPECIALIZED COURTS, prepared by Florida Senate's Criminal Justice Comm. Staff, REP. NO. 97-P-21 (Oct. 1997).

41. Center for Families, Children & the Courts statistics "show that in half of the families who come to family court [in California] (53 percent), at least one person is in pro per. When only one party is represented, neither mothers nor fathers are more likely to have attorneys. In 12 percent of the families fathers were the only represented party; mothers were the only party with an attorney in 13 percent of the cases." CENTER FOR FAMILIES, CHILDREN & THE COURTS, REPORT 12: PREPARING COURT-BASED CHILD CUSTODY MEDIATION SERVICES FOR THE FUTURE 3 (Judicial Council of California, Sept. 2000).

42. Tsai, *supra* note 5, at 1305.

43. For example, in Quincy, Massachusetts, those seeking restraining orders first meet "with a domestic abuse clerk in a separate office established exclusively for restraining orders." Assistance with paperwork and information about local resources are provided; then petitioners attend "a briefing given daily by the District Attorney's Office, in which a victim/witness advocate" provides information on the court process, civil and criminal legal remedies, and other resources. After this, "the domestic abuse clerk provides moral support by accompanying the woman to the courtroom" for the expedited hearing process used in Quincy. *Id.* at 1298.

44. Epstein, *supra* note 12, at 29.

45. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 1, at 14: Out of 26 domestic violence courts indicating that they provide referrals to services, 20 said they assign advocates to petitioners.

46. *Id.* Referrals are to agencies and organizations providing, for example, community support, children's services, substance abuse treatment, pro bono attorneys, emergency housing, services for immigrants, support groups, public assistance, job counseling, elder assistance, and medical services. The court may also provide interpreters and translators. One of the difficulties courts experience is not having the resources to provide needed services or appropriate referrals. For example, not all domestic violence services are accessible to those who do not speak English. See Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in CRITICAL RACE THEORY 364-67 (Kimberle Crenshaw et al. eds., The New Press 1995) (discussing the policies that keep women from being able to access certain services); see also Gloria Bonilla-Santiago, *Latina Battered Women: Barriers to Service Delivery and*

Cultural Considerations, in HELPING BATTERED WOMEN: NEW PERSPECTIVES AND REMEDIES 229-34 (Albert R. Roberts ed., Oxford 1996) (noting that in a study of "twenty-five incarcerated battered Latina women, ... because of language and cultural barriers, most ... had received no assistance or protection from the police, legal aid, welfare, family counseling agencies, or community mental health centers").

47. See, e.g., CAL. PENAL CODE § 1203.097 (West Supp. 2000) (mandating court referrals to certified batterers' programs for certain offenses).

48. Alyce LaViolette, *Batterers' Treatment: Observations From the Trenches*, 1 CENTER FOR FAM., CHILDREN & CTS. UPDATE 13 (July 2000).

49. See also NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *supra* note 28, at 66 (suggesting that "[c]hild protection services should avoid using, or use with great care, potentially dangerous interventions such as couple counseling, mediation, or family group conferencing in cases of domestic violence").

50. See Gondolf, *supra* note 32, at 435 (describing findings indicating that court review increases the likelihood that participants in court-referred batterers' programs will comply and complete programs).

Community Courts and Family Law

The relationship between the courts and the community and, in particular, the need for collaboration between them have been frequent topics in both government and academic literature for the last 30 years. This interest in community justice may concentrate on juvenile law at one time, shift to civil litigation at another, or focus on criminal justice at still another. What has remained constant is recognition that the courts need working partnerships with their communities. The term “community court” has been used to describe various types of collaborative efforts between courts and the communities they serve.

Significant changes in social and economic structures have created demands on courts that promote ongoing movement toward community-focused programs. There were virtual explosions of experimentation with innovative community and court collaborative programs throughout the seventies and eighties, some successful and some not. In the last decade, however, a modern community court paradigm has emerged, primarily in the area of criminal justice. While preserving the traditional principles of community courts in setting goals and priorities on the basis of community input, the new community courts recognize the necessity for strategic planning based on social science research, advanced information systems, data collection, and quantitative evaluation. The partnership between law and social science has been tremendously enhanced by new technology, and the potential for courts to improve their services to the public has never been greater or more timely.¹

This article describes modern community courts and provides some historical background. It also presents an example of a prototypic criminal justice community court, the Midtown Manhattan Community Court. Established in 1993, the Midtown Manhattan Community Court is perhaps the best known of the modern community courts. In addition, the article presents other criminal justice examples to demonstrate the variation in program experimentation.

Although the modern community courts seem to have their roots in the criminal justice arena, the authors postulate that the social and economic conditions giving rise to these courts² are also present in the civil arena and demand a similar paradigm shift in civil litigation. This is particularly evident in the family law courts. For this reason, family law courts have been, and should be, building upon the criminal justice model to provide social services to family law litigants. The article therefore presents examples of community courts dealing with family law issues. Finally, the article proposes a model for a modern family law community court.

WHAT IS A COMMUNITY COURT?

In the area of criminal justice, community courts are a part of a larger community justice system that includes community policing,³ community prosecution⁴ and defense,⁵ and community corrections.⁶ In civil law, community courts more frequently experiment with alternative dispute resolution services and may not even be part of the formal justice system.⁷



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Most of the community court projects to date have been implemented in the area of criminal justice. There are many models of such community courts, but some features are common to all. A defining characteristic is the partnership between the criminal justice system and social services within the community. The purpose of this article is to examine how goals and techniques adopted in the criminal justice arena are applicable to a civil court—in particular, family law. The authors examine some of the

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societal forces influencing the development of community courts. Examples are given of several criminal justice community courts. Additionally, the application of the community court model to civil courts is discussed and examples given. The authors propose a community court model in family law and relate the goals of the model to those of unified family courts. ■

Although many models of community courts dealing with various legal issues are currently in operation, they share several common characteristics. First, they seek to establish a stable attachment between communities and courts by bringing together citizens and the justice system to solve local problems. In addition, these courts practice restorative justice, treat litigants on an individual basis, and use community resources in the adjudication of disputes.⁸

The principles of the modern criminal justice community courts are set out on the Community Justice Exchange Web site.⁹ The principles are as follows:

1. Restoring the community. The first principle of community courts is to restore the community after a crime has been committed. The court recognizes that both the victim and the community suffer loss from crime. It uses punishment to pay back the community, combines punishment with help to the defendant, gives the community a voice in determining restorative sanctions, and makes social services at the court available to residents who need assistance.

2. Bridging the gap between communities and the courts. The second principle seeks to secure an attachment between the court and community by making the process of justice visible, making justice accessible, being proactive in working with the community to monitor problems, and reaching out to victims with assistance.

3. Knitting together a fractured criminal justice system. The third principle addresses the disorganization within the system itself. The community courts are central hubs in the justice process and can use their authority to link criminal justice agencies that too often have operated in isolation. The courts cannot “reinvent the wheel,” so they need to reach out to community-based agencies for expertise in areas required for the successful operation of the court. Social services and justice professionals must work together to link litigants with services. The use of “comprehensive jurisdiction” also should be explored because litigants often have several cases in different courts. Under comprehensive jurisdiction, one judge hears several types of related matters (e.g., a juvenile dependency case and a domestic violence case related to the same family and same set of circumstances).

4. Helping offenders deal with problems that lead to crime. Instead of focusing on case processing and punishment, community courts put problems first by formulating sentences that can help defendants change their lives and reduce criminal recidivism. Such sentencing strategies include different forms of restitution and participation by the defendant in programs like drug treatment, medical services, educational assistance, job training, batterers’ intervention, mental health treatment, and other social services. In this way, the court becomes a gateway to treatment. Furthermore, these courts remain involved after disposition of the immediate case so the judge can monitor the defendant’s progress and continue to make effective treatment orders.

5. Providing better information. In a community court, the staff makes every effort to give as much information to the judge as possible at the defendant’s first appearance to facilitate effective, case-specific sanctions that match the needs of the defendant with available treatment or service programs. This information is simultaneously made available to the attorneys and social service staff as soon as it is obtained. The information system is used to enhance accountability by providing updates on the defendant’s progress and compliance and by flagging developing problems.

6. Reflecting the community in the courthouse's design. The courthouse should be a physical expression of the community court's goals and values, reflecting a sense of respect for the legal process and for all who are involved, including defendants, victims, and the general public. The courthouse needs to have adequate space for social service workers, case managers, service workshops, treatment sessions, and classes. It also needs to be available for community use after business hours.

Though most community courts are neighborhood-based, some are citywide.¹⁰ They tend to handle minor, quality-of-life crimes that traditional criminal justice has basically marginalized, such as loitering, turnstile jumping, panhandling, prostitution, shoplifting and other thefts, public urination, graffiti, and low-level drug possession. Citizens' concerns about these quality-of-life crimes frequently exceed their concerns about more serious violent crimes.¹¹ Some community courts are also attempting to address civil matters such as neighborhood disputes, health and safety code violations, property rented to drug dealers or otherwise turned into public nuisances, and landlord-tenant matters.¹²

THE HISTORICAL CONTEXT OF COMMUNITY JUSTICE

Collaboration between communities and the courts is not a new idea. In fact, this connection was traditional in preurbanized America. The changes in economic structure evidenced by massive migration of the population from small rural communities into increasingly large urban centers naturally led to a restructuring of the courts. Roscoe Pound observed that social and political changes were creating communities with "which our legal institutions had no experience."¹³ As cities grew, so did the number of courts within them. New legal issues were being created, law was becoming more complex, professionalism and specialization became necessary, and the number of courts continued to proliferate. For example, in 1931 Chicago had 556 different courts. There was also rapidly developing concern in Chicago and other urban areas about the connection between the courts and local political corruption, and a belief that the problem resulted from the ever-expanding number of different courts popping up in a disorganized and overlapping array of jurisdictions. The solution was thought to be centralization of courts. In fact, it was the concern about the connection between the courts and local politics that motivated a reform movement that would remove the courts from the neighborhood level and eventually contribute greatly to their estrangement from the communities they served. Reform during and immediately after World War

II focused on curbing expansion and centralizing courts in single "downtown" courthouses. As a result, Chicago today has a single court with one main courthouse and 10 satellite courts in various locations. Other urban areas had similar concerns, and the trend nationwide was to centralize court services.¹⁴

In a recent paper discussing American criminal justice from a systemic point of view, University of Maryland Professor Charles F. Wellford observes that a characteristic of the criminal justice process has been its disarray.¹⁵ In fact, rather than a coordinated system, criminal justice has been a poorly coordinated collection of independent fiefdoms labeled police, courts, corrections, and so forth. He notes that progress in coordination and effectiveness has been made in recent years, citing such examples as drug courts and community courts where police, prosecutors, defense attorneys, judges, and treatment providers work together. From this viewpoint, it seems evident that the centralization of court management during the forties and fifties, which claimed efficiency and coordination as its justification, did not result in any effective collaboration between the court and other parts of the justice system.

In a paper reviewing factors affecting criminal justice over the last 30 years, Professor Todd Clear of Florida State University postulates that continuing social change from the sixties to the present has contributed to the current trends in community justice development. During these years, for example, the young males of the "baby boom" generation reached their most crime-prone ages. Indeed, the fact that the baby boomers were moving through their crime-prone years can explain much of the increase in the crime rate in the second half of the 20th century.¹⁶ Some believe that this structural aspect served to overwhelm the crime-reform policies of the sixties that were set out in the report of the 1967 President's Commission on Law Enforcement and the Administration of Justice.¹⁷

Clear also notes the enormous changes in family structure that have occurred during this period.¹⁸ There are more children being supported by only one parent, more teen pregnancies, and more children living in poverty. Combined with changes in urban ethnic makeup, demographics have been seriously altered for the population as a whole: "[T]he white, middle-class family with a working father and a homemaker mother is today a minority social unit."¹⁹

Clear further cites structural changes in the economy²⁰ as resulting in a bifurcated job market with high-wage professional jobs on one end and low-wage service-sector jobs on the other. The well-paid unskilled and semiskilled jobs have all but disappeared,²¹ and the gap between the

poorest and richest Americans has steadily grown. The result is that relative poverty is at an all-time high.²²

Finally, the remarkable change in the expression of public values and attitudes toward crime is noted.²³ In 1967, there was widespread belief that crime was a complex problem arising from entrenched social problems such as poverty and violence.²⁴ Solutions were thought to require answers as complex as the problems they sought to address, and programs needed to be carefully designed by professionals.²⁵ This view changed throughout the eighties to the belief that the causes of crime are less complex and are simply the result of the individual's failure to control his impulses and accept responsibility for his actions.²⁶ Solutions were now directed toward correction by punishment and incapacitation through incarceration. But the resulting increase in the prison population occurred at a time of sweeping tax cuts. Correctional institutions were being required to comply with court orders mandating standards for prison housing without the necessary funding, in turn fueling pressure for them to find "alternatives" to prison. Such alternatives initially included intensive supervision programs, electronically monitored home incarceration, and boot camps.²⁷ At the same time, judges and prosecutors were experiencing an explosion in the size of court dockets. Adding to this burden was an even greater jump in the size of the prison population occasioned by the war on drugs in the eighties.²⁸

It is from these pressures on corrections and law enforcement that the current movement for change within the criminal justice system originated. It has grown from community corrections programs and community policing to all other areas of the criminal justice system, including the courts. This was a major impetus of the community court movement, which holds that individuals whose behavior can be managed outside prison should be handled with the help of a concerted effort by government and community social services. The use of prisons should be reserved for individuals who cannot reenter society for various reasons.

In the last two decades, centralized courts have been tremendously challenged by the numbers and types of cases reaching them. Problems of substance abuse, family violence, and poverty have been overwhelming for both private and governmental institutions. Courts cannot limit the flow of criminal and civil cases into the courtrooms. Caseload pressures have become acute and the issues more complex. Courts with the highest caseloads are in areas such as misdemeanor crime and family and juvenile law, which have traditionally attracted minimal judicial attention.²⁹ Often these cases are marginalized within central courthouses because of competition for resources. Furthermore, most of these cases benefit from

specialized judicial expertise. Within the court itself, the precipitating force for change has come from individual judges who, dissatisfied with treatment services and lack of coordination, initiate innovative programs in collaboration with community service providers. The more comprehensive responses include drug courts, domestic violence courts, and community courts.³⁰

MIDTOWN MANHATTAN COMMUNITY COURT

A well-known example of a functioning community court is the Midtown Manhattan Community Court.³¹ Many other courts have used it as a model on which to base their own community court initiatives.

The Midtown Community Court was launched in 1993. A system of neighborhood magistrate courts had existed prior to the centralization of the city's courts in 1962, so the concept was not new to New York's justice leaders.³² The decision to establish this community court resulted from problems identified by community members who were interested in addressing a variety of quality-of-life crimes³³ in the Times Square area and surrounding neighborhoods. The project brought together planning staff from the New York State Unified Court System, the City of New York, and the Fund for the City of New York.³⁴ The planners believed (1) that the focus of the centralized courts on serious crime results in insufficient attention to these minor crimes; (2) that community members and justice officials share frustration about the situation; (3) that the community feels isolated from the centralized court; and (4) that the community has a stake in addressing these quality-of-life crimes.³⁵

It was decided to house the court in the old Magistrate's Court building next to the Midtown North Police Station. Funding from private foundations, corporations, and the city was obtained to renovate the building. The Midtown Community Courthouse is self-contained. In addition to a courtroom, it has a social services center, a community service program, and an innovative technology system.

OPERATION

Upon arrest in the Midtown Community Court district, a defendant is taken to the community courthouse for booking.³⁶ Defendants are housed in holding cells secured by glass rather than metal bars. The cells have computer monitors that show the status of pending cases, pay phones, and drinking fountains. While in custody, and prior to arraignment, each defendant is interviewed by the court's pretrial agency. Defendants are asked about substance abuse, general health, housing, employment, and

other potential problems, and whether they need help with any of these issues. The information is recorded by the interviewers on laptop computers and then downloaded into the court's main network. If the defendant requests such assistance during the pretrial interview, he or she is assigned a counselor who will make an assessment of treatment and/or case management needs. Results of such assessments are added into the court's computer for use by the judge, attorneys, and other staff.

Also prior to the arraignment, a resource coordinator reviews all available information about the case. This includes the assessment information, rap sheet, complaint, compliance history, and any other relevant information. A summary is prepared for the judge and a sentencing recommendation is made. All information is available on a computer screen that can be accessed simultaneously by the judge and attorneys.

The Midtown Community Court is an arraignment court. If the defendant, with assistance of counsel, pleads not guilty, the case is sent to the downtown criminal court. If the defendant pleads guilty, the sentence is determined immediately. The defendant is usually sentenced to perform community service or to obtain treatment for substance abuse or other problems. Orders for community service are usually carried out quickly; some can be completed on the same day as the arraignment. Workdays are six hours, and a sentence of up to 10 days of service may be imposed.

Examples of community service are painting over graffiti, cleaning out tree beds, sorting donated clothes at drop-off points, assembling bulk mailings for neighborhood organizations, and performing sanitation duties. Community service projects are designed from requests made by community boards and neighborhood associations. The Midtown Community Court is supported by a community ombudswoman who attends community meetings and discusses problems and possible ways the court can be helpful. She provides the court with input from the discussions with community groups and gets news into the community about the court's accomplishments.

Once sentence is imposed, the defendant is taken to the sixth floor, where all the social services at the court are located: short-term drug treatment, long-term substance abuse treatment groups, housing assistance, health-care services, English as a Second Language classes, GED classes, and job training. The first stop is a health screening conducted on-site by the New York Department of Public Health. The defendant is then assigned to and meets with a counselor. The counselor schedules community service, arranges appointments for social services, and informs the defendant of other available services.

Case managers monitor compliance with court orders for community service and treatment. The case managers track progress and compliance and record information daily about attendance, drug test results, or other relevant data. The information is recorded into the computer system, which produces a compliance screen available to the judge and the attorneys. The police also have a link to the court's computer so they can see the outcome of any case and the offender's progress with his or her sentence. This provides the officers with feedback about their own work and allows a rapid response to a defendant's failure to comply with the court orders.

The computer screens available to the judge provide a file on the defendant that includes a great deal of information. In addition to the pretrial interview and assessment, the rap sheet, complaint, and compliance data, the system provides a Court Technology Screen that summarizes a defendant's past community court cases, sentencing for each one, and compliance history.

The court also conducts a community outreach program in which social workers ride with the local police to contact homeless and other individuals in need and refer them to appropriate shelters or other services. It is hoped that these ride-along activities will serve as successful interventions with problems that could lead to criminal matters if left unaddressed.

INITIAL CONCERNS

As with all government projects, cost is always a concern. There were two initial concerns regarding the cost of the Midtown Community Court. The first was that this community court model would be more costly than the centralized model. This proved to be true; however, the court appears to more than pay for itself through savings in incarceration costs and the value of equivalent community service sentences. The second concern was that less-affluent neighborhoods would not have the private funding base to initiate similar projects, and that the Midtown project would become a model for elite areas. This concern has been addressed in part by the development of the Red Hook Justice Center in Brooklyn, an area far less affluent than the Times Square area. The Red Hook Justice Center was financed initially by funds from the New York Housing Authority, the Schubert Foundation, the Fund for the City of New York, and the Scherman Foundation. With the addition of funds from the Bureau of Justice Assistance, the City of New York provided the remainder of the funding to start the court.³⁷ The Red Hook Justice Center began hearing cases in April 2000.³⁸

Another initial concern was that defendants would plead not guilty to have their cases moved to the Downtown Court, where they could expect their sentence to

include credit for time served and to be released without the requirement of community service. The evaluation research, however, found no significant difference in overall continuance rates between the Midtown Community Court and the Downtown Court, and defendants did not appear to be forum-shopping in that manner.

Attorneys also raised concerns about the confidentiality of prearrest interviews. During the interview, the defendant could make potentially incriminating statements. Another concern was that the resource coordinator would make sentencing recommendations and therefore might influence judicial decision making. It seems, however, that these concerns have calmed over time and that defense attorneys have seen that the value of the court's services to their clients outweighs their concerns about confidentiality.³⁹

EVALUATION

The National Institute of Justice and the State Justice Institute conducted an 18-month evaluation of the Midtown Community Court. The goals were to document its evolution and to examine its impacts and implications for other jurisdictions.⁴⁰ This evaluation showed that cases moved faster at Midtown. The time between arrest and arraignment averaged 18 hours as opposed to an average of 30 hours in the Downtown Court. This arrest-to-arraignment time reduction was estimated to save between \$60 to \$150 per day per prisoner in custody costs.⁴¹ By the end of the research period, the court was averaging 60 arraignments per day.⁴²

The evaluation also noted that the efficiency in implementing the community service sentence was striking and that the benefit to the community was significant. Community service was begun on the same day or next day in 40 percent of cases. The community service work completed by defendants contributed \$280,000 in equivalent value.⁴³ Another \$57,000 worth of work preparing bulk mailings on-site at the courthouse was done for local non-profit agencies.⁴⁴

In the Downtown Court, where cases like the ones handled at Midtown commonly resulted in sentences for time served, community service orders, if any, were ignored by defendants without much risk of sanction. The Midtown Court gave significantly higher numbers of sentences for community and social services.⁴⁵ The compliance rate at Midtown was 75 percent, while the Downtown rate was 50 percent. Furthermore, of those sentenced to social services at the Midtown Court, 16 percent remained in their treatment programs voluntarily once their sentences were completed.⁴⁶

There also is evidence that serious crimes decreased because the Midtown Community Court effectively dealt

with minor criminal matters.⁴⁷ Over the first 18 months of the community court, arrests for prostitution dropped by 56 percent, unlicensed vending arrests decreased by 24 percent, and graffiti was noticeably less along the commercial strip.⁴⁸ Between 1993 and 1994, reports of robbery, grand larceny, and assault declined by 25 percent. Burglary reports decreased by 15 percent, reports of grand larceny against the person dropped by 18 percent, murder by 75 percent.⁴⁹ By the end of the evaluation, it was clear that the Midtown Community Court Project had both achieved its operational goals and had substantial positive impact in four areas: case outcomes, compliance with immediate sanctions, community conditions, and community attitudes.⁵⁰

OTHER COMMUNITY COURT MODELS

In several other cities, courts and communities have collaborated to address various aspects of public safety. Each develops the community court in a fruitful direction.

HARTFORD COMMUNITY COURT, CONNECTICUT

The Hartford Community Court⁵¹ encompasses all of Hartford's 17 neighborhoods. Funding for the court comes from the Connecticut Court Administration, the Comprehensive Communities Program (an initiative funded by the Department of Justice), and the Hartford Mayor's Office. The community court handles public nuisance complaints and misdemeanors. Defendants appear for arraignment within 48 hours of arrest. The Hartford Community Court differs from the Midtown Manhattan Community Court in that it is a citywide project.

As in the Midtown Community Court, most sentences are for community service, social services, or a combination of both. Sentences for community service are often carried out on the same day as sentencing. Each of the 17 neighborhoods has a citizen problem-solving committee that decides what the community service projects should be. The community service projects are part of a program in which supervisors work alongside the defendants on a project.⁵²

Once sentenced, defendants meet with a court caseworker to link with social services assistance providers.⁵³ The Capital Region Mental Health Center Jail Diversion Team is able to provide immediate access to substance abuse treatment and can assist with access to psychiatric treatment.⁵⁴ The State Department of Social Services and Hartford Department of Human Services provide a liaison to the community court for job and educational assistance.⁵⁵ They also provide a job specialist on-site for

defendants. Substance abuse education groups are held in both Spanish and English. Each week an HIV/AIDS education group provides testing.⁵⁶ In addition, the Hartford Area Mediation Program accepts referrals from the community court.⁵⁷ Examples of recent disputes referred to mediation are a disagreement about pay between a babysitter and a customer, an argument between a parent and a school staff person, and a scuffle between two Hartford High School students.⁵⁸

NEW JERSEY JUVENILE CONFERENCE COMMITTEES

The New Jersey Juvenile Conference Committee system⁵⁹ is a statewide program in which citizen committees meet with young offenders, their families, victims, and other concerned parties to discuss the offense and recommend a plan for the child. There are 330 such committees.

The goal of the committee system is to prevent further misconduct by encouraging appropriate, effective intervention in the child's own neighborhood. Cases are given sufficient individual attention to allow consideration of the child's home, school, health, and other aspects of his or her environment in the development of a plan for the child. By so doing the committee tailors the plan to meet the needs of the child and his or her family. The family court presiding judge in each county appoints the committee members. The court provides a coordinator for each county, but the resident members run the committees. A judge must endorse the decisions of the committee. Participation in the program is voluntary, and compliance with committee decisions can be reviewed for up to nine months.

There are four particularly significant aspects of this program: (1) the committees have significant operational autonomy; (2) they practice therapeutic jurisprudence and restorative justice;⁶⁰ (3) the court provides mandatory training in interviewing, assessment, and mediation to committee members; and (4) pursuant to court rule, each committee must reflect the racial and ethnic demographics of the areas in which they operate.⁶¹

NEIGHBORHOOD ENVIRONMENTAL COURT, WICHITA, KANSAS

The mobile Wichita Neighborhood Environmental Court⁶² works to build partnerships between community members and the court and to see that environmental violations receive the attention they deserve. The court consists of a judge, prosecutor, and clerk,⁶³ and travels among four police stations. The court was developed in response to citizen concerns about neighborhood safety. Court is held in the evening at neighborhood locations to increase

community access. The court handles cases involving environmental, traffic, building, fire, and zoning code violations, and other nuisances. Through the Comprehensive Communities Grant Program,⁶⁴ the Neighborhood Environmental Court now also includes a drug court that provides intensive probation and treatment for repeat drug and alcohol offenders.⁶⁵

FAMILY LAW COURTS

The economic, social, and political factors that have led to the current development of community court initiatives in criminal justice are similar to those currently pressuring the family law court system for innovative community-focused planning. Historically, organization and specialization by subject matter has been part of the response of the court to the volume and complexity of legal issues occasioned by the urbanization of America.⁶⁶ In Chicago, for example, the first juvenile court in the country was implemented in 1899. The first family court appeared in 1914 in Cincinnati.⁶⁷ In the years that have followed, the courts have handled family law matters in so many different ways that the term "family court" has no one meaning.⁶⁸

It has been since the end of the Second World War that the most staggering changes affecting the courts and families have occurred. Just as the "baby boom" generation moved through their most crime-prone ages between 1960 and the present,⁶⁹ they also reached the age of parentage. The divorce rate quadrupled between 1960 and 1985.⁷⁰ Births outside of marriage increased from 5 percent in 1960 to 22 percent in 1985 and have continued to increase.⁷¹ The National Center for State Courts has determined that family law cases are the largest and fastest-growing segment of state courts' civil caseload,⁷² about 35 percent of the total number of civil cases handled by the majority of American courts,⁷³ and that in 53 percent of such cases at least one person appeared without assistance of counsel.⁷⁴ A report from the State Bar of California states that in 67 percent of family law cases at least one party appears pro se.⁷⁵ The court system is ill prepared, insufficiently funded and staffed, and incapable of handling the needs, difficulties, and disputes of those who want and need access. If the courts and the community do not make an organized, concerted effort to address the multiple needs of these families, society will fail to serve them and let them slip through the cracks.

The changes in the economy that have affected the criminal justice courts have had similar effects on family law courts. First, the economic resources available to families have declined as relative poverty has increased.⁷⁶ This gap between the "haves" and "have-nots" has been particularly pronounced in California with its high-tech

economy.⁷⁷ Poverty decreases access to services within the society, including legal services; increases the difficulty of keeping children safe;⁷⁸ and adds to the number of people seeking help from the family law courts. In California, for example, the Family Law Facilitator Program, a mandated court-based service for pro se litigants with regard to child support and other family law issues, helps approximately 28,000 customers per month.⁷⁹

Second, the number of women entering the workforce has increased enormously. In 1960, 19 percent of married mothers with children under the age of 6 worked outside the home;⁸⁰ in 1986, 54 percent.⁸¹ Even though more women are in the labor force, many are working at low-wage service and clerical jobs that have replaced those well-paid unskilled and semiskilled jobs that have disappeared from the national economy.⁸² With the additional pressure of providing child care during work hours, the economic disadvantages for single parents can be particularly harsh.⁸³ The issue of child support has become increasingly important for both custodial and noncustodial parents. For example, in San Diego County, California, 21,341 cases were calendared for hearing in the child support enforcement courts in 1999.⁸⁴ Recent demographic data collected by the California Family Law Facilitators of 21 counties, describing 35,688 customers, indicate that 64 percent report they are employed, and 68 percent report a gross monthly income of under \$1,500 per month.⁸⁵ Most young families cannot afford to own their own homes and many lack health insurance.⁸⁶ These economic pressures result in more litigants at court who have limited access to attorneys and limited information about court procedures or community resources to assist with problems outside the court setting. Because of job requirements, families tend to be more mobile, and parents have less time to spend with their children and are more socially isolated from friends, relatives, and neighbors.⁸⁷ This tends to foster reliance on social services to address needs formerly met by extended family, friends, and neighbors, and on the court to resolve their problems and serve as a gateway for other services. Additionally, along with the high divorce rate is a corresponding high rate of remarriage and resulting blended families. Parents may find themselves involved in multiple family law cases involving several parties and complex issues.

Third, the demographics of ethnicity have also changed greatly. In 1970, Whites accounted for 75 percent of the California population.⁸⁸ By 1980, that population was only 66.6 percent of the total and in 1990 was at 60 percent. Projections are that, in 2020, Whites will be 40.6 percent of California's total population.⁸⁹ By then the Asian population is expected to increase ninefold, the Hispanic population to grow by a factor of six, and the

African-American population to double.⁹⁰ The court is being challenged to meet the need for access by an increasingly culturally diverse community. For example, California Family Law Facilitators in 21 counties report that 20 percent of their customers are Spanish speaking. Facilitators in 17 counties reported that at least 5 percent of their customers speak languages other than English, including Southeast Asian languages, Mandarin, Cantonese, Japanese, Togan, Samoan, Tagalog, Russian, Armenian, and American Sign Language.⁹¹

Fourth, in recent years, family disputes have become more contentious.⁹² For example, child support enforcement procedures are cited as contributing to an increase in animosity between parents.⁹³ The problems presented to the courts involve allegations of domestic violence, child abuse, substance abuse, and other behavioral problems⁹⁴ that appear intractable within the current family law system. While such issues have always been in the courts, the numbers of cases and the severity and multiplicity of issues have increased dramatically, straining the ability of the courts to deal effectively with these families. Indeed, even as the numbers of new filings in family law have leveled out or decreased in some geographic areas, the number of hearings required to resolve cases has continued to increase.⁹⁵ Family law cases are often highly complex, requiring multiple proceedings and intensive participation by ancillary service providers.⁹⁶ For example, in 1998, Alameda County, California, which has a population of approximately 1.4 million, had over 32,000 family law matters set for hearing.⁹⁷ The ever-growing demand on the resources of the family law courts has come during a time of tax cuts and shrinking fiscal resources available to the public-service sector.⁹⁸

Finally, from a systemic viewpoint, a prominent characteristic of the majority of family law courts, just as in criminal justice,⁹⁹ is its disarray. There is lack of coordination among the various parts of the family justice system and fragmentation of issues related to families.¹⁰⁰ Frequently the legal issues related to a family enter the California court system in a variety of ways. Cases of child abuse and neglect are heard in juvenile dependency courts and sometimes in criminal courts as well. Guardianships of children may be part of a juvenile dependency case or, if filed by a private party, part of a probate or family law case. Child support commissioners hear actions filed by the local child support agencies. Divorce, establishment of paternity, legal separation, and nullity are heard in family law courts. Important issues filed within those cases include custody, visitation, support, property division, and restraining orders. If a request for a restraining order is filed under a separate civil domestic violence case, it may be heard in a civil domestic violence court. If the

defendant has been arrested, the criminal domestic violence case will take place in a criminal court.¹⁰¹ According to California Superior Court Judge Donna Petre, “[e]ach of these departments has minimal knowledge of the decisions of the other, even if the decisions involve the same family and children. The larger the court, the more the problem is compounded. In large courts, each of these departments may not be just in separate courts, but in different facilities miles away from one another with no technological contact.”¹⁰² When this is the case, the social service providers may be the only commonality and touchstone for the family facing this legal maze. Coordination of services, court appearances, and information are essential to the family’s ability to successfully address the problems that have brought them to the court.

There are also ancillary government agencies that work with these various parts of the courts. At present, most California courts do not have a system of coordination among these various entities. Children’s Protective Services, the Department of Social Services, dependency mediation services, and the Court-Appointed Special Advocate (CASA) program work with the juvenile courts. Probate investigators work with the probate court. Family court services and family law facilitators work with the family, child support, and civil domestic violence courts. Law enforcement, pretrial services, prosecutors and defense attorneys, probation, and drug court services work with the criminal court. In conjunction with these government agencies, community-based organizations routinely provide court-ordered social services to litigants. Examples are mental health service providers, substance abuse and batterers’ treatment providers, parent education providers, child custody evaluators, co-parenting counselors, domestic violence shelters, supervised visitation programs, and drug-testing facilities.

The family law caseload exploded in the 1970s. Although this growth was already occurring, it substantially increased during the years following the passage of California’s “no-fault” divorce statute.¹⁰³ While many attribute the increase in the divorce rate to implementation of “no-fault” divorce,¹⁰⁴ others recognize that such trends appear in varying degrees in every developed country, and therefore appear to be part of much broader social and economic change, specifically industrialization and urbanization.¹⁰⁵ Whatever the cause, the effect on the family law court has been an unprecedented demand on its resources.

During the eighties, the response to these demands was mainly to seek nonjudicial solutions, especially alternative dispute resolution techniques, primarily mediation. By 1981, California passed the first mandatory mediation statute, requiring all parents in dispute over child custody to participate in mediation, and by 1998 all but six states

had similar statutes.¹⁰⁶ From the late seventies through the eighties, the trend in limited civil litigation¹⁰⁷ as a whole was criticism of legal formalism and the adversary system. Experimentation with non-court-based programs such as community boards, neighborhood justice centers, and other informal alternative dispute resolution programs abounded.¹⁰⁸ In the last decade, however, the focus in family law has moved back toward the courts and away from more nonjudicial dispute resolution mechanisms. Family and juvenile courts have attempted to address the problems through judicial management of cases related to children and families.

Most family law scholars agree that the fragmented family law system needs reform¹⁰⁹ and are calling for systemic implementation of unified family court systems.¹¹⁰ A unified family court system is a single court with comprehensive jurisdiction over all cases involving children and relating to the family, with one specially trained judge¹¹¹ assigned to each family, and with coordinated social services crafted to meet the family’s individual needs.¹¹² A unified family court is also part of a broader community justice paradigm that focuses on problem solving, practices therapeutic jurisprudence, and coordinates with community services.¹¹³

COMMUNITY COURT PRINCIPLES AND FAMILY LAW

The goals of the criminal justice community courts are entirely consistent with those of family law reform and, in actuality, relate specifically to problems being faced daily in the family courts.

1. Restoration of the community

The concept of “community” is two-pronged as it relates to family law. First, in the traditional sense, the community at large is adversely affected by protracted, painful family disputes, which can lead to tragic and even fatal consequences. Second, and of equal importance, is the community of the family itself. The parties in a family dispute are part of an extended social group including children, other family members, friends, and co-workers. All are affected by the ability of the litigants to resolve their conflicts in a way that can restore peace and predictability to daily life. Unlike civil litigants, who have little or no connection other than the dispute, the individuals involved in family law disputes will be continuing their relationships far past any given court hearing on a particular disputed issue. They will continue to be connected, usually for life, because of the children they care for. Not only the outcome, but also the process of obtaining dispute resolution, edu-

cates the participants in how to resolve future conflicts. Community-based services teach families how to handle problems and seek assistance when needed.

2. Bridging the gap between communities and courts

Family law litigants are routinely referred to various services from the community. Examples of these community services are substance abuse treatment, drug testing, supervised visitation, anger management, parenting classes, co-parenting counseling, and conjoint counseling with children. The connection between the courts and community service providers is often weak, and there is very little direct communication. The courts do not really understand the services provided or their limitations. The community service providers are frequently unaware of the details related to the legal cases and the concerns of the courts. Collaboration between the courts and these community service providers not only provides the opportunity for more holistic treatment for families, but also provides the court with a good entry point into the community at large to solicit input and provide education about the operation of the court. The courts learn what services are available in the community, what are appropriate referrals and requirements, and what expectations are reasonable for the litigants. The community service providers learn what the court expects, how to help their clients meet those expectations, and how to provide progress reports that are helpful to the court. Absent such collaboration, litigants often get conflicting messages about what they are reasonably expected to accomplish.

3. Knitting together a fractured family court system

Earlier discussion pointed up the fragmentation in the current family law system. The unified family courts attempt to bring all matters relating to one family under the auspices of one judge who has comprehensive jurisdiction over all issues that may arise for the family. This system greatly enhances the court's ability to coordinate with the community service providers who are attempting to make helpful interventions pursuant to orders of the court. More important, it is better for children and families because the services and expectations can be coordinated and all relevant information is available to the court so that a comprehensive plan for the family can be developed and implemented. The result is less confusion for the families. They are more likely to succeed when the directives are consistent and uniform and there is a societal expectation of success. The families benefit most when the court and the service providers have a consistent approach.

4. Helping litigants deal with problems that lead to recidivism

Family law departments see the same litigants repeatedly. This is "family law recidivism." As with drug treatment courts, it is desirable for family law departments to develop a treatment approach to the problems that are provoking this sustained litigation. In developing such an approach, the court considers the needs and abilities of the litigants and tailors a plan to overcome problems and enhance strengths. The litigant, the treatment provider, and the court work together to alleviate the problems that brought the litigant and the family before the court. Until the underlying issues are addressed, recidivism will continue. Social services and programs are available to assist families with the sorts of problems that lead to recidivism; the family law court can be a gateway to those services.

5. Providing better information

The fragmentation of issues relating to families makes the need for information extremely pressing. Judges need information about previous case history, other matters pending in other parts of the court, and family members' history of compliance with treatment and other orders. For the most part, this developing technology to facilitate information sharing with the different parts of the court is at a starting point for family law courts. Linkage with social services and other government and community agencies is also required. Furthermore, data collection and input technology are desperately needed in order to assess true caseload volume and evaluate efficacy. Pro se assistance can also be enhanced by user-friendly interactive information and forms systems that make court procedures and mandated forms available, combined with assistance from on-site personnel.

6. Design of the courthouse

A community court for family law would have a waiting area with appropriate amenities or at least enough space so that litigants could sit comfortably in the courtrooms. The court should also have a secure waiting room for children. There would need to be space for volunteer and community referral services, as well as a courthouse safety protocol to protect individuals who were at risk of physical harm from the other party. Space would also be required for a help center that would assist unrepresented litigants in negotiating their way through the court system.

FAMILY COMMUNITY COURT EXAMPLES

Across the country, communities have applied community court principles to family law problems. The resulting family community courts have proved quite successful.

JACKSON COUNTY COMMUNITY FAMILY COURT, OREGON

Jackson County calls its family law court a “community court” to emphasize the court’s commitment to community collaboration.¹¹⁴ The court seeks to coordinate with social services to make early identification of a family’s needs and to hold the family accountable for compliance with court orders. Jackson County has established family resource centers in which up to 17 agencies are housed in one building.¹¹⁵

The court incorporates a one-family/one-judge case assignment system. The community court clerk searches the automated data systems for cases involving children and may receive case referrals from judges, court staff, and social service agencies. There are three levels of service for multiple-case families. At Level I, a court coordinator simply gathers together all cases related to the family and meets with the judge who has had the most involvement with the family. The decision whether or not the family can benefit from Level II service is then made. If so, the family is assigned to one judge for judicial coordination: all pending cases are “bundled” together so that all future hearings will be in front of that judge. The family may also qualify for Level III service, in which the family is given a comprehensive family plan including social services. The case coordinator then meets with the family and the service providers to create the plan. The services may be provided through a family resource center or by an interagency team of providers. Participation is voluntary. The plan is filed with the court and monitored for compliance.¹¹⁶

JEFFERSON COUNTY FAMILY COURT, LOUISVILLE, KENTUCKY

In the Jefferson County Family Court, each judge is assisted by a staff social worker who is present in the courtroom during proceedings. The social worker provides information to help the judge in making determinations and linking families to social service providers in the community.¹¹⁷ A local human services agency, Seven Counties, and the Jefferson County Public Schools provide liaisons to the court. The Cabinet for Families and Children provides two paralegals and a social worker to the dependency cases. The University of Louisville’s social work school sends interns to the court, and the law school sends law students

for training. Volunteers staff the children’s waiting rooms; others, from the Center for Women and Families, assist victims of domestic violence and their children. The Jefferson County Department for Human Services develops community-based services in neighborhoods.¹¹⁸

Communication is a major focus of the court. The court exchanges information with other courts and government agencies, community service providers, probation departments, gun registries, prosecutors and defense attorneys, law enforcement, national agencies, and criminal records to assist in ensuring enforcement and to provide information to all agencies on orders and progress of treatment. The court has a family court advisory committee with subcommittees focusing on specific areas: emergency protective orders, divorce, status offenders, dependency, paternity, termination of parental rights, and adoption.¹¹⁹

FAMILY DIVISION OF THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

The Baltimore City Family Court began as a pilot project mandated by legislative funding.¹²⁰ Constructed on a social science research paradigm, it has an interdisciplinary team approach not unlike the medical model and practices therapeutic jurisprudence.¹²¹ The principles of the court include (1) the protection of adults and children from harm; (2) protection of children from the adverse impact of family law litigation; (3) increased access to the judicial system for unrepresented litigants; (4) aggressive case management to facilitate early settlement and referrals to appropriate services; and (5) identification of litigants exhibiting signs and symptoms of substance abuse and addiction and appropriate referrals for treatment. Services are offered both in the courthouse and in the community.¹²²

Cases are managed by a team made up of judicial officers and staff, the family division coordinator, the family division manager (clerk of the court), the social services coordinator, the domestic violence case monitor, and the chief medical officer and staff.¹²³

The family division coordinator reviews the contested files and works with the supervising judge on matters of policy and procedure, service contracts, staffing issues, community relations, and other administrative matters. The family division manager oversees clerical operations in the clerk’s office. The family division social worker coordinates evaluation of the litigants and referrals to services such as substance abuse treatment. The domestic violence case monitor coordinates referrals of victims to services and assists on the ex parte calendar. The chief medical officer has clinical responsibility at the court and is responsible for custody evaluations and recommendations.¹²⁴

Baltimore City Family Court makes several social services programs available to litigants:

- A substance abuse program trains all team members to identify the signs and symptoms of substance abuse. When a substance abuse problem is identified, a clinical social worker evaluates the litigant and reports to the court. The social worker also counsels the litigant, makes referrals to treatment, and monitors compliance.
- The judicial officer may refer litigants to the supervised visitation program. In such a case, a court social worker conducts an interview and intake evaluation of the litigant, schedules the visits, and supervises them. Family visits take place in a playroom located in the medical services office, which contains a one-way mirror. A court security staff person is always present. In addition to regular court hours, the visitation center is open four weekday evenings and Saturday mornings. The medical services office also serves as a safe place to exchange children for visitation and is available Friday evenings and Sunday afternoons.
- Students from the University of Maryland School of Social Work help victims of domestic violence get restraining orders through the Domestic Violence Ex Parte Project. The Women's Law Center of Maryland provides advocacy and representation of domestic violence victims at the court.
- Pro se assistance is provided full-time at the court through a contract with a local legal services provider.
- Sheppard Pratt Hospital's community education programs offer parent seminars and children's groups.
- A volunteer attorney settlement panel is available to assist with case settlement. This program is administered by the Bar Association of Baltimore City and monitored by an oversight group.

Ongoing training is provided to judges and staff in all areas of treatment and other social services provided by the court.¹²⁵

HAYWARD DOMESTIC VIOLENCE COURT, HAYWARD, CALIFORNIA

The Hayward Domestic Violence Court¹²⁶ hears matters relating to civil domestic violence restraining orders. It is one of six civil domestic violence courts in Alameda County.¹²⁷ Community service providers actively participate inside the courtroom during each calendar session. In addition to the judge and courtroom staff, there are plaintiffs' domestic violence counselors, defendants' domestic violence counselors, family court services mediators, a fami-

ly law facilitator and staff, and volunteer resource specialists.

The plaintiffs' domestic violence counselors are volunteers from local domestic violence advocacy groups, shelters, or legal services. Tri-Valley Haven and San Leandro Women and Children's Shelter have participated in the Hayward Domestic Violence Court as plaintiffs' counselors. The counselor interviews the plaintiff before the hearing and gathers information related to the history of violence, the existence of other problems such as substance abuse and mental illness, previous separations and reconciliations, and the type of treatment or other assistance that may be desired. Information is taken in the form of a structured interview and recorded on a form made available to the judge and to family court services if children are involved. The plaintiffs' counselor may make a recommendation to the judge about possible treatment and services for the plaintiff. The counselor will also provide the plaintiff with information about resources available in the community.

The court works with local batterers' and substance abuse treatment agencies to provide defendants' domestic violence counselors. A Second Chance and Terra Firma are community-based organizations that have sent volunteer defendants' counselors to the Hayward court. The counselor meets with the defendant before the hearing. If there is a pending criminal case, the interview is waived because of confidentiality and privilege concerns. Once the criminal matter is disposed of and the case returns to the civil domestic violence court, the interview will take place.

The defendant's interview is basically identical to the plaintiff's. The interview is structured, recorded on a court form, and covers the defendant's history of violence, relationship history, problems of substance abuse and mental illness, and his or her input on possible counseling orders. The reports of the interview are made available to the judge, and the counselor may make recommendations about treatment options or other support services. The counselor may also provide information to the defendant about possible treatment plans and available resources.

If children are involved, both plaintiff and defendant meet with a family court services mediator who is also present in the courtroom during proceedings. The parties meet separately with the mediator. The information gathered in the structured interviews by the plaintiffs' and defendants' domestic violence counselors is made available to the mediator. If a reasonable custody and visitation agreement can be reached, the mediator drafts the agreement and submits it to the judicial officer prior to the hearing on the restraining order. If there is no agreement, the mediator makes a recommendation for a short-term temporary custody and visitation order lasting until the

parties return to court in about 30 days. During this period, the mediator conducts a more extensive inquiry into the case and prepare a written recommendation for the next hearing.¹²⁸

Case history and coordination research is conducted before the hearing and provided to the judge for each case. It includes the identification of other cases concerning the parties, such as dissolution, paternity, guardianship, and child support enforcement; criminal histories; and information about any restraining orders from the criminal court. If a criminal restraining order is identified, effort is made to secure the docket and provide it to the judge so that conflicting orders may be avoided. Case history and coordination information, along with copies of the pleadings, are also given to the family court services mediator before the hearing in order to provide maximum data on which to base any recommendations he or she may make to the court.

The family law facilitator and staff assist the parties in the courtroom in cases involving child support issues and help with the preparation of the restraining orders after hearing. The facilitator and staff also provide the parties with information about court procedure and make referrals to legal services for assistance with other family law issues. The family law facilitator's office works in collaboration with the Alameda County Bar Association's Volunteer Legal Services Corporation to provide courthouse assistance to unrepresented litigants who are seeking or responding to restraining orders.

If restraining orders are granted, often treatment orders for the defendant are also made, and the plaintiff is encouraged to seek counseling or other support services. The type of treatment orders will depend on the facts of the case as well as the individual needs of the defendant and other family members. The primary goal is to keep all family members safe and free from harm.

Recently, a volunteer from the CalWORKs¹²⁹ domestic violence project has begun working as a liaison to the court and is attempting to structure some case management services for eligible litigants. It is hoped that additional on-site volunteers will participate as liaisons to the Victim-Witness Assistance Program and programs offering housing assistance, GED, supervised visitation, and mental health services.

Input from the domestic violence counselors and family court services mediators assists in making treatment determinations. Often the defendant's interview has helped the defendant achieve enough perspective that he or she can "buy in" more readily to the treatment plan. Sometimes the judge needs additional information and assessment, in which case the defendant is ordered to participate in several assessment sessions with a batterers'

treatment or substance treatment provider, and the case is continued for a short time to complete the assessment. Compliance is monitored by means of a review structure in which the defendant is required to return to court and discuss progress in treatment with the judge and other courtroom staff. The length of time between reviews depends on the ability of the defendant to comply. The more problems there are with compliance, the more often the reviews will occur.

The presence of treatment providers in the courtroom demonstrates to the litigants that the court takes treatment seriously. It also greatly reduces the ability of the litigants to manipulate the court by exploiting an obvious lack of communication between service providers and the court. Additionally, the personal connection made between the treatment providers and the litigants appears to reduce anxiety and facilitate initial enrollment and attendance in the programs.

A PROPOSAL FOR A MODEL FAMILY COMMUNITY COURT

Many litigants in family law do not require supportive services; however, many need assistance in dealing with the issues that have interfered with their personal relationships and brought them to the court. The authors propose that a realistic approach to the resolution of family disputes arising from such problems should include assessment and a practical treatment plan. By connecting litigants with treatment service providers in the courtroom setting, the likelihood of a successful treatment outcome is increased. In most areas of law, legal realism, which seeks to foster the social welfare of litigants and the community,¹³⁰ has dominated judicial decision making.¹³¹ The task for legal realists in family law is to structure the system to reflect the realities of the families it serves. The current system of family jurisprudence does not, for the most part, function in this way.

A realistic family court system would have at least six primary goals: (1) unification of children and family cases¹³² into a system of comprehensive jurisdiction that allows for a one-family/one-judge method of case assignment; (2) the practice of therapeutic jurisprudence¹³³ based upon social science research; (3) adequate court infrastructure of administrative and other support services; (4) development of effective technology and automation as a priority; (5) assistance to pro se litigants to facilitate access to the family justice system; and (6) ongoing collaboration with the community in a variety of areas, including community education.

Because the process of structuring a unified family case assignment system will most certainly vary from one court

to another depending on their reunification organization, it is not our purpose here to discuss this aspect of the family community court. Suffice it to say that the planning and implementation of a unified family system is imperative; nevertheless, it may not be a condition precedent to the other features set out herein. Family courts may find certain of the procedures and/or personnel tasks helpful even though they have not yet unified their children and family cases.

COMPONENTS OF THE FAMILY COMMUNITY COURT

This family community court¹³⁴ adopts a team approach that is similar to the Baltimore City Family Court in that it resembles the medical-team model: team members work together to assess the causative factors in protracted or intense disputes, to formulate a plan for dispute resolution, to implement the plan, and to follow up and support plan compliance. The team consists of the judge and courtroom staff, a family court coordinator, a family court investigator, a differential assessment counselor, a child custody mediator, a case manager, community service providers, a volunteer coordinator, pro se assistance, and specialized court administration.

The work of some team members takes place before the first hearing; others work primarily during hearings; and still others work throughout the family community court process. The operation of the court emphasizes coordination of court and other information, assessment and effective therapeutic court orders, linkage to community service providers, accountability and compliance, and collaboration with community service providers. Additionally, to accommodate the litigants' work schedules, all services should be available in the evenings and on Saturdays.

Before the First Hearing

Family court coordinator. Once a case has been set for hearing by the family court clerk and assigned to a judicial officer, it is given to the family court coordinator. Each judicial officer in the family community court division should be assigned a family court coordinator. The family court coordinator assists the judicial officer in gathering information to be used at the first hearing on the newly filed motion. The family court coordinator searches the civil, probate, criminal, and juvenile databases to locate other cases pertaining to the family. Whenever reasonably possible, the files from the other cases will be provided to the judicial officer with a summary of case activity, future hearing dates, and existing orders. The family court coordinator also gathers and summarizes

criminal histories and other relevant information obtained from governmental databases.

Ex parte matters are prioritized so that the family court coordinator can attempt to gather as much data as possible before the judicial officer makes a decision on the ex parte application. Ex parte orders require such rapid attention that it may be desirable to have an ex parte coordinator whose responsibility is to deal immediately with the requests as they come in.

The family court coordinator reviews the case files prior to hearing for readiness and makes reports to the judicial officer. The role of the family court coordinator is not unlike that of the resource coordinator in the Midtown Manhattan Community Court.

Family court investigators. The family court investigator's task is to obtain additional information from collateral sources. The family court investigator might attempt to corroborate allegations of child protective services or police involvement. The investigator can contact child-care providers, schools, and therapists and interview other collateral witnesses. The investigator can also make home visits. Investigative information is made available to the judge and other members of the family court team. If the court is unified, the existing investigative services, such as child protective services and probate investigators, will coordinate information with the family court investigators.

Differential assessment counselor. Also before the first hearing, the family is assigned to a differential assessment counselor who focuses on prioritizing its various needs. The assessment counselor should be a social worker or other mental health professional trained in mental health assessment and case management. Although the assessment counselor does not serve as the case manager for the family, experience in case management is imperative because he or she recommends the judicial case management track that will best serve the needs of the family. The assessment counselor attempts to determine the most efficacious point of intervention from a therapeutic perspective. The differential case management tracks of the court may include alcohol and other drugs, child protection, mental health support, domestic violence, high-conflict custody, employment assistance, and no social service support for families that do not require it. The counselor recommends service providers, if needed, and compile a referral packet for the family's use. The assessment counselor is provided with copies of the summaries prepared by the family court coordinator as well as copies of the pleadings and any information obtained by the family court investigators. The counselor may also interview the litigants. An assessment counselor should always be present

in the courtroom at the first hearing on a motion to meet with those who have not yet participated in an assessment.

Child custody mediators. In California, child custody mediation is mandatory when parents are not in agreement. Family court services will conduct the mandatory child custody mediation. The family court services mediators will be provided with copies of the pleadings and information from the family court coordinator, investigator, and assessment counselor. The availability of this information is vital to mediators in counties where recommendations about child custody and visitation are made to the court if the parties fail to agree. At least one child custody mediator should be available in the courtroom at all hearings for those who could not come to a mediation appointment prior to hearing. This is particularly important in domestic violence and other cases involving ex parte orders that are set for hearing within a short time frame.

The First Hearing

Before the first hearing on a new motion, the judicial officer receives data summaries from the case coordinator and reports of any investigative activity. The judge may also receive recommendations from the assessment counselor and the child custody mediator. This information is also made available to litigants or their attorneys if it is not protected by statute. At the first hearing, if the family is not in need of any type of social services, the case will not be referred to a differential case management track. Instead, the case will be placed on the litigation track, a primary goal of which is adequate availability of settlement conference and trial time.

In cases where services are needed, the judge assigns each case to one of the differential case management tracks and makes appropriate orders. For example, if the judge determines that the most therapeutic case management plan is to be found in the substance abuse track, orders may require the addict's enrollment in substance abuse treatment and/or drug testing as well as the partner's attendance at a codependency group. If the case is related to chronic nonpayment of child support, the judge may assign it to the employment assistance track and order the parent to consult with a job counselor and make efforts to gain employment. Once the initial orders are made, a date is set for a second review hearing to occur in a fairly short time and the litigants are ordered back.

Case managers. Once the initial orders are made, the case is assigned to a case manager. The case manager will serve as a compliance assistance counselor and as a point of contact at the court for community service providers. The case manager will maintain client contact and help with

access to services. The case managers will collect progress reports from the treatment providers and prepare summaries for the judge at review hearings. The case manager may also make recommendations for modifications in the case management plan when it seems appropriate or as circumstances begin to change. The case managers may make field visits when indicated to assist the client in accessing services and complying with court orders.

The Second Hearing

At the second hearing community service providers begin their courtroom involvement. If the family community court can acquire facilities adequate to house offices for the community service providers, as the Midtown Manhattan Community Court did, this contact could take place immediately after the first hearing. The parties would simply go directly from the courtroom to the social services center. Without such a facility, community services must be coordinated in scheduling clusters. For example, review hearings for the substance abuse track may be on one day each week, review hearings on the domestic violence track on another. Review hearings on the mental health support track may be held on only two days per month. The frequency of scheduling should be determined on the basis of a weighted caseload analysis.

Community service providers. The community service providers participate in the courtroom during review hearings beginning at the second hearing in the case. Because review hearings are clustered according to case management track, not all providers need be in the courtroom at the same time. Depending on the track, the following team members might be needed at court:

- Substance abuse track: Substance abuse counselors, drug-testing services (to perform on-site presumptive testing), and addiction education providers
- Domestic violence track: Providers of assistance to domestic violence victims; anger management and batterers' treatment counselors
- Child protection track: Parental stress counselors; CASA volunteers; and providers of therapeutic supervised visitation services, co-parenting counseling, and parent education
- Employment assistance track: Employment assistance providers; educational counselors to provide referrals to literacy programs, English as a Second Language classes, and GED and other educational programs
- Mental-health-support track: Mental health service providers to make referrals to psychiatric services

- High-conflict-custody track: Child custody evaluators, special masters or other experts, supervised visitation providers, and providers of extended focused mediation services

The courtroom community service providers interview litigants, assist those who had not yet accessed the services to which they were referred, provide counseling and orientation about helpful ancillary social services, and keep the judge informed about their programs and litigants' compliance.

Ongoing Compliance Reviews

A system of review hearings ensures compliance by the litigants. These hearings are scheduled in clusters according to the case management track. The frequency of such hearings would depend on various factors, such as the nature of the order being reviewed and the history of compliance. Both parties would not necessarily be required to attend every review hearing, although they would be entitled to attend if they so desired. Intermediate review hearings set specifically to track the progress of only one of the litigants may be scheduled. If the other party does not wish to be present for these hearings, his or her appearance can be waived and the case manager will forward a copy of the court's order. If some adjustment in the parenting arrangement related to compliance problems appears to be required, the case manager will notify the other party. The case manager monitors compliance during the periods between hearings and will make reports and recommendations to the judge at the review hearings. Community service providers in the courtrooms may be asked to interview litigants with particular problems and provide information directly to the court. The court may address specific problems as they arise.

Sanctions will be crafted from a therapeutic perspective that includes accountability. Ongoing compliance failure may result in a more intensive or different case management plan, more frequent reviews, or possible restrictions on access to the minor children if their welfare is involved. Because the family community court is primarily a civil court, the sanction of incarceration is very limited and probably is not optimally useful except for criminal acts of family violence. Since the litigants are ordered back to the court for review hearings, failure to appear might result in a bench warrant that is held temporarily. The first step in such cases might be for the case manager to try to contact the delinquent litigant and find out why he or she did not show up for court. The case manager would inform the litigant of the next court date and explain that if there is another failure to appear, a police officer will bring the litigant to the judge. If the

case manager fails to reach the litigant or the litigant fails to appear again, the bench warrant will be served and the person brought to court. Such an action must be executed in a manner that does not traumatize any minor children who may be involved. Though such an event would probably not result in subsequent incarceration, it would be expected that the experience of being brought to court by the police would have a sobering effect on the individual and make it clear that the court is seriously interested in enforcing its orders. The court would need to work closely with local community policing programs to use this method of enforcement. Input from local law enforcement about resources and method would be imperative. Law enforcement does have an interest in compliance with family court orders, however. The police are continuously plagued by calls related to domestic disputes occasioned not only by domestic violence, but also by arguments over such matters as custody and visitation where court orders seem unclear or conflicting. It is hoped that the success of the family community court would serve to reduce substantially this burden on police.

Participation Throughout the Process

Judicial officers. The family community court would have a presiding judge and sufficient judicial resources and staff to effectively manage the family law caseload. Judicial officers assigned to the family community court should have substantial family law experience, and regular training sessions for updates in the law and social science research should be offered. As noted, cases would be assigned through a one-family/one-judge method.

A family community court should employ several other principles of judicial workload assignment. First, workload assignment should consider complexity of the cases and not simply caseload volume. Second, docket control and the speed of disposition should not be the single criterion for identifying judicial need; this task must also consider the quality of justice. Third, workload for judicial officers must include time off the bench for financial and program development and for administrative work such as meetings, phone calls, writing letters and articles, speaking, community outreach and education, and networking. The courts that have the best resources, that allow for innovative program development, are those in which the judges have engaged in aggressive development activities off the bench.¹³⁵ Moreover, judges in the family community court should be rotated as infrequently as possible to allow for the development of expertise. Judicial officers should have regular meetings with one another and with other team members to discuss successes and problems.

Volunteer coordinator/community liaison. The volunteer coordinator would be responsible for organizing and scheduling the courtroom participation of community service providers. This person would also work closely with providers to help create a more coordinated community response by conducting regularly scheduled meetings to work on systemic issues, such as developing a centralized intake procedure, uniform intake and compliance report forms, mechanisms for getting information to case managers, a system of cross-referrals, case-conferencing procedures, and conducting and organizing cross-training sessions. In addition, the volunteer coordinator would organize regular roundtable meetings between the court and community providers to exchange information and collaborate on problem-solving tasks.

As community liaison, the volunteer coordinator would attend community meetings, gather information from the community about how the court can improve its services, and provide information about the court and its programs. It is hoped that the court as a whole would conduct a vigorous community education project designed to communicate to the entire community about the role of the judicial system. The volunteer coordinator would work closely with the education project so that information about the family justice system is fully included.

Pro se services.¹³⁶ Because family law is characterized by an enormous number of unrepresented litigants, the community court must be guided by the goal of access to the family justice system by these individuals. Pro se litigants require assistance at each proceeding. General information about the court, its procedures, locations of various offices and courtrooms, times and places of hearings, and simple case status information are always needed by these litigants. Assistance with forms and information about filing, service of process, and payment and waiver of filing fees are all needed at the pleading stage of the proceeding. There are many methods of delivering such services. Telephone help lines can be useful for general information. Assistance with forms and procedures can be provided one-on-one either by drop-in or by appointment or in workshops and seminars. Automated interactive forms programs may be useful to many litigants and should be available whenever possible.

Pro se assistance is also required in courtrooms when there has been a failure of service or some other procedural error in the pleadings and for explaining and running guideline support calculations, writing stipulations, preparing orders after hearing, explaining orders, or just providing supportive human contact in a frightening and confusing situation. In fact, the courtroom is an extremely efficacious point of assistance for pro se litigants.

Because both parties and a judge are often present, it is an opportunity to conclude many procedural matters that would be resolved with great difficulty, or not at all, outside the courtroom.

Providers of pro se assistance services must make it clear to the litigant that they do not give legal advice, that no representation is provided, and that no confidential relationship exists.¹³⁷ Litigants need to be informed that the pro se assistance service is available to everyone, including one's spouse, ex-spouse, or partner. Of equal importance is the training of pro se assistance personnel so that the line between legal information and legal advice is clear to them as well. Litigants should receive information about legal assistance referral services so they can obtain representation whenever possible. It would be very helpful to have a representative of the lawyer referral service available on-site. Pro se assistance services should be administered by a licensed attorney, but many of the services may be delivered by paralegals, law student interns, or volunteer attorneys, provided proper supervision is in place. The pro se assistance service providers should also seek close collaboration with other legal service providers in the community to coordinate services whenever possible.

Children's waiting room. Many litigants, owing to scheduling and financial constraints, have to bring their children with them to court. Frequently, the children are exposed to adult courtroom disputes, a situation detrimental to the children and disruptive to the court. The courthouse facility should therefore have a secure children's waiting room staffed at all times the courthouse is open for business. Staff may be either court employees or volunteers. Use of the children's waiting room should be free of charge and have sufficient space for use by children of varying ages.

Administrative operations. The family community court needs to have a dedicated court administrator who oversees court operations on a day-to-day basis. The administrator would ensure that all court clerks are knowledgeable about court forms and procedures and are provided training in such things as domestic violence, substance abuse, and cultural sensitivity.

In addition, court administrators should develop a full-time professional fundraising and grant administration office. Family law does not have the access to government funding in the way that criminal justice does. Other sources must be developed with links to the local business community and private foundations. This department would be responsible for locating potential funding sources, writing grant proposals, and working with community service organizations on collaborative funding strategies to maximize and reduce competition

for resources. Moreover, current funding sources are categorical and have very specific subject-matter or financial eligibility limitations. The grant administration service would be responsible for budget management, reporting, and accounting and billing of grant-funded programs for the family community court.

Technology and evaluation. A family community court should vigorously pursue the most advanced technology possible. The jobs of family court coordinator, investigator, assessment counselor, and case manager would all be greatly enhanced by available technology. Being able to “bundle” information related to a case in the manner developed at the Manhattan Community Court would be invaluable. Better courtroom automation for the production of minute orders and orders after hearings would be of enormous benefit to both the court and litigants. Automated self-help programs that assist pro se litigants with completion of forms would help increase the quality of pro se pleadings. Automated referral systems that would allow a litigant to access a community provider directly from the courthouse after the first hearing would be an extremely useful compliance assistance tool.

Evaluation design for court-based programs has proved problematic mainly because of problems of data collection at the courts. In part, and especially for family law, this may result from the sheer volume of cases entering the court at any given time. Certainly the more rational organization of cases in a unified model would be helpful, but appropriate automated data collection methods are an integral component of program evaluation. It would be expected that eventual evaluation of a program that is structured around therapeutic case management tracking would include variables from both litigation and clinical efficacy models.

CONCLUSION

One of the factors that distinguishes the proposed family court model from the Midtown Manhattan Community Court is that the social and therapeutic services are not provided by the court, or even at the courthouse, but entirely by the community. The proposed family community court and community service providers would collaborate closely in the attempt to match effective therapeutic court orders to responsible community services. The court operates not as a social service provider, but as a portal through which litigants can link up with high-quality services and more effectively benefit from the court's orders. It is true that if the court had the facilities available to house full-time community service liaisons, the need for calendaring clusters according to differential case management tracking would be lessened from a

docket-control standpoint. However, from a therapeutic viewpoint, this may not be helpful. One of the therapeutic elements of the drug treatment court is the experience litigants gain from seeing others in the courtroom struggling with similar problems and being able to view both successes and failures. The successful effect of the group dynamic should not be underestimated. Certainly, many families who come to court have multiple problems. A domestic violence case may include substance abuse problems. Cases involving any kind of family violence tend to be more highly contentious. It is not realistic from a therapeutic perspective, however, to expect that all the problems of any family can be addressed at the same time. The assessment counselor's job is to evaluate which type of intervention and case tracking would be most helpful initially, and then make recommendations to the judge. Further assessments will be made by the case managers in collaboration with community providers. Families may move among the various tracks or altogether out of the differential case management tracking system.

It is hoped that a family community court would have beneficial effects not simply for the litigants, but for the judge and other court staff as well. If the court is successful in assisting litigants in solving problems, job satisfaction would be expected to increase.¹³⁸ Judges suffer from lack of feedback, caseload volume, and lack of control over what cases they get. They frequently express dismay at finding that, owing to large caseloads, they have to “process” people because they have so little time to listen.¹³⁹ Most family judicial officers work with large calendars containing a mix of issues. They have little control over what cases are scheduled in a given morning and can rarely predict what their days will be like. It is impossible to tell how long the matters may take, whether a short calendar will mean a light day or will become a nightmare because of one or two problem cases, or whether a large calendar will be difficult or actually light because the parties do not appear. Rational workload assignments, familiarity with cases and issues, case clustering, and an organized structure of reviews would all help to alleviate some of these problems.

As noted earlier, the number of children and family cases requiring court hearings continues to increase, as does the complexity of the issues. In the majority of cases, these hearings are conducted on short-cause motion or show-cause calendars rather than in formal trials or evidentiary hearings. This means that the true extent of contested family disputes cannot be accurately measured by counting how many cases require disposition by a formal trial. Until the volume of short-cause motion/show cause calendars is accurately measured, the real amount of family law litigation will remain anecdotal. Still, there is

absolutely no indication that this trend of growth will slow within the foreseeable future. Even with the implementation of mandatory mediation and other alternative dispute resolution services, court caseloads have continued to increase. Both criminal and family courts are being forced to respond to the demands placed on them by ongoing societal changes over which they basically have no control. Communities and courts are being affected by the same social conditions and have common interests in a system of rational jurisprudence. The growing movement of community and court collaborative initiatives in both criminal and family justice is a natural and rational development for jurisprudence in the new century.

NOTES

1. Interest in court and community collaboration is also driven by ongoing concern about the apparent low levels of public trust and confidence in the judiciary. Recent surveys report that only 22 to 48 percent of the public have a high confidence level in the judicial system. Surveys of court personnel reported lack of public trust as one of the five most pressing problems in their courts. See DAVID ROTTMAN ET AL., A GUIDE TO COURT AND COMMUNITY COLLABORATION, at viii (National Ctr. for State Courts 1998); see also Veronica S. McBeth, *Judicial Outreach Initiatives*, 62 ALB. L. REV. 1379 (1999).
2. Examples are drug and alcohol abuse, mental health problems, housing, health care, unemployment, and resultant recidivism.
3. Community-oriented policing seeks to form closer attachments between police and community members by focusing on strengths and goodwill rather than fear and punishment, recognizing the broader context of neighborhood crime, and working together to promote peace and solve problems. See Wesley G. Skogan, *The Community's Role in Community Policing*, NAT'L INST. JUST. J. 34 (Aug. 1996).
4. Community prosecution is a response to grassroots public safety demands in which prosecutors are assigned to specific neighborhoods to work closely with citizens and police. See Barbara Boland, *What Is Community Prosecution?*, NAT'L INST. JUST. J. 40 (Aug. 1996).
5. Community defense deploys public defenders in neighborhoods for the purpose of solving problems in the community while providing high-quality representation. See Christopher Stone, *Community Defense and the Challenge of Community Justice*, NAT'L INST. JUST. J. 45 (Aug. 1996).
6. "Community corrections" refers more to an offender living outside a correctional facility than it does to any collaboration with the community. See Todd R. Clear, *Towards a Corrections of "Place": The Challenge of "Community" in Corrections*, NAT'L INST. JUST. J. 56 (Aug. 1996).
7. Raymond Shonholtz, *Neighborhood Justice Systems—Work, Structure, and Guiding Principles*, 1 MEDIATION Q. 30 (Sept. 1984) (giving the example of the San Francisco community boards).
8. David B. Rottman, *Community Courts: Prospects and Limits*, NAT'L INST. JUST. J. 60 (Aug. 1996); Marlene A. Young, *Restorative Community Justice in the United States: A New Paradigm*, 6 INT'L REV. VICTIMOLOGY 277 (1999).
9. See Community Justice Exchange Web site, www.communityjustice.org, at "Best Practices," "Community Court Principles" (visited Nov. 3, 2000).
10. For example, St. Louis, Missouri (pop. 400,000), and Hartford, Connecticut (pop. 125,000), have citywide community courts. *Id.* at "Best Practices," "National Scene."
11. Todd R. Clear, *Societal Responses to the President's Crime Commission: A Thirty-Year Retrospective*, in THE CHALLENGE OF CRIME IN A FREE SOCIETY: LOOKING BACK LOOKING FORWARD 148 (U.S. Dep't of Justice 1998) (citing Barbara Boland, *How Portland Does It* (1996) (unpublished report to the National Inst. of Justice)).
12. Hempstead, New York, Indianapolis, Indiana, and Portland, Oregon, are examples of cities that are attempting to address some civil matters using a community court model.
13. ROTTMAN ET AL., *supra* note 1, at 4 (citing ROSCOE POUND, CRIMINAL JUSTICE IN AMERICA 13–15 (Henry Holt & Co. 1930), *quoted in* FRANK TANNENBAUM, CRIME AND THE COMMUNITY 30 (Ginn & Co. 1938)).
14. *Id.*
15. Charles F. Wellford, *Changing Nature of Criminal Justice System Responses and Its Professions*, in THE CHALLENGE OF CRIME IN A FREE SOCIETY: LOOKING BACK LOOKING FORWARD, *supra* note 11, at 63.
16. Clear, *supra* note 11, at 133.
17. In 1967, President Lyndon Johnson convened the President's Commission on Law Enforcement and the Administration of Justice. Professor Clear cites four main themes articulated at the 1967 President's Commission: (1) the problem of crime results from inadequate social institutions and lack of economic opportunity; (2) repeat offending results from the lack of integration into socially supportive structures such as jobs, family, and housing; (3) criminal justice can best promote public safety by improving services to offenders and coordinating with

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- social service agencies; (4) offender adjustment is best effected by community-based agencies, and prison should be a last resort. *Id.* at 135.
18. *Id.* at 133.
19. *Id.*
20. *Id.*
21. *Id.* (citing WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (University of Chicago Press 1987)).
22. Relative poverty is a social problem that contributes greatly to crime. *Id.* (citing JOHN BRAITHWAITE, *INEQUALITY, CRIME, AND PUBLIC POLICY* (Routledge & Kegan Paul 1979)).
23. *Id.* at 134.
24. *Id.*
25. *Id.*
26. This more individualistic focus on crime as the result of individual sloth, self-indulgence, greed, or other personal moral failings was supported by reaction to political events of the sixties and by the research concluding that rehabilitation does not work to reduce criminal behavior. *See id.* at 138, 139–40 (discussing Robert Martinson et al., *What Works? Questions and Answers About Prison Reform, in REHABILITATION, RECIDIVISM, AND RESEARCH* (National Council on Crime & Delinquency 1976)).
27. *Id.* at 142.
28. *Id.* at 144.
29. *See* ROTTMAN ET AL., *supra* note 1, at 6.
30. *Id.*
31. For detailed reports on the operations and evaluations of the Midtown Community Court, see DAVID ANDERSON, *IN NEW YORK CITY, A COMMUNITY COURT AND A NEW LEGAL CULTURE* 10 (National Inst. of Justice 1996); ROTTMAN ET AL., *supra* note 1, at 97; MICHELLE SVIRIDOFF ET AL., *DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT* (National Inst. of Justice 1997); Community Justice Exchange Web site, *supra* note 9, at “Best Practices,” “Project Profiles,” “Midtown Community Court.”
32. *See* ANDERSON, *supra* note 31, at 4.
33. Quality-of-life crimes include prostitution, shoplifting, minor drug possession, turnstile jumping, and disorderly conduct.
34. The Fund for the City of New York is a nonprofit organization.
35. *See* SVIRIDOFF ET AL., *supra* note 31, at 2.
36. See the Community Justice Exchange Web site, www.communityjustice.org/walkthru/html/walkthrintro.html, for a detailed “walkthrough” of the Midtown Community Court.
37. See the Community Justice Exchange Web site, *supra* note 9, at “Best Practices,” “Project Profiles,” “Red Hook Community Justice Center,” for a description of the Red Hook Justice Center.
38. E-mail communication with Courtney Bryan, Associate, Technical Assistance, Center for Court Innovation (June 6, 2000).
39. *See* SVIRIDOFF ET AL., *supra* note 31, at 4. It should be noted, however, that serious concerns about confidentiality remain but are beyond the scope of this article.
40. *Id.* at 1.
41. *See* ANDERSON, *supra* note 31, at 10.
42. *See* SVIRIDOFF ET AL., *supra* note 31, at 4.
43. *Id.* at 5.
44. *See* ANDERSON, *supra* note 31, at 10.
45. *See* SVIRIDOFF ET AL., *supra* note 31, at 6.
46. *See* ANDERSON, *supra* note 31, at 2.
47. *Id.* at 11.
48. *See* SVIRIDOFF ET AL., *supra* note 31, at 9.
49. *See* ANDERSON, *supra* note 31, at 11.
50. *See* SVIRIDOFF ET AL., *supra* note 31, at 1.
51. See the Community Justice Exchange Web site, *supra* note 9, at “Best Practices,” “National Scene,” “Hartford, Connecticut,” for a description of the Hartford Community Court.
52. *Id.*
53. *Id.*
54. Barbara Zebrowski, *Social Services*, 1 HARTFORD COMMUNITY CT. NEWSL. 2 (Dec. 1998).
55. *Id.*
56. *Id.*
57. Barbara Sarkis, *Hartford Area Mediation Program*, 1 HARTFORD COMMUNITY CT. NEWSL. 2 (Dec. 1998).
58. *Id.*
59. *See* David B. Rottman & Pamela Casey, *A Response to Scheff: Don't Write-Off the Courts*, 67 REVISTA JURIDICA UNIVERSIDAD DE PUERTO RICO 653 (1998) (describing this and four other community and court collaborative projects).

60. Dispositions often include counseling, community service, restitution, school attendance, school grades, and curfews. *See id.* at 655.
61. The court routinely monitors compliance with the requirement. *Id.*
62. See the Community Justice Exchange Web site, *supra* note 9, at “Best Practices,” “National Scene,” “Wichita, Kansas,” for a description of the Wichita Neighborhood Environmental Courts.
63. *Id.*
64. The Comprehensive Communities grant program is an initiative funded by the United States Department of Justice.
65. *See* Community Justice Exchange Web site, *supra* note 9, at “Best Practices,” “National Scene,” “Wichita Kansas.”
66. ROTTMAN ET AL., *supra* note 1, at 6.
67. Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 479 (1998); *see also* Robert W. Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*, 44 JUV. & FAM. CT. J. 7 (1993).
68. Babb, *supra* note 67, at 480.
69. Clear, *supra* note 11, at 133.
70. Gary B. Melton, *Children, Families, and the Courts in the Twenty-First Century*, 66 S. CAL. L. REV. 1995 (1993).
71. *Id.*
72. Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Family Law Courts*, 32 FAM. L.Q. 6 (Spring 1998).
73. Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Approach*, 72 IND. L.J. 776 (Summer 1997).
74. Jona Goldschmidt, *How are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13–14 (1998).
75. *Id.*
76. Melton, *supra* note 70, at 1999.
77. *Id.*
78. *Id.*
79. JUDICIAL COUNCIL OF CALIFORNIA, CALIFORNIA’S CHILD SUPPORT COMMISSIONER SYSTEM: AN EVALUATION OF THE FIRST TWO YEARS OF THE PROGRAM 43 (May 2000).
80. Melton, *supra* note 70, at 1995.
81. *Id.*
82. *See* Clear, *supra* note 11, at 133 (citing WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (University of Chicago Press 1987)).
83. Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, 33 FAM. L.Q. 618 (Fall 1999).
84. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 79, at 49.
85. *See* Frances L. Harrison et al., *California’s Family Law Facilitator Program: A New Paradigm for the Courts*, 2 J. CENTER FOR FAM. CHILDREN & CTS. 61 (2000).
86. Melton, *supra* note 70, at 2002.
87. *Id.* at 1996.
88. *Id.* at 2013.
89. *Id.*
90. *Id.*
91. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 79, at 46.
92. Pearson, *supra* note 83, at 618–20.
93. *Id.* at 619.
94. *Id.*
95. Melton, *supra* note 70, at 2005.
96. *Id.*
97. Family Law Facilitator, Superior Court of California, County of Alameda, Family Law Calendar Caseload Statistics (1999) (unpublished document on file with Alameda County Superior Court).
98. Pearson, *supra* note 83, at 635.
99. Wellford, *supra* note 15, at 63.
100. Barbara A. Babb, *America’s Family Law Adjudicatory Systems*, 32 FAM. L.Q. 37 (Spring 1998); Babb, *supra* note 67, at 482; Jeffrey A. Kuhn, *A Seven-Year Lesson on Unified Family Law Courts: What We Have Learned Since the 1990 National Family Law Symposium*, 32 FAM. L.Q. 67, 75 (Spring 1998); Melton, *supra* note 70, at 2006; Ross, *supra* note 72, at 5.
101. Deborah Chase & Peggy Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 CTS. REV. 13 (Spring 2000).
102. Hon. Donna M. Petre, *Unified Family Court: A California Proposal Revisited*, 1 J. CENTER FOR CHILDREN & CTS. 161 (1999).
103. Babb, *supra* note 73, at 781–82.
104. *Id.* at 782.

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105. Melton, *supra* note 70, at 1995.
106. Pearson, *supra* note 83, at 621.
107. Civil litigation can be described in this context as disputes involving nominal amounts.
108. Abstracts of research addressing civil community courts from that period in the National Criminal Justice Reference Service Abstracts Database include: Bruce E. Barnes & Peter S. Adler, *Mediation and Lawyers, The Pacific Way: A View From Hawaii*, 18 HAW. BAR J. 37–52 (1983) (describing Hawaii's neighborhood justice centers); Theodore L. Becker, *Conflict and Paradox in the New American Mediation Movement—Status Quo and Social Transformation*, 1986 MO. J. DISP. RESOL. 109–29 (expressing concern that mediation itself is becoming formalized); Robert Beresford & Jill A. Cooper, *Neighborhood Courts for Neighborhood Suits*, 61 JUDICATURE 185–90 (Oct. 1977) (describing informal neighborhood program for the resolution of small claims matters in San Jose, California); Joseph W. Cotchett, *Community Courts: A Viable Concept*, 14 TRIAL 45–47 (Apr. 1978) (proposing that small claims matters be moved into neighborhoods and adjudicated by lay judges); John C. Cratsley, *Community Courts: Offering Alternative Dispute Resolution Within the Judicial System*, 3 VT. L. REV. 1–69 (1978) (discussing alternatives to the adversary system at the neighborhood level); Richard Hofrichter, *Justice Centers Raise Basic Questions*, 2 NEW DIRECTIONS 6 (Nov.–Dec. 1977) (discussing the trend toward informal dispute resolution); Lance H. Selva & Robert M. Bohm, *Critical Examination of the Informalism Experiment in the Administration of Justice*, CRIME & SOC. JUST. 43–57 (Issue No. 29, 1987) (discussing informalism as a product of a fiscal crisis of the state); Shonholtz, *supra* note 7, at 30; Daniel McGillis, U.S. Dep't of Justice, *Neighborhood Justice Centers* (1978) (unpublished paper on file with the U.S. Dep't of Justice) (advocating the use of informal neighborhood justice centers as an alternative to the adversary system); Raymond Shonholtz, *Community Board Program, Ethics and Values of Community Boards: Developing Concept Tools for the Work of Community Members* (1981) (unpublished paper on file with the U.S. Dep't of Justice) (describing how community boards go about resolving neighborhood disputes).
109. See Barbara Babb, *Symposium: Substance Abuse, Families and the Courts: Legal and Public Health Challenges*, 3 J. HEALTH CARE L. & POL'Y 1 (1999), in which the author cites a Maryland study that identified impediments to family justice and listed the following as the most pressing concerns: (1) the resolution process is often time-consuming, expensive, and cumbersome, with some aspects of the dispute being adjudicated more than once; (2) proper attention is not given to child-related issues, which are being allowed to fester as part of other aspects of a family law dispute; (3) there is inadequate systemic resort to nonjudicial resolution techniques (alternative dispute resolution or ADR) that might provide better, quicker, cheaper, and less acrimonious solutions to many of these kinds of cases; (4) there is inadequate coordination and consolidation of litigation involving the same family; a case involving the same family may be dealt with by different judges, or masters, or even different courts—thus inhibiting a rational, coordinated, stable approach to both the litigation and the problems it has spawned; (5) in some instances, judges sitting on family law cases display a lack of interest, a lack of appropriate temperament, or a lack of understanding with respect to these cases; and (6) the courts are not giving proper attention to the special needs of poor people, who often cannot afford representation by counsel and need, or desire, to proceed pro se.
110. Babb, *supra* note 100, at 37; Babb, *supra* note 67, at 482; Kuhn, *supra* note 100, at 69; Melton, *supra* note 70, at 2006; Ross, *supra* note 72, at 5.
111. Unified family court judges must deal with legal, emotional, and social issues of the family.
112. Pearson, *supra* note 83, at 629.
113. *Id.* at 631.
114. CAROL R. FLANGO ET AL., *HOW ARE COURTS COORDINATING FAMILY CASES?* 60–62 (National Ctr. for State Courts 1999).
115. *Id.*
116. *Id.*
117. *Id.* at 63–64.
118. *Id.* at 63.
119. *Id.*
120. Babb, *supra* note 109, at 18.
121. Therapeutic jurisprudence is the study of the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or antitherapeutic consequences for individuals involved in the legal process. See David Wexler & Bruce Winick, *Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research*, 45 U. MIAMI L. REV. 979 (1991); see also Peggy Hora & William Schma, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime*, 74 NOTRE DAME L. REV. 439 (1999) (identifying therapeutic jurisprudence as the underpinning of the rapidly growing drug treatment court movement).

122. Babb, *supra* note 109, at 20.

123. *Id.* at 22.

124. *Id.* at 23.

125. *Id.* at 34.

126. The Hayward Domestic Violence Court was initiated in 1999 by co-author Judge Barbara J. Miller. She and co-author Deborah J. Chase worked together to implement this model of a civil domestic violence court, which is held one morning per week.

127. The other courts are in Oakland, Berkeley, Pleasanton, Fremont, and Alameda.

128. *See* CAL. FAM. CODE §§ 3160–3186 (West 1994 & Supp. 2000), setting out California's mandatory child custody mediation standards, and in particular CAL. FAM. CODE § 3183 (West 1994 & Supp. 2000), regarding recommendations to the court.

129. The California Work Opportunity and Responsibility to Kids Act, CAL. WELF. & INST. CODE §§ 11200–11526.5 (West 1991 & Supp. 2000).

130. *See* Babb, *supra* note 73, at 775 (citing Theodore M. Benditt, *Legal Realism*, in *LAW AS RULE AND PRINCIPLE* 1–21 (Stanford University Press 1978), *reprinted in* DALE A. NANCE, *LAW AND JUSTICE: CASES AND READINGS ON THE AMERICAN LEGAL SYSTEM* 69 (Carolina Academic Press 1994)).

131. *Id.* (citing Gary Melton & Brian L. Wilcox, *Changes in Family Law and Family Life: Challenges for Psychology*, 44 *AM. PSYCHOLOGIST* 1214 (1989)).

132. The cases heard in a unified family community court would include divorce, legal separation, nullity, establishment of parental relationship, child support enforcement, probate, juvenile dependency and delinquency, civil and criminal family violence, emancipation, and adoption.

133. *See generally* Wexler & Winick, *supra* note 121; Hora & Schma, *supra* note 121.

134. Much of the credit for the ideas set out herein must go to a collaborative effort by participants at two Community and Court Collaborative Roundtables, including many of Alameda County's community service providers in the areas of substance abuse treatment, batterers' treatment, domestic violence advocacy, parent education, supervised visitation, community mental health, and pre-trial services who met with judges, court administrators, and other government personnel working in the areas of probation, law enforcement, dependency mediation, drug court services, public health, probate investigation, and family court services, as well as family law facilitators and victim-witness assistance providers. Additional input

came from the members of the Alameda County Family Violence Council, a court-sponsored Community Education Forum, and community meetings organized by the Alameda County Superior Court's Community Focused Strategic Planning Committee.

135. National Council of Juvenile & Family Court Judges, *Report From Conference on Assessment of Judicial Workloads in Family and Juvenile Courts*, TECHNICAL ASSISTANCE BULL. (July 1999).

136. For an example of a limited pro se assistance program, see the Family Law Facilitator Act, CAL. FAM. CODE §§ 10000–10015 (West Supp. 2000).

137. *See* CAL. FAM. CODE § 10013

138. Chase & Hora, *supra* note 101, at 18.

139. Issiah M. Zimmerman, *Stress: What It Does to Judges and How It Can Be Lessened*, 20 *JUDGES' J.* 4 (1981).

California's Family Law Facilitator Program

A New Paradigm for the Courts

During the past two decades, the growing number of self-represented litigants, especially in family law, has placed an increasingly heavy burden on courts throughout the country. Between 1980 and 1985, self-representation in divorce cases almost doubled, from 24 percent to 47 percent of litigants.¹ By 1995, approximately 65 percent of California divorces² were brought by pro se³ litigants.⁴ Recent data from California suggest that this number is now approaching 75 percent.⁵ The reason for this increase is quite simple: The litigants cannot afford to hire attorneys.⁶ The solution, however, is not so simple. No-cost or very low cost, traditional, full legal representation has been available only to a limited number of poverty-level litigants through attorney pro bono services, legal services programs, and other public-interest providers. Because the demand for such legal representation far outstrips the supply,⁷ a majority of litigants in family law matters has been denied meaningful access to the courts.

The most recent comprehensive review of the status of legal services for low-income persons was presented at a December 1998 conference⁸ hosted by Fordham University School of Law. In a report on Maryland's successful limited legal assistance program, in which local law student volunteers supervised by knowledgeable attorneys provided legal services to low-income litigants, Professor Michael Millemann—a conference participant—and his co-authors identify “[r]igid adherence to the full-service representational model” as “a source of the access-to-justice problem.”⁹ Accepting that the traditional model is the correct one for many matters, they conclude that “many times . . . the lawyer’s imposition of the full-service model on clients who do not need it and cannot afford it legally disenfranchise[s] them. . . .”¹⁰ The usual alternatives are unassisted self-representation or default and abandonment of rights.¹¹

The California family law facilitator program departs from traditional legal services assistance models to create a new paradigm that shows great promise. The program offers large numbers of self-represented litigants quality (albeit limited) legal assistance in family law matters. The success of this program demonstrates the need to “think outside the box” to find better solutions in this arena. Critical to the success of the program are its legislative underpinnings.

In an attempt to alleviate California’s burgeoning pro se problem, the 1996 California Legislature passed the Family Law Facilitator Act (“the act”),¹² mandating the establishment of an Office of the Family Law Facilitator in every California county.¹³ Since that time, the act has been amended and rules added to further define the office.

As creatures of statute, the family law facilitator programs differ greatly from traditional legal services programs and avoid many of the common roadblocks encountered by such programs:

- The Office of the Family Law Facilitator is an arm of the superior court;¹⁴ facilitators are neutral and impartial persons assisting the court in its duty to provide due process of law and equal access to the court for all members of the community.



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As courts struggle to serve increasing numbers of pro se family law litigants, California has instituted a statewide court-based program of family law facilitators. Facilitators are experienced family law attorneys employed by the courts to bring direct assistance to pro se individuals in cases involving child and spousal support.

This article sets out the history of California’s Family Law Facilitator Act, describing

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two legislatively mandated pilot projects as well as other local precursor programs. In addition, it examines current facilitator service models and presents data on customer demographics, volume, and service delivery. The authors also discuss ethical and practical issues created by this new role for attorneys in the court, including how best to deliver services to pro se litigants, how to avoid the appearance of advocacy, and how to provide information and education while maintaining the independence and impartiality of the court. ■

- The Office of the Family Law Facilitator provides services to both parties or, if there is a joinder, all parties to an action.¹⁵
- The family law facilitator does not represent any party.¹⁶
- The act provides that “[n]o attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator.”¹⁷
- The emphasis of the family law facilitator programs is on providing legal information and education, not legal advice and strategy, to litigants.¹⁸
- Facilitator services are available to all self-represented litigants; the act does not require an income qualification test.¹⁹ Although many of the litigants served would qualify for traditional poverty legal services, many others have incomes above poverty guidelines but fall into a category that can best be described as “the working poor.”²⁰

This article presents a description of the California facilitator programs. It shows how the facilitator programs provide an alternative perspective and focus that resolve many of the concerns raised by traditional legal services programs and suggests a plan for future development.

HISTORY

In their search for a solution to the pro se issue, California court administrators, judges, legal services groups, and legislators viewed with interest a project undertaken by the Maricopa County, Arizona, superior court in 1995. Small local programs also began to evolve throughout California during the 1990s.

THE PILOT PROJECTS

The development of California’s statewide program began in 1994 with two statutory pilot projects in Santa Clara and San Mateo Counties.²¹

In San Mateo County, the court was given authority to appoint a family law evaluator to assist with hearings on motions for temporary child support, spousal support, and health insurance in cases where at least one of the parties was not represented by an attorney.²² The court was to designate the evaluator’s duties by local rule.²³ Certain duties were suggested by the statute; however, the court’s assignment of duties was limited only by the subject matter and type of hearing to which they applied.²⁴ Although the statute provided that the evaluator would “be available to assist parties,” the duties suggested by the statute made it quite clear that the primary focus of the project was on providing assistance to the court.²⁵ Because the facilitator would review the paperwork and prepare support schedules, stipulations, and formal orders, however, there were also anticipated benefits for litigants: the expedited proceedings meant less time off work and more efficient dispositions.²⁶

In San Mateo County, it rapidly became apparent that the scope of the project had been defined too narrowly. For a party to obtain an order for child and spousal support, he or she must often file an underlying paternity, dissolution of marriage, legal separation, nullity, or domestic violence action and initial requests for child custody and visitation.²⁷ Furthermore, the office quickly became an all-purpose clearinghouse for parties who had been referred to the courthouse by a variety of sources, ranging from child protective services, law enforcement, domestic violence support groups, and the family support division of the district

attorney's office to private attorneys, family court services, schools, bar associations, legal aid, and other community agencies.²⁸

The San Mateo family law evaluator pilot project has become the Office of the Family Law Facilitator. It currently provides services to self-represented individuals on a drop-in basis in two court locations. The facilitator's office handles child support matters and related issues such as custody and visitation and domestic violence restraining orders. The office also now handles underlying actions such as establishment of paternity, dissolution of marriage, legal separation, and annulment. Spanish-language service is available.

The facilitator's office is staffed by the facilitator, an assistant facilitator attorney, and a research attorney. Self-help information sheets and Judicial Council forms are available at the centers; recorded information is available by telephone. The facilitator's office provides referrals to attorneys, family law alternative dispute resolution services, and other community-based services.²⁹

The Assembly defined the Santa Clara project more broadly. The project applied to all hearings for temporary or permanent orders, and the subject matter was expanded to include custody and visitation.³⁰ The statute provided for the hiring of an "attorney-mediator" to "assist the court in resolving child and spousal support disputes, to develop community outreach programs, and to undertake other duties as assigned by the court."³¹ As with the San Mateo project, the Santa Clara project was designed to provide assistance to the court; there was, however, a new emphasis on attempting extrajudicial resolution of disputes.³² Again, the statute suggested certain duties,³³ and the superior court was given the power to designate the duties of the attorney-mediator by local rule.³⁴

Santa Clara County launched its project in February 1994 with \$80,000 in state seed funding. The program was headed by the attorney-mediator, required by statute to be a licensed attorney with substantial experience in mediation and family law.³⁵ A qualified attorney was hired part-time on a contract basis to develop the project. The attorney-mediator began assisting the court with child support disputes between parents, helping parties with paperwork, and providing procedural information in actions under the Family Law Act,³⁶ the Uniform Parentage Act,³⁷ and the Domestic Violence Prevention Act.³⁸

The Santa Clara project found that the need for services had been greatly underestimated. Indeed, the need was so great that the attorney began donating almost half her time. In 1995, the court supplemented the funds with an additional \$19,000. By fiscal year 1995–1996, the superior court's judicial officers had persuaded the county board of supervisors that the project merited a full-time

contract financed with local funds. The project had become indispensable to the Santa Clara family court, which was striving to meet increasing demand for services. At that time, pro se litigants accounted for more than 65 percent of initial filings.³⁹

The project became known as the Family Court Clinic. The program's initial priority was to mediate child support disputes and achieve resolution without court hearings. The attorney prepared child support schedules based on statutory guidelines and drafted stipulations when agreement was reached. When agreement was not reached, the attorney advised the court regarding the disputed issues that were ready to proceed. The parties returned to the courtroom armed with their support calculations and factual information the court would need to make a decision. The attorney-mediator, assisted by volunteer law students, paralegals, and family law attorneys, educated the parties and assisted them with forms for court hearings to obtain child support, spousal support, health insurance, domestic violence restraining orders, paternity, and custody and visitation matters.

The Family Court Clinic is now the Family Law Facilitator's Office for Santa Clara County. It currently offers the same range of services it did before passage of the Family Law Facilitator Act. The act allocated Title IV-D⁴⁰ funds to the court for facilitator services regarding child support, spousal support, and health insurance only. Consequently, the program offered only the statutorily specified services until the Santa Clara County Superior Court provided additional funding for assistance with nonsupport issues such as Domestic Violence Prevention Act restraining orders and custody/visitation orders. It has also added two attorneys and a domestic violence legal assistant to the staff. Volunteers from the local bar and law student interns provide additional assistance.

Currently, the Santa Clara County facilitator's program operates five days a week. Staff members or interpreters provide foreign language assistance (Spanish, Vietnamese, and Farsi). Litigants⁴¹ may drop in from 8:00 to 9:00 A.M. or at 1:30 P.M., Monday through Thursday, to receive same-day assistance with forms, to obtain procedural information, or to make an appointment. Fridays are reserved for administrative duties.

Litigants may also pick up informational handouts and refer to sample completed forms posted outside the facilitator's office. Additional help is available from the Family Court Web site and an automated telephone information line. Judicial officers refer individuals to the program directly from courtrooms for a variety of services, including mediation of support, drafting of written stipulations, and preparation of written orders after hearing.⁴²

OTHER PRECURSOR PROGRAMS

Other programs designed to offer assistance to self-represented litigants were developed by legal assistance groups. Most of these programs followed the traditional model of adversarial advocacy with resulting conflict-of-interest issues and selective representation of poverty-guideline clientele.

San Diego Volunteer Lawyer Program (SDVLP)

Also in 1994, a program to fund alternative dispute resolution (ADR) programs to serve self-represented litigants was established in the San Diego courts using money from filing fees.⁴³ The family law portion of the funds was awarded to the San Diego Volunteer Lawyer Program (SDVLP), a traditional low-income legal services organization then primarily designed for placing clients with pro bono counsel. Under the direction of a certified California Family Law Specialist,⁴⁴ the program opened in July 1994 with one family law attorney⁴⁵ and one paralegal plus a large, previously established network of volunteer attorneys.

As in the pilot program counties, it was quickly determined that there was overwhelming demand for a broad range of family law services. Paramount among these was access to the courts.⁴⁶ Whether an issue is to be litigated or resolved by alternative methods, an underlying action such as dissolution of marriage, legal separation, nullity, or paternity must be filed. Once filed, additional motions for custody and support are frequently required, especially if the other party refuses to cooperate or the party's whereabouts are unknown. Although California family law is essentially form-driven, those forms, and the procedures associated with them, can be complex.

At the request of the family law judges, the family law ADR grant was interpreted very broadly and was later amended to permit a wider range of services.⁴⁷ The SDVLP operated within a legal representation format, providing services only to one party to an action, and only to persons meeting the low-income test. This "representation," however, did not include court appearances by the attorneys.⁴⁸ Many litigants unable to obtain courthouse services from SDVLP viewed the selective representation as a violation of the court's impartiality.⁴⁹

With the assistance of many family law attorney volunteers, the SDVLP program operated from counter space in the court's business office until June 30, 1999. During Summer 1998, the facilitator program opened at Family Court. As the facilitator program grew, the SDVLP was able to focus more on mediation. At the time of this writing, the SDVLP operates a mediation program in conjunction with the San Diego Mediation Center. The program is located across from the court and handles

family law mediation cases referred by judges, facilitators, attorneys, community agencies, and other sources. Cases that present a conflict of interest to SDVLP or exceed the poverty guidelines are handled by the San Diego Mediation Center.

Alameda County Bar Association Volunteer Legal Services Corporation (VLSC)

One of the earliest of the precursor programs was the Alameda County Bar Association's Volunteer Legal Services Corporation. Like San Diego's program, this program was originally designed for case placement to pro bono counsel. Quickly realizing that it could serve more litigants in clinics, VLSC opened its first clinic in December 1983. By 1991, VLSC was serving approximately 800 clients per year; by 1996, the number had more than doubled.⁵⁰ VLSC currently provides four clinics per month for pro se litigants with dissolution-of-marriage cases, three clinics per month on child custody and visitation matters, four clinics per month for domestic violence assistance, and one general family law advice clinic per month. Clients remain pro se but receive assistance with paperwork and procedural information. VLSC also provides assistance to individuals in guardianship cases, foreclosure rescue, elder law, and consumer/debt counseling.

The office of the Alameda County facilitator now collaborates with VLSC to coordinate services. Since the implementation of the facilitator program, VLSC clinic numbers have diminished to some degree, which has given VLSC more time to devote to individual counseling and advice and to focus on issues not covered by the facilitator.⁵¹ Because Alameda County's facilitator's office is funded only for the child and spousal support services specified in section 10004 of the Family Code, it cannot assist individuals seeking domestic violence restraining orders without child support, individuals presenting only custody/visitation issues, individuals seeking only resolution of (or preparation of judgments involving) property issues, grandparents seeking visitation orders, or individuals needing help with guardianships.⁵² All such cases are referred to VLSC's pro se programs. In fact, VLSC conducts its domestic violence restraining order clinics in the office of the facilitator. On the other hand, VLSC refers to the facilitator all inquiries about Title IV-D child support and related issues as well as those individuals with support problems not eligible under the VLSC's income limitations.

Alameda County Family Law Financial Mediation Program

Another precursor program was the Alameda County Family Law Financial Mediation Program. This program

was primarily a mediation program rather than a pro se assistance program. The program was a collaboration of the family law judges, family court services, the Alameda County Family Law Association, and the University of San Francisco Law School. The program was designed to provide in-court mediation services on financial issues to pro se litigants, to assist both the court and litigants by providing procedural information and child support calculations, and to provide education and training to law student interns in both mediation and family law. An attorney-supervisor provided training and supervision in family law, and a family court services mediator provided training and supervision in mediation techniques. The court, the students, and the litigants were all stakeholders in this program, creating a symbiotic relationship that exists today in many facilitator programs.

The court already had clustered pro se matters for hearing on a specified day of the week, a calendaring technique that made the program possible. On those days, the mediator-supervisor, volunteer attorney-supervisor, and law student interns took cases assigned to the program by the judicial officer and attempted to mediate the financial issues related to support or temporary use of personal property. When agreements were reached, the interns prepared written agreements for signature. Interns also prepared written orders after hearing and provided procedural information.

The financial mediation program continued until October 1997, when the attorney-supervisor was appointed to the position of family law facilitator for the Alameda County Superior Court.

THE FAMILY LAW FACILITATOR PROGRAMS

The concept of on-site help at courthouses in Santa Clara County and San Mateo County shaped the Family Law Facilitator Act. In 1996, the California Legislature created a new statewide family law facilitator program to begin on July 1, 1997.⁵³ The stated legislative intent was to "make the services provided in the family law pilot projects in the Counties of Santa Clara and San Mateo available to unrepresented parties in the superior courts of all California counties."⁵⁴ In reality, the Family Law Facilitator Act mandated services only for establishing parentage and establishing, modifying, and enforcing child and spousal support.⁵⁵ Although the courts were authorized to designate additional duties for the facilitator,⁵⁶ another provision of the act placed a practical limitation on this power. It required the director of the state Department of Social Services to seek federal approval "to utilize funding under Title IV-D of the Social Security Act for the services pro-

vided pursuant to this division."⁵⁷ Title IV-D funding is available only for establishing or enforcing child support, for enforcing child support-related spousal support, and for orders for children's health insurance.⁵⁸ To date, the Legislature has provided funds only for the facilitator services mandated by Family Code section 10004. Any additional services provided by the Office of the Family Law Facilitator must be funded from the budgets of the individual courts.

The facilitator program operates in all of California's 58 counties. Although the enabling legislation told the facilitators what they were required to do⁵⁹ and what in addition they were permitted to do,⁶⁰ the facilitators were not told *how* they were to implement the statutes. September 1997 marked the first statewide AB 1058 conference of child support-enforcement district attorneys, child support commissioners, and facilitators. The attorneys who had established the pilot projects, together with one of the earliest facilitators,⁶¹ spoke on their experiences, held roundtable discussions, and distributed materials they had created for use in their programs. Each county's facilitator was then left to design a program to meet the needs of his or her own county.⁶² The design of programs in counties that had had pilot projects or other precursor programs was clearly influenced by each county's experience with its own earlier programs.

The facilitators were well qualified. The act requires California facilitators to be attorneys with experience in family law litigation and/or mediation.⁶³ On average, the facilitators have over 12 years' prior family law experience,⁶⁴ and six are Certified Family Law Specialists. Many of the facilitators have served as pro tem judges or commissioners, a number have taught family law-related subjects at California law schools, and others have taught at the college level. Two of the facilitators have taught family law topics for California judges' continuing education courses. Most of the facilitators have participated in pro bono or volunteer programs related to family law as well as other community service work.⁶⁵ Armed with materials and suggestions from the pilot projects and information about projects in other jurisdictions and the precursor programs, the facilitators opened their offices and began work on the courts' steadily increasing family law pro se problem.⁶⁶

Information from the pilot projects regarding the income and education levels of the litigants proved to be extremely valuable. Published studies of projects outside of California seemed to suggest that the majority of pro se divorce litigants were reasonably well educated. A 1991 study found that the most common educational level for self-represented litigants was one to three years of college.⁶⁷ An even earlier study found that 76 percent of self-represented litigants had

at least some college education.⁶⁸ A 1996 survey found the median household income of a pro se center's litigants to be between \$25,000 and \$40,000, and at least 60 percent to have had some college experience.⁶⁹

The experience of the pilot projects, as well as early pro bono efforts, showed facilitators that the need for pro se assistance in the lower income and education levels had been seriously underestimated in these studies. The 1991 study was limited to litigants whose divorce cases were completed during a particular four-month period.⁷⁰ No analysis was made of pro se litigants who were unable to access the system or unable to complete their divorces. The 1996 study was drawn from an exit survey of persons leaving the Maricopa County, Arizona, court's self-service center—a center providing assistance primarily through written materials and computer-driven kiosks.⁷¹ It is likely that the studies identified the population that was most able to use the provided services, not the population most in need of them. Written materials, educational classes, Web sites, kiosks, and the like are useful primarily to sophisticated, well-educated, and computer-literate litigants. Litigants with income slightly above the poverty level, often with marginal education and unable to afford attorney fees, usually found themselves with nowhere to turn for assistance.

In 1998 and 1999, all the facilitators statewide met three times a year for training and exchange of information and materials. These meetings and the exchange of ideas, information, and materials have proved to be exceptionally valuable. The facilitators also communicate with one another by telephone, e-mail, fax, and Internet bulletin board. The Administrative Office of the Courts regularly provides educational materials.

Also with the assistance of the Administrative Office of the Courts, the facilitators are working toward uniformity in policy and are attempting to identify and implement "best practices." Uniformity in method of delivery of services is less likely. By February 2000, the facilitators had tried many models for service delivery.⁷² Although the optimum service delivery model varied with the size of the county and with many other factors such as the education, literacy, sophistication, and emotional state of the recipient, all counties found that the most effective model required some one-on-one personal contact with the individual litigant.⁷³

Fortunately, California family law practice has characteristics that facilitate delivery of limited legal assistance to pro se litigants:

- California family law is form-driven. There are some 176 family law forms adopted or approved by the Judicial Council,⁷⁴ so it is rarely necessary to draft a traditional pleading. The forms, though sometimes compli-

cated and difficult to understand, make possible the assistance of large numbers of pro se litigants.⁷⁵

- A number of California family law courts "Reiflerize"⁷⁶ their hearings—that is, they receive evidence at hearings other than trial by sworn declaration. It is far easier to assist a litigant to organize his or her thoughts for a written declaration prepared on the spot than to help the litigant prepare for oral testimony to be given at a later time.⁷⁷
- Many counties accept forms that have been filled in with hand-printed as well as typewritten information.

THE ALAMEDA COUNTY MODEL

Alameda is a medium-sized county with a population of approximately 1,421,000.⁷⁸ The Alameda facilitator program is funded only for services mandated under Family Code section 10004; all services provided must, therefore, have some support component.

The Alameda County Superior Court appointed two family law facilitators to implement its pro se assistance program. These attorneys were both long-time family law practitioners in the county. One of the facilitators, a Certified Family Law Specialist,⁷⁹ had been the attorney-supervisor for the financial mediation program. The other had background in legal services and administration at the Alameda County Bar Association. The program the facilitators developed was therefore influenced by the service delivery experiences of both VLSC and the financial mediation program. The models employed by facilitators throughout the state have been frequently influenced by whatever pro se services were in existence locally prior to the implementation of the Family Law Facilitator Act.

Both of Alameda County's facilitators believed that pro se litigants need assistance at all phases of the legal process and did not want to limit services to the pleading stages. Furthermore, it was clear that the enormous need for such services would create a volume not amenable to a purely one-on-one assistance system. A three-pronged service delivery model was developed:

1. A help line that provides nonautomated live assistance over the telephone
2. Subject-matter workshops to provide assistance with paperwork
3. A courtroom assistance program

The Help Line

Telephone calls are answered four afternoons a week. The telephone contact serves two purposes. The first is to provide as much assistance as possible over the phone. Exam-

ples of such assistance are general information about the court, case status information, procedural information, and appropriate referrals. This is particularly useful to those who are employed during facilitator office hours, who have day-care problems, or have some other difficulty coming in to the office.

The second function of the help line is to do a preliminary triage of the needs of the litigant and schedule an appointment for additional services. The staff member begins an interview with the caller, asking the marital status of the litigant in relation to the other parent, the sex and ages of the children, and whether the litigant is currently represented by counsel. In the course of the conversation the interviewer also determines whether the district attorney (local child support agency) is involved in the case, asks what issues are of concern to the person, and locates the case in the court's automated registry of actions. The interviewer also identifies any other cases pending in the court, finds orders that may need to be modified, determines whether an initial filing is required, and inquires about cases in other venues.⁸⁰ If the person needs additional assistance, an appointment is made for participation in a facilitator workshop. If an issue requires immediate attention, it will be handled at a drop-in intake session. The help line is also a single point of contact for people to talk to a "real person" about their experiences at the court and gain appropriate perspective by learning about court procedures.

Subject-Matter Workshops

Workshops have been established to provide assistance with paperwork. These clinics are similar in many ways to those originated by VLSC. Workshops were implemented to help with

- Starting a divorce or legal separation
- Starting a private paternity case
- Making or responding to a motion for support in non-Title IV-D cases
- Responding to Title IV-D child support actions
- Drafting motions for relief in Title IV-D cases

There are approximately eight workshops per week, two of which are in Spanish. Workshops last between one and three hours and provide assistance with paperwork, legal education about relevant issues, and answers to specific questions posed by workshop participants. Workshops are limited to approximately 15 persons.

Crowding can occur when participants bring relatives or children with them. Such conditions detract from the learning environment the facilitator is trying to create, so

customers are asked not to bring children or others with them to workshops. Only about 60 percent of those with workshop appointments actually attend the workshop. Interestingly, the percentage of individuals failing to appear at the workshops approximates the percentage of pro se litigants who do not show up for their hearings in court.

One function of the workshop is to conduct a further analysis of the litigant's needs in order to determine what action is to be taken, what procedure is to be followed, and what forms are to be filed. Information given at the intake may not be complete, or the litigant may need a remedy entirely different from what he or she had thought.⁸¹ The workshops, while organized by case type, are broad enough to allow for appropriate flexibility once additional or different needs are ascertained. Individual help is available when the procedural problems are too complex for the workshop setting. The most common examples are multiple IV-D cases over numerous counties.

A portion of the workshop time is conducted classroom-style. The workshop leader explains each form, item by item, and discusses the meaning of each item with the participants. Individual questions are answered as they arise. In workshops designed to prepare papers for a motion, the facilitator works with the participants on the construction of their declarations. Toward the end of the workshop, the facilitator explains how to present the cases in court, what to expect on the day of the hearing, and what will be expected from the litigant. He or she also explains the process of the family law court as it is expected to affect the individual litigant. Some participants need more information about the function of the district attorney's office in the establishment and collection of child support orders, others about family court services, and still others just need information about what happens in court so they have a context in which to think about their matter. Not only do the workshops allow service to a larger number of individuals, but they also enable pro se litigants to obtain more legal education related to their cases than they would otherwise receive.

The facilitator's office experimented with additional classes on legal issues and court procedures, but they were poorly attended. Facilitators found that education was best combined with forms assistance. In addition, it was observed that many of the individuals attending the workshops were benefiting from the group process. Those with more difficulty reading, writing, or understanding may receive assistance from others in the workshop who are more at ease with the material. The participants benefit from the general question-and-answer sessions in the workshops.

A collateral benefit is that participants learn that they cannot expect a confidential relationship with the facilita-

tor because questions are asked in the group setting. They understand that their communications with the attorneys and staff are not privileged, that the facilitators do not represent them, and that the same services would be available to the opposing party.

The Courtroom Assistance Program

The courtroom assistance program has grown out of the financial mediation program. The facilitators provide courtroom assistance to pro se litigants when there are procedural problems such as failure of service or defects in pleadings. The facilitators also mediate support issues, explain guideline support and calculations, write stipulations and orders, and provide supportive human contact during what for many is a frightening experience.

The judicial officers refer the cases to the facilitator; participation with the facilitator is voluntary. If there are issues of domestic violence, the parties are seen separately. When the parties reach an agreement, the facilitator writes the stipulation and order. When no agreement is possible, the facilitator assists the parties in clarifying and narrowing their disputed issues for presentation in the courtroom and writes the court's orders once they are made. The facilitator's office may also review pro se litigants' documents for the court prior to hearing.

The courtroom has proved to be a particularly efficacious location for pro se assistance. Many of the questions answered by the facilitator would otherwise be posed to the judicial officer, who is trying to manage a busy docket. Furthermore, because both parties and the judicial officer are present, they can resolve many procedural problems that might be extremely difficult, or impossible, to solve outside the courtroom setting.

Currently the facilitator's office has two attorneys and four full-time legal assistants. Drop-in intake sessions are held four mornings per week in two court locations. Courtroom assistance services are provided five mornings per week at three court locations. Workshops are held four or five afternoons and one morning per week in two court locations. The help line is available four afternoons per week.

The facilitator's program also operates an internship program for law students and has recently implemented a work-study program. The students are from several local law schools and are recruited through the local Public-Interest Law Day. The students are provided with both didactic and practical education in family law and are supervised by the facilitators. Legal assistants and interns operate the help line under the supervision of the facilitators. Facilitators and/or staff operate the workshops with the assistance of law students. There is always a facilitator on-site during any workshop. Courtroom service is pro-

vided primarily by the facilitators. Interns and staff may assist in the courtrooms with appropriate supervision.

THE SAN DIEGO COUNTY MODEL

San Diego is a large county with a population of approximately 3 million.⁸² The San Diego County Superior Court has one of the larger and more comprehensive facilitator programs in the state. In addition to state funding for support-related issues, the program receives substantial funding from the court's budget so it can offer services in almost all types of family law matters. In return, the courts are experiencing more efficient case processing, a reduction of conflict between the litigant and the system, faster resolution of cases, and more streamlined court calendars, all of which make more judicial time available for complex cases.⁸³

The San Diego County facilitator's office now has seven attorneys, two legal assistants, and six court operations clerks who are full-time employees of the court. In addition, the office has three court-employed part-time student workers (undergraduates) and many unpaid law student interns and volunteer attorneys. The court also cooperates with local law schools in a work-study program.

The facilitator's office provides at least one full-time attorney and a full-time court operations clerk to each of four courthouses. The office cooperates with the Legal Aid Society under an Equal Access Fund Partnership Grant by providing a part-time attorney and a full-time clerk to a fifth court.⁸⁴ Another attorney, a Certified Family Law Specialist and lead facilitator for the county, is stationed in the central courthouse and performs administrative and supervisory functions. The lead facilitator also serves as a consultant and resource for the on-site facilitators and occasionally works with litigants to replace an attorney who is unexpectedly absent.

Service Procedure

At all court sites, facilitators serve the public on a first-come, first-served basis. Two sessions are held each day. The number of litigants assisted per session varies with the number of facilitator staff, volunteer attorneys, and law student interns available for the particular session. A supervising attorney is on-site at all times.

When signing in for a session, litigants sign a disclosure form acknowledging they have been informed that there is no attorney-client relationship with the facilitator's office, there is no attorney-client confidentiality, the facilitator will not represent the litigant in court, and the facilitator may assist both parties.⁸⁵ The disclosure also informs the litigant that some issues cannot be adequately addressed without the assistance of an attorney.⁸⁶ To assist the facilitator's staff in locating the correct court

files, the litigant also provides his or her name, the name of the opposing party, the names and birthdates of children of the relationship in question, and any known existing court case numbers.⁸⁷ Finally, the litigant gives a brief statement describing the assistance sought.

The facilitator staff then utilizes a kind of triage process. Cases in which the parties may be amenable to mediation are referred to the county-funded mediation project;⁸⁸ others not within the family court purview are referred to the appropriate court or public agency. Emergency domestic violence restraining order requests are given priority. Staff members explain that facilitators are unable to assist with property issues more complex than a division of automobiles or furniture; litigants with complex property cases are told why self-representation is a poor idea. Litigants wishing to begin a dissolution of marriage,⁸⁹ legal separation, or annulment are registered for a workshop. Those litigants who require more than the limited services provided by the facilitator are referred for legal representation by a traditional legal services program if they qualify; if the litigant can afford a private attorney, representation by a private attorney is recommended.⁹⁰

The experience of the facilitators confirms the need for the “diagnostic interviews” emphasized by commentators.⁹¹ The diagnostic interview enables the interviewing attorney to make an appropriate decision regarding the limited services to offer the litigant and for the litigant to make an informed decision about how to proceed.⁹² As Millemann notes, “[T]he interviewer must understand the whole body of family law and be good at eliciting facts, evaluating people, and probing for hidden issues.”⁹³

Initiating the Dissolution-of-Marriage Process

Because the procedure is the same regardless of variations in facts, workshops have proved successful for initiation of marriage dissolution actions and actions to establish parental relationship.

The San Diego facilitator's office holds two group workshops each week at the family law courthouse in downtown San Diego. Workshops are held in a large third-story room previously used as a lunchroom, courtroom, and lounge. Experience has shown that 10 participants is about the optimum class size for a three-hour workshop, and 15 is the maximum.⁹⁴

With the aid of an overhead projector and transparencies, the workshop leader explains each form item by item and answers questions. As a form is completed, the leader and a co-worker check each litigant's form for completeness and answer additional questions. After completion of the forms, the instructor gives detailed information on service of process. Workshops may be conducted by an

attorney or by a legal assistant. A supervising attorney is always available on site.

Information about the procedural course of the dissolution action and the necessity of obtaining a judgment of dissolution of marriage is also given during the workshop. Facilitators are finding that many pro se litigants, including those who have been assisted by an independent paralegal, have not understood that the filing of the petition and related papers only begins the process, that the marriage is not terminated until a judgment has been entered. Facilitators sometimes find a litigant has numerous marriages and actions to dissolve those marriages, none of which has been completed; what presents as one divorce may, in fact, require an annulment, plus annulment or dissolution of previous marriages.⁹⁵

The goal is for all workshop attendees to complete their paperwork, make copies, and file the action on the same day as the workshop. Litigants who are unable to complete the process by filing on that day are asked to return at a regular session to have their work checked and to review the information on service of process.⁹⁶

Motions

Another type of workshop run by the facilitators is designed to help litigants bring motions for court appearances. Motions,⁹⁷ such as those for requesting custody, visitation, or support orders, are far more dependent on the facts of the individual case than are petitions. Motions, especially postjudgment motions, usually require some individualized attention.

After the diagnostic interview is completed, the attorney may instruct a legal assistant or law-student intern regarding the appropriate procedures and forms for that litigant. The legal assistant or intern will, in turn, explain the procedures and “walk through” the forms with the litigant. Litigants are shown how to write a factual declaration, which will serve as evidence. From that point on, the litigants are assisted in a “modified workshop” setting. In Title IV-D cases, the assistance required to make a meaningful response is substantially more complex than in other types of cases and is likely to require preparation of brief points and authorities and possibly some research. At the Family Law Courthouse facility in downtown San Diego, most litigants are assisted at picnic bench-style carrels in the open lobby. Litigants fill out their forms and write their declarations at the carrels. Facilitator staff members, volunteer attorneys, and interns move from litigant to litigant, answering questions and checking paperwork. Litigants can go directly from the facilitator to the court business office to file their papers. When one litigant vacates a carrel, another is seated.

A clerk, intern, or paralegal will review the rules for service of the papers on the opposing party with the litigant. The litigant is given a highlighted proof-of-service form with a preprinted or attached list of the documents being served. The highlighted items must be completed after service by the person who served the papers (not the litigant).

After the litigant has filed the papers, the litigant returns for a staff member to check that the packet of conformed copies of the papers, including any blank forms that must be served, is ready for service on the opposing party. After the opposing party is served, the litigant brings the proof of service to the facilitator's office, where it is checked for completeness before being filed with the court. If the form is not complete, the litigant returns the form to the server to complete it. These procedures ensure that a motion prepared with facilitator assistance will generally reach the judge only when it is in a form that permits the judge to resolve the issues.

Completing the Process

At present, the completion of the dissolution process by default or setting for trial and entry of judgment is handled on an individual basis. The facilitators anticipate that these processes will soon be handled in a workshop setting.

CURRENT ISSUES FOR COURTS AND FACILITATORS

The family law facilitator program responds to conditions that have an increasing impact on the court as the number of pro se litigants grows.⁹⁸

- The need to provide pro se litigants with meaningful access to the courts
- The need to protect the court's ability to provide impartial justice and fairness
- The need for courts to reconnect with the communities they serve⁹⁹

The facilitator program represents a significant change in the role of the court vis-à-vis the litigants who seek its services. Courts have historically taken a passive role; for the first time, courts are now undertaking to provide direct assistance to parties in preparing their pleadings and educating them on their rights and remedies and the court's procedures.

As the number of litigants unable to obtain traditional, full legal representation increases, the duty of the courts to provide fairness and justice for all who come before them becomes more and more difficult to fulfill.¹⁰⁰ Most commentators agree that if "justice and fairness" is

not going to become "justice for those with lawyers" or "justice and fairness to the extent permitted by docket control,"¹⁰¹ court personnel must begin to take a more proactive role in assisting pro se litigants.¹⁰² When traditional rules obstruct the goals of justice and fairness, the rules, not the goals, must be changed.¹⁰³

Many commentators also agree that clerks should have an expanded role in providing assistance within the range of their expertise. Many support the idea that judges also must take an active role in ensuring impartiality, justice, and fairness by assisting unrepresented litigants¹⁰⁴ "on procedures to be followed, presentation of evidence, and questions of law."¹⁰⁵ Some recommend that the court call witnesses and conduct direct or cross-examination, examine the papers in the case, and talk to unrepresented parties to help them develop relevant facts and identify potential claims and defenses.¹⁰⁶ All these suggestions should be carefully considered.

The suggestions, however, have drawbacks. As courts move in this direction, these issues must be addressed:

- Many court clerks know a great deal about how their courts operate and can be of great assistance in that regard, but their knowledge of the law and remedies is limited by their experience and carries the danger associated with "a little learning."
- The large dockets faced by most courts do not permit the judge to conduct much of an evidentiary hearing, let alone engage in developing the evidence. In addition, although justice and fairness may be better served by judges' assistance to pro se litigants, it may not be so perceived by litigants appearing in court with counsel, either in the same case or in other cases.¹⁰⁷

As Russell Engler has noted, the roles of the various court personnel have traditionally been discussed in isolation, whereas in reality the roles are "inextricably intertwined."¹⁰⁸ In this context, what will be necessary and proper conduct for judges will be partly determined by the definition of the roles performed by those court personnel with whom the litigant has dealt before appearing before the judge.¹⁰⁹ The more adequate the assistance the litigant has obtained before appearing before the judge, the easier the role of the judge will be.¹¹⁰ To the extent that roles of courts and judges cannot or will not be revised, or to the extent the suggested revisions fail to protect the basic rights of the unrepresented poor, the court must identify others within the system who can effectively assist pro se litigants.¹¹¹

Family law facilitators are primary agents in taking California courts in these new directions. Facilitators, who are required by statute to be experienced attorneys,

can take much of the burden of dealing with pro se litigants from the clerks, can serve as an interface with the judges, and can enhance the judge's ability to provide fair and reasoned resolutions of pro se litigants' legal issues.¹¹²

Facilitators find, however, that the ethical framework set out in the Rules of Professional Conduct of the State Bar, which are applicable to practicing attorneys, does not adequately address the issues involved in providing legal education, information, and assistance in a court setting. More apposite to facilitator attorneys in their role as an arm of the court are canons of the California Code of Judicial Ethics.¹¹³

From the beginning¹¹⁴ of the statewide program, a vigorous discussion of new ethical guidelines among facilitators has led to a growing understanding and consensus in some areas and has shed light on those issues that remain unresolved. Many early debates centered around the question whether or not facilitators give "legal advice."¹¹⁵ There is no "bright line" delineating what is and is not legal advice: the definition varies greatly from jurisdiction to jurisdiction and from context to context. Giving "legal advice" also raises different issues for non-attorney personnel. For non-attorney personnel, the issue is whether the assistance being provided constitutes the unauthorized practice of law in contravention of statutes designed to protect the public against incompetence.¹¹⁶ In facilitator programs, the "unauthorized practice of law" issue does not arise because non-attorney personnel, paralegals, clerks, and student interns are supervised by licensed attorneys.

For attorney personnel, the critical issue with regard to what constitutes "legal advice" is whether an attorney-client relationship, with all of its subissues, attaches. Although a matter of quite some concern in traditional legal services programs, much of the "legal advice" debate has been resolved for facilitators by the passage of Family Code section 10013, which specifically provides that "[n]o attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator."¹¹⁷ This does not, however, end the matter for facilitators who must struggle with the nebulous definition of "legal advice"; here, facilitators must use their own lodestars of competence and impartiality.

In the process of defining the role of the attorney-facilitator, it is essential always to keep in mind that the facilitator is above all an employee¹¹⁸ of the court and as such is creating a new role for the court. A major challenge in creating these ethical guidelines is to keep these two perspectives in their proper relationship. As court employees, facilitators are subject to the Code of Ethics for the Court Employees of California¹¹⁹ if it is adopted by

their local court. Nevertheless, because attorneys bear a special relationship with the court¹²⁰ as well as with the public, they are unlike other court employees and have ethical duties that do not apply to others. They are able to speak with authority about the law and are treated with the respect normally afforded members of the bar by the judiciary. Over time, facilitators have adopted a pragmatic approach, and their discussions on ethics have focused on what facilitators actually do, practical ways to avoid misleading or otherwise harming parties, and practical ways to maintain the neutrality of the court.¹²¹

To the extent that ethical guidelines define a correct way to discharge one's duties, we must examine facilitators' duties.

THE FACILITATOR MUST ACT COMPETENTLY WITHIN THE ROLE'S LIMITED SPHERE

Facilitators must inform litigants of the facilitator's limitations. While providing that facilitators and the litigants they assist do not have an attorney-client relationship, California Family Code section 10013 also requires facilitators to disclose that fact "in a conspicuous manner." Furthermore, the facilitator is required to inform the litigant that facilitator assistance is always available to the other party in the case.¹²²

Litigants must understand that not only is the scope of the facilitator's relationship with the litigant limited, but also that the duties of the facilitator and the issues with which the facilitator can competently assist the litigant are limited by the nature and constraints of the program. The facilitator's province is to assist the litigant in gaining access to the court, not to protect all of the litigant's rights. Many family law matters involve complex and valuable legal rights, some of which cannot be adequately protected without the assistance of an attorney. In such situations, facilitators must explain to litigants why self-representation is a poor idea.

Within the facilitator's sphere, however, the facilitator must act competently to provide assistance. As defined by the State Bar's Rules of Professional Conduct, competence in any legal service requires application of the diligence, learning, skill, and mental, emotional, and physical ability reasonably necessary for the performance of the service. It also requires adequate supervision of the work of subordinates, including non-attorney personnel. These standards, and standards for maintaining current continuing legal education, apply to facilitators.

In the facilitator context, acting competently requires a diagnostic interview and a review of the court's file and existing orders to determine the status of the case; it

requires careful education, supervision, and review of paperwork.¹²³ Given the large number of litigants seeking assistance, there is always pressure to provide less adequate assistance to more people. Facilitators must always be open to new strategies for providing services to maximize the number of people assisted; however, facilitators must ensure that their services provide competent assistance.

THE FACILITATOR AS EDUCATOR

The role of the facilitator is fundamentally that of an educator. Facilitators teach basic family law, procedure, and principles of due process. In addition to being helped with paperwork, litigants are educated about the concept of “notice and the opportunity to be heard.” The contents of the pleadings, forms, and declarations must give the other party notice of what the litigant is asking the court to do and what facts the litigant is offering in support of his or her position. The litigant must know what kind of factual information the court will need in order to make a decision. They also receive information on the difference between a “fact” and a “conclusion,”¹²⁴ and between a fact “known” and a “fact” the declarant has heard from another person. Information about service-of-process rules and procedures is given and explanation provided as to why the court must be assured that the other party has been served before making any orders. Instruction is also given about what information must be contained in a proof of service.¹²⁵

Part of the role of private attorneys is to educate their clients, but the role of the private attorney goes beyond explaining the law and trying to establish reasonable expectations for their clients. Education is often secondary to case management. Private attorneys take responsibility for ensuring that notices are properly given and received, provide tactical advice and advocacy, draft the necessary motions, declarations, and briefs, and “handle” all aspects of the case on the client’s behalf. The facilitator must educate the litigants to handle their own cases and must maintain the neutrality of the court.

Some guides to the facilitator’s appropriate role are:

- Consistently avoid giving strategic advice.

If facilitators carefully explain the importance of the court’s neutrality, most parties will understand and accept this restriction. If facilitators explain available options, litigants can usually reach their own rational conclusions about the best way to proceed.

- Ensure that documents are the litigant’s own product.

Facilitators must avoid the strong temptation to just “take over” and do what the litigant needs. Taking over is sometimes the most time efficient way to proceed,

but the litigant should be encouraged to complete the forms and write the declaration in his or her own words. Some “taking over” may be unavoidable, as when the litigant cannot write, but if the facilitator explains the choices, the document will be what the litigant has chosen to present, not the product of the facilitator. In such cases, it is often useful to have the litigant dictate the declaration.

- Do not maintain a file on individual cases (other than the court’s own official case file).

From time to time it may be necessary to retain some documents or notes regarding a case to complete a discrete task or to keep a particular document as a sample or model for use in other cases. Routinely creating and maintaining case files in the facilitator’s office should be avoided, however, because it could easily lead to an expectation by litigants that they have an ongoing relationship with the office.

- Whenever possible, avoid conducting research and preparing a memorandum of points and authorities tailored to an individual case.

This practice risks placing the facilitator in the role of an advocate for one party. Some facilitators are unable to avoid doing so, however, because of local rules requiring such memoranda in family law cases¹²⁶ or because child support enforcement attorneys take positions that must be refuted by legal arguments. These local requirements not only compromise the role of the facilitator, but they also constitute an unnecessary barrier to court access by pro se litigants.¹²⁷

THE FACILITATOR AS ASSISTANT TO THE COURT

Facilitators in some courts provide assistance to the judicial officer with pro se litigants’ cases. Such assistance is usually provided during the calendar at or near the courtroom and may consist of providing procedural information to litigants, making child support calculations, assisting the parties in resolving child support issues or making minor adjustments in the custody/visitation arrangements, or drafting stipulated orders or orders after hearing. Errors, the existence of multiple cases, and other procedural anomalies are often uncovered at this time and are particularly amenable to correction because one or both parties are present and the judicial officer can take appropriate action.

When the court asks the facilitator to work with both parties on some specific issue such as child support, this should not be referred to as mediation. The term “media-

tion” implies a degree of confidentiality,¹²⁸ whereas the purpose of the referral is to elicit information for the court and assist the parties in narrowing their issues if resolution is not reached. In such an instance, the facilitator should take steps to protect the rights of the parties and avoid the appearance that the facilitator is making the decision. The facilitator should explain to the parties at the outset that (1) the facilitator is assisting the court; (2) any information they reveal may be shared with the judge; (3) the facilitator does not have any authority to make decisions; and (4) in the event of disagreement over an issue or outcome, the parties have the right to be heard by the judge, who will then make the decision. Furthermore, if the facilitator is to communicate information to the judicial officer, the facilitator must present the information in a way that does not convey any prejudging by the facilitator.¹²⁹ The facilitator must take care that each litigant understands that it is the litigants’ responsibility to present the case, that the facilitator will not be presenting the case for them. By reviewing with the litigants the issues that each wants to present, the facilitator can help each litigant make a focused presentation and understand that the facilitator’s input will be neutral. The facilitator must maintain neutrality, and the appearance of neutrality, throughout the process.¹³⁰

THE FACILITATOR AS PROGRAM ADMINISTRATOR

New legislation has given facilitators the duty to ensure that they and their staff understand and commit to following the canon of the California Code of Judicial Ethics that prohibits public comment about any pending or impending proceeding in any court and any nonpublic comment that might substantially interfere with a fair trial or hearing.¹³¹

The statute providing that there is no attorney-client relationship formed as a result of facilitator services also requires “conspicuous” notice that communications between the litigant and the facilitator are not privileged.¹³² The facilitators have discussed adopting their own ethical guideline to the effect that, despite the lack of an attorney-client privilege, the facilitator and staff should protect the privacy of individual parties by not making unnecessary disclosures of any information provided by a litigant.

Other topics for guidelines in this area may include continuing education for the facilitator and staff in order to maintain competence in the law; proper supervision of staff so that accurate and appropriate legal information is consistently provided to the parties; and maintaining a credible, functioning procedure for the public to bring to the attention of the facilitator and his or her supervisors

any complaints of improper practices or behavior by the facilitator or staff.

THE FACILITATOR AS A COMMUNITY SERVICE PROVIDER

The facilitator’s function as a no-cost direct service provider parallels that of private, nonprofit community-based organizations (CBOs). One major difference is that most legal services providers perform services only for those who fall within their very low income guidelines, whereas the facilitator’s services are available to all.

As a means to leverage resources and fill gaps in services, facilitators have developed many programs in collaboration with CBOs.¹³³ This places facilitators at a vital crossroads where they further two important goals: they help the courts become more a part of the communities they serve, and they directly and truly facilitate public participation in the legal system.¹³⁴ Nevertheless, as facilitators develop community-court collaborations, some aspects may require careful review in order to maintain the integrity and neutrality of the court:

- Does the CBO charge fees for services provided at the court? In counties where more than one CBO provides certain services, such fees could lead to charges of favoritism or other impropriety.
- What are the restrictions on receiving services? Will the collaboration result in an invidious class bias affecting who receives and who is denied needed services? If services may be denied to a class of litigants who would otherwise have no access to their legal remedies, can these services be provided by the facilitator or by some other CBO? An example of this problem would be allowing a domestic violence assistance program to use court facilities to help women obtain domestic violence restraining orders while providing no services to the defendants or to men seeking similar protection.

THE FACILITATOR AS AN ACCESS PROGRAM FOR THE COURT

The Family Law Facilitator Act established the facilitator program to meet “a compelling state interest in having a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation.”¹³⁵

Family law facilitators have explicitly assumed responsibility for this access function by including it in their ethical guidelines.¹³⁶ The extent to which a facilitator may succeed or fail in this role will depend largely on the culture of the court within which he or she operates. Facili-

tators who have met together from around the state have noted the profound influence of local court cultures on the way their programs operate. Ethical guidelines must strive to recognize the importance and significance of these varying cultures and at the same time provide some uniform guidance. Best practices should be identified to promote effectiveness and avoid harm when operating a facilitator program.

One situation in particular has sharply illustrated the need for such guidelines: a litigant seeking information about how to disqualify a judicial officer¹³⁷ or family court services mediator or asking about challenging a judicial officer's decision. Some facilitators have felt pressure to avoid giving information or to "soft pedal" such information. Unless one accepts that "access to justice" applies only to justice from certain judicial officers or from trial courts alone, it is clear what the ethical response would be. California facilitators have under consideration an ethical guideline that would mandate they provide such information in response to a request.

OTHER ISSUES FOR FACILITATORS

A highly controversial issue among facilitators has been whether a facilitator should practice law in the same court where he or she is working as a facilitator. What seems to be a compromised appearance of neutrality to some is a serious practical problem for others: a number of counties have populations so small that the facilitator position is only part-time, and the incumbent must engage in other work as a matter of survival. Some counties have made agreements in which one facilitator provides services in more than one county. Other counties have attempted to minimize the appearance of impropriety by providing facilitator services completely outside of the courthouse setting and by having the facilitator serve as a contractor rather than as an employee. To many facilitators, these "answers" merely beg the question. The issue will remain unresolved until funding for a full-time facilitator is provided for every county. Such funding would minimize the effect that radically different social environments, such as isolated rural communities and teeming urban centers, otherwise have on the ability of each court to maintain its neutrality and, therefore, its credibility.

There are other ethical questions as well, such as whether the facilitator should provide services when a former client's opposing party requests them. There is general agreement that in this circumstance written waivers by both parties should be sought. Even more problematic is the case when a facilitator's former client seeks services, as assisting a former client may also raise the issue of continuing representation.

These cases should be referred to another facilitator or a volunteer attorney. Such problems may be particularly acute in counties with small populations, where the facilitator may be one of a very small number of family law attorneys in a large geographical area.

Another question is whether an attorney who was previously a facilitator and enters private practice should provide representation to a party he or she assisted as a facilitator or to any opposing party. Given that the facilitator act provides that there is no attorney-client relationship, theoretically there should be no problem. Moreover, given that facilitators do not keep records on the litigants they assist, there may be no way to determine whether or not services were provided. Best practice would require full disclosure to all parties of the attorney's previous facilitator status and the possibility that in that role he or she may have assisted the parties.

FACILITATOR DATA COLLECTION

The California family law facilitators are developing a unified reporting system for collecting data on their programs. Volume, demographic, and service delivery data are required to assess the needs of the pro se population seeking access to the family law courts. Two data collection methods have been developed for this purpose.

The first, the SCANTRON method,¹³⁸ is named for the automated input system it uses. In collaboration with the Judicial Council of California, Administrative Office of the Courts, the Statistics Committee of the California Family Law Facilitator's Association developed a uniform data-reporting form. One form is to be used for each customer contact and is filled out by the customer and facilitator staff. At the end of the month, the forms are input into a database by use of a scanning system.¹³⁹ The database is used to generate monthly reports for each participating county, year-to-date reports, and aggregate reports that include and tally the data from all participating counties. Twenty-six counties¹⁴⁰ had signed up for SCANTRON and 21¹⁴¹ had begun to use it prior to July 1, 2000. Another 12 counties had signed up to use it as of October 2000.

Los Angeles County is developing the second method of data collection, the ACCESS system.¹⁴² At the time of the client interview, facilitator staff members input volume, demographic, and service delivery data into the ACCESS database. Los Angeles County will make this system available to any of the facilitators who wish to use it. To date, the data from SCANTRON and ACCESS have not been combined into a single database for analysis and are therefore reported separately. Combining these data should be the next step in the facilitator data project.

The statistics cited in this article are taken primarily from the SCANTRON data available at the time of writing.¹⁴³ There are various limitations on this information. For example, input from the 21 counties came from the months of March through June 2000. Some counties responded in March only, some in April only, some only in May or June, some in combinations of two or three of these months. Some did not use SCANTRON for the entire month reported. Several of the larger SCANTRON counties significantly underreported their volume because of inexperience with the forms. Therefore, the aggregate figures are extremely conservative and will tend to underestimate facilitator customer volume for these 21 counties.

Nevertheless, given these inconsistencies, the enormity of facilitator customer volume does begin to become apparent. The total number of customer contacts derived from these early reports is 35,688. On average these 21 programs reported approximately 11,605 customers per month, by which we may make a conservative projection of 139,805 per year. Data received to date from Los Angeles County increase this monthly average by 6,805 customers,¹⁴⁴ which increases the yearly projection to 221,465. The 21 SCANTRON counties and Los Angeles account for approximately 75 percent of California's population. Based on population size, the remaining 36 counties would be expected to add an additional 73,834 customers to the yearly volume, for a statewide estimate of 295,299. As facilitators become more familiar with this system and reporting is more routine, the quality of this data will continue to improve. Full reporting is expected to show a volume of between 300,000 and 400,000 customer contacts per year.

Since the preliminary sample size from the 21 SCANTRON counties (35,688) is so large, it would be expected that the data could provide reliable information about demographics and service delivery. Complete reports from Los Angeles were unavailable at the time of the writing of this article; however, when the data become available, they will be reported.

A variety of data limitations will be noted throughout this section. Data were reviewed and sorted by grouping the 21 SCANTRON counties according to population size and whether they were urban, rural, or mixed.

FACILITATOR CUSTOMERS

According to the aggregate SCANTRON data, an individual seeking assistance from a facilitator is about equally likely to be male or female. This person would be between 30 and 39 years of age and have two children. He or she would most likely be Caucasian, Hispanic, or African American. The individual would be a high school

graduate and be employed, reporting a gross monthly income of under \$1,500 per month. Most would have district-attorney involvement in their cases, and many would be involved in dissolution proceedings. About half would never have been to court before; the other half would have been at least once. This individual would have been referred to the facilitator by the court clerk's office, the District Attorney Family Support Division or the local child support agency, a judicial officer, or a friend. He or she would be expected to ask for help with child support, child custody and/or visitation, starting dissolution proceedings, or getting a domestic violence restraining order. The type of assistance provided by the facilitator's office would vary among counties depending on various local factors, including the existence of additional funding by courts over and above the AB 1058 funding.¹⁴⁵

DEMOGRAPHIC DATA

The following sections refer to tables located in the appendix to this article.¹⁴⁶

Age (Table 1)

The largest overall percentage (40.1%) of facilitator customers are between the ages of 30 and 39. This was true in all counties regardless of population size, geographic region, or type of county (urban, rural, or mixed). The highest percentages in this age group were reported by the urban counties and counties with populations of over 1 million, primarily located in Southern California and the Bay Area.¹⁴⁷ The second-largest percentage (28.5%) of customers overall were individuals between the ages of 20 and 29. Counties reporting the highest percentages of 20- to 29-year-olds were primarily located in Central California, were rural (30.1%), and had populations between 250,000 and 499,000 (30%).

The third-largest percentage (21.9%) of customers overall were individuals between the ages of 40 and 49. Counties with populations under 250,000 reported the highest percentage (approximately 26%) of customers between 40 and 49 years of age. Only 6.8% of facilitator customers were over 50 years of age. Counties with populations under 100,000 reported the highest percentage (12%) of customers in this age group.¹⁴⁸ One of the limitations of these data is presented in the low number of customers over the age of 50 years. Individuals in this age group often present issues not covered by AB 1058 funding. Examples are family law cases in which the children are no longer minors; where pension or other property matters from a dissolution remain pending; or where grandparents are seeking visitation with, or guardianship of, a minor. It should not be inferred from these data,

therefore, that there are few unrepresented individuals over age 50 who need assistance with their family law matters. The need may be far greater.

Income (Table 2)

Overall, 82% of facilitator customers have a gross monthly income of under \$2,000. Over 67% of facilitator customers have gross monthly incomes of under \$1,500. Over 45% of facilitator customers have gross monthly incomes of under \$1,000, and approximately one-fifth report gross monthly income of \$500 or less.

In Los Angeles County, 77% of the customers report gross monthly incomes of under \$2,000. Approximately 62% of Los Angeles customers report gross monthly incomes of under \$1,500, 35% have incomes under \$1,000, and 23% report incomes of \$500 per month or less.

Rural counties, particularly in Central California, with populations between 100,000 and 499,000, report the highest percentages of customers with incomes under \$1,000 per month. Over 50% of facilitator customers in these counties report incomes that fall within this range. The highest percentages of monthly incomes of \$500 or less were also reported in these counties.

Only 18% of facilitator customers overall have gross monthly incomes of over \$2,000. The highest percentages of those reporting gross monthly incomes between \$2,000 and \$3,000 per month are in urban counties (11.9%) and counties with populations over 1 million (12.7%), in both Southern California and the Bay Area. Los Angeles reports that 15% of its customers are in this income group. Only 6.8% of customers report gross monthly incomes of over \$3,000. The highest percentages in this category are reported by counties with populations between 500,000 and 1 million (7.9%), primarily in the Bay Area (11.2%) and in Los Angeles County (8%). This suggests that facilitators in areas where the cost of living is higher and legal representation is more costly may see more individuals in this category. Nevertheless, in all but two Bay Area counties where the cost of living is extremely high, over 90% of facilitator customers had gross monthly incomes under \$3,000.

For the most part, facilitator customers are not likely to have income sufficient to afford full-service legal representation; however, their incomes may be just high enough to make them ineligible for assistance from Legal Services Corporation or IOLTA-funded¹⁴⁹ legal services programs.

Ethnicity (Table 3)

There appears to be substantial ethnic diversity among facilitator customers. No ethnic group constitutes a majority of all facilitator customers. Overall, the largest percentage of individuals is Caucasian (44.1%), followed

by Hispanic (33.7%) and African American (13.9%). These three groups account for 91.7% of facilitator customers. There are notable differences in the distribution of these percentages, however.

There was no ethnic majority of customers in any urban county or county with a population over 500,000. In urban counties and counties with populations of over 500,000, there was an approximately equal distribution of Caucasian customers (between 36 and 41%) and Hispanic customers (between 34 and 38%). This was particularly true for Southern California. The highest percentages of Hispanic customers were reported in these counties. The next-largest percentages in those counties were African-American customers (between 15 and 19%). The remaining percentages were distributed among Asian/Pacific Islander, Native American/Eskimo, multiethnic, or undefined other.

Data from urban counties with populations over 500,000 are similar in the Bay Area and Southern California, except that there are slightly larger percentages of African-American customers (35%) and Asian/Pacific Islander customers (6%) in the Bay Area. The largest percentages of African American and Asian/Pacific Islander customers were reported in these Bay Area counties. There are correspondingly smaller percentages of Caucasian customers (31%) and Hispanic customers (23%). The remaining percentages were distributed among Native American/Eskimo, multiethnic, or undefined other.

Counties with populations between 250,000 and 499,000 reported percentages showing a small Caucasian majority (52.8%). Rural counties reported a larger Caucasian majority (60.2%). In Central California, Caucasian customers made up about 52% of facilitator customers, followed by Hispanic customers (36%) and African-American customers (5%). The remaining percentages were distributed among Asian/Pacific Islander, Native American/Eskimo, multiethnic, or undefined other.

In Northern California, a majority of facilitator customers are Caucasian (66%). The largest percentage of Caucasian customers is reported in these counties with populations under 100,000 (79.8%). The next-largest groups in Northern California are Hispanic (14%) and African American (3%). The remaining percentages were distributed among Asian/Pacific Islander, Native American/Eskimo, multiethnic, or undefined other.

Source of Income (Table 4)

In total, the majority (63.7%) of facilitator customers are employed. Highest employment figures are found in urban counties (69%) and counties with populations over 1 million (68.9%). Lowest employment (54.5%) and highest unemployment (approximately 24%) were found in rural

counties and counties with populations between 250,000 and 499,000 respectively. These counties were located primarily in Central California.¹⁵⁰ Nevertheless, in all but three rural counties with populations under 100,000, the majority of facilitator customers reported they were currently employed. Overall, approximately one-fifth (19.7%) of facilitator customers are unemployed. Only 2.1% report they receive unemployment benefits, and only 8.9% report public assistance. Urban counties (5.3%) and counties with populations of over 1 million (6.1%) report the smallest percentages of customers receiving public assistance. These percentages are about equal in Southern California and the Bay Area.¹⁵¹ Rural counties (12.8%) and counties with populations between 100,000 and 249,999 (12.7%) report the largest percentages of customers receiving public assistance. These percentages are about equal in Central and Northern California.¹⁵² Facilitator customers also received income from various sources, such as retirement (1.3%), disability or workers' compensation (7.6%), family or friends (3.9%), or child or spousal support (4.1%), or were students (4.4%).

Children (Table 5)

Overall, most people were likely to have one or two minor children. The largest percentage (30.2%) report having two children and 22.8% report one child. Another 24% had three or more children. Only 9.4% of facilitator customers report having four or more.

The number of children appears related to population size and urbanization. The largest percentages of customers with only one child were reported in urban counties (36%) and counties with populations over 1 million (35.2%). The largest percentages of customers reporting four or more children were in rural counties (10.6%) and counties with populations under 100,000 (13.2%).

Education (Table 7)

Most facilitator customers reported graduating from high school (84.6%). Many (41.4%) had some college but did not have a college degree. Overall, 10.4% of the customers had completed college and 2.4% had some graduate-level education. There was not much variance among the groups.

One limitation of the data applies here: There is no way to control for the functional educational level reported by the customer. Some litigants have had schooling in a foreign country and may be unable to read or write in English. Moreover, all facilitators have encountered functional illiteracy in individuals with high school diplomas.

Gender (Table 8)

In the aggregate, the facilitators see approximately the same percentage of men (49%) and women (51%). The data seem to suggest that when the facilitator customer is female, child support is more likely to be sought through a dissolution case; whereas when the customer is male, the child support issue is more likely to be found within a local child support agency case. This variance may be the result of population demographics, issues related to AB 1058 funding limitations, or factors yet to be determined.

Case Types and Hearings (Tables 6 and 8)

The district attorney is in some way involved in the cases of the majority of facilitator customers (51% report a public IV-D case). Many (40.5%) are involved in an action for dissolution or legal separation; 9.9% are involved in actions under the Uniform Parentage Act,¹⁵³ and 7.5% are involved in cases filed under the Domestic Violence Prevention Act. Los Angeles reports that 73% of facilitator customers are involved in a Title IV-D case; 28% have an action for dissolution, 1% have a Uniform Parentage Act case, and 2% have cases filed under the Domestic Violence Prevention Act.

Statewide, 17.4% of facilitator customers are involved in more than one case. Urban counties report that 20.5% of customers have more than one case; counties with populations over 1 million report that 19.4% have more than one case; counties with populations under 100,000 report that 29.7% have multiple cases.

Approximately 48% of facilitator customers have been to court for at least one hearing regarding their family law matters. Of those, 28% have been at least twice and 17% have had three or more hearings. Counties with populations under 249,999 report the highest percentages of customers who have had six or more hearings.

FACILITATOR SERVICE DELIVERY

Assistance Requested by Customer (Table 9)

The largest percentage of facilitator customers were requesting assistance with child support, spousal support, and support-related issues. Child support, spousal support, and related issues include motions concerning driver's licenses, arrears, and wage assignments. Some 55% of customers requested assistance with such child support-related issues. Only 6.3% were requesting help with spousal support issues; 46.2% were requesting assistance with issues of child custody and visitation. Nearly 24% asked for help with a divorce, 5.4% for help in establishing paternity, 10.1% with preparing responsive pleadings to papers with which they had been served, and 10.3% with help related

to domestic violence issues. The need for assistance in both setting child support and making custody/visitation arrangements for the children is clearly expressed in the data. One of the data's limitations, however, is that without further statistical study, it is unclear how many of those asking for assistance with child support also needed assistance with custody/visitation. The link between these issues is nevertheless guaranteed by the fact that the California child support guideline algorithm includes time spent with the child as a factor in setting child support.

Help Actually Provided by Facilitator (Table 10)

Facilitators are not necessarily able to provide the assistance requested by a facilitator customer, especially if the program is limited to funding under AB 1058. As a result, most assistance provided by facilitators was related to child support (63.7%), child-care expenses (1.7%), health insurance (5%), spousal support (11.6%), and support arrears (10.8%). Another 24% addressed custody/visitation issues only insofar as was necessary to calculate child support. Approximately 38% addressed other issues unspecified in the data. These would be cases where referrals were made to other sources capable of dealing with non-AB 1058 issues or where counties have supplemented funding to allow facilitator assistance with such issues.

Types of Services (Tables 11–14)

Forms Assistance (Table 11). Assistance with forms was provided by facilitators in about 43% of total customer contacts. In Los Angeles County, 47% of facilitator customers received help in preparing forms. It is the second most common assistance provided by the facilitators. The most common is giving procedural information. As would be expected, most forms were related to child support. About half of those receiving forms assistance needed help with forms required to place a motion onto the court's calendar (49.7%). About 32% received help with fee waiver forms, 33.5% with income and expense declarations. Additionally, 18.1% needed assistance with an initial pleading to start a dissolution, legal separation, or paternity case. Assistance with responsive pleadings was required by 13.4%, ex parte applications by 8.4%, and completion of judgments by 8%. The other forms with which facilitators provided assistance were license revocation review motions, stipulations and orders, orders after hearings, and wage assignments. There were 25.6% of unspecified other types of forms, which may be related to non-AB 1058 issues.

Courtroom Assistance (Table 12). Some of the facilitators provide assistance either inside the courtroom or by taking referrals immediately from the courtroom. The most

common form of courtroom assistance these facilitators provide is giving the litigant procedural information (49.3%). Facilitators also review cases for readiness for hearing (44.5%), interview the litigants (37%), write orders after hearing (31.4%), and do support calculations (16.3%). What the data indicate is that courtroom assistance usually involves interviewing litigants, assessing cases for readiness for hearing, working up support calculations, providing the litigant with procedural information, and preparing orders after hearing. Some courtroom assistance may also include financial mediations and preparation of stipulations, providing educational materials, and referrals.

Telephone Assistance (Table 13). Most telephone assistance provided by facilitators gives customers general information about the court or the facilitator's program (66.9%). Information about court procedures is also given over the telephone (29.9%), and appointments for further assistance are made (21.7%). Some counties provide referrals and support calculations over the phone. In Los Angeles County, 40.5% of telephone assistance provided the customer with general information about the court, 28.7% provided information about court procedures, 20.7% made appointments for further assistance, and 8.8% provided referrals.

Other In-Office Assistance (Table 14). Providing customers with information about court procedures is the number-one in-office service provided by facilitators (85.1%). This is also the largest category of service provided overall to facilitator customers, accounting for the majority (52%) of total customer contacts. When combined with courtroom and telephone assistance, providing procedural information to customers accounts for 63% of all customer contacts. This underscores the role of the facilitator as a educator of the public on court procedure.

The second most common in-office service is review of documents presented to the facilitator by the customer (62.6%). Documents may be numerous pages of pleadings and orders from multiple cases or pleadings that the customer has prepared on his or her own and wishes the facilitator to check for sufficiency. Other services include support calculations or calculation of arrearages (22.4%), support mediations and preparation of stipulations (3%), educational literature or videos (11.2%), and referrals (13.4%).

Time (Table 15)

The majority of customer contacts take facilitators under 30 minutes (76.1%). Another 13.4% take between 30 minutes and an hour, and only 10.5% take over 1 hour. Not surprisingly, the time per contact is related to the

service delivery mode being used by the facilitator: one-on-one attention takes more facilitator time than informational workshops on common forms or giving a simple procedural instruction, for example.

Referrals (Table 16)

Referrals to the facilitator's office come from the clerk's office (24.6%), the District Attorney Family Support Division or local child support agency (22.3%), judicial officers (10.1%), friends (15.3%), family court services (8.5%), and unspecified sources (18.6%).

PLANNING FOR THE FUTURE

Lacking meaningful access to the court system, many current pro se litigants previously "solved" their family law issues outside the court system. If they could not access the system, they simply avoided it. Programs to establish and enforce child support have brought many poverty-level and "working poor" litigants into the family law system; increased access to domestic violence restraining orders has brought many more.

Fundamental to these programs is the recognition by the courts of the societal value of equal access to justice and not merely equal justice for those who can afford it. When setting goals and formulating strategic plans, courts have emphasized programs designed to increase access and assist litigants. Facilitators see daily the positive responses of parents who find that the system can be used to assist them and is not there simply to extract something from them or to be used punitively against them. The court itself also benefits from pro se programs, not just in its day-to-day operations, but in its community relations as well.

Our legal system, as it has evolved, is designed to operate with intermediaries between the court and the litigant—the lawyers. Lawyers present cases to the court in a condition ready for resolution; they marshal the facts and provide the applicable law; they ensure that notice and an opportunity to be heard have been given; and they argue the legally cognizable issues to the court.¹⁵⁴ After a decision is rendered, they draft written orders or judgments to memorialize the court's rulings. Ideally, all litigants would have lawyers to help maintain docket control and preserve the impartiality of the court.

Unfortunately, that is not a reasonably foreseeable possibility: the court of the 21st century is simply not going to have the same physiognomy as the court of the 20th century. Changes are needed to meet the challenge of increasing numbers of pro se litigants. The facilitator programs have given us some direction in how this might be accomplished.

In developing a facilitator program, one must keep in mind the enormous variance in the demographics of the

California courts. California has 58 counties. One has a population of fewer than 1,500; another, over 9 million. The model set out below is most applicable to large urban areas; however, many of the ideas may also be useful to those in other settings as they develop programs to meet the needs of their own courts and communities.

The development of up-to-date computer, software, and information systems technology is of enormous importance to court-based pro se assistance. The creation of interactive automated assistance in preparation of forms, electronic filing capacity, and resource kiosks in courthouses that assist pro se litigants in accessing community services all serve to increase access to justice for pro ses. In addition, the ability of the court to access its own records, maintain electronic files, sort and organize information relating to families within the system, and generate its own written court orders all serve to increase the ability of the court to effectively manage a large pro se litigant caseload. The ongoing effort to modernize in these ways is central to the creation of a model facilitator program.

The authors propose that facilitator programs should be expanded and further integrated into the fabric of the court to provide assistance in four areas:

1. In-courtroom assistance to the court, including drafting stipulations, orders after hearing, and judgments in pro se cases
2. Assisting pro se access to the court
3. Legal research: Case workup and research prior to hearing and research and assistance to the court after hearing when necessary in all cases
4. Program administration and outreach

Ideally, each facilitator would serve in only one of these capacities at any given time and would rotate among them on some regular basis. The facilitator program should be a viable career track in order to retain capable and experienced facilitator attorneys and support staff.¹⁵⁵

IN-COURTROOM ASSISTANCE TO THE COURT

Entry-level facilitator attorney trainees¹⁵⁶ should have a minimum of two years' family law litigation¹⁵⁷ experience prior to application and would begin service in the in-courtroom assistance segment of the program. Working under the supervision of an experienced facilitator, the attorney would assist the court as needed by drafting stipulations, orders after hearing, and judgments. This also would be a valuable training ground for law student interns. Entry-level facilitators would gain additional

experience on how to best organize materials for clear and effective presentation to the court—skills that will be useful in educating pro se litigants when the facilitator moves to the access portion of the program.

ASSISTING PRO SE ACCESS TO THE COURT

The attorney would next move to the access component of the program. This component would be staffed by at least one highly experienced family law attorney-supervisor; paralegals and clerks, assisted by volunteer attorneys and law student interns, would operate under guidelines such as those previously discussed. The program would also serve as a training ground and mentoring program for less-experienced attorneys and law students in exchange for volunteer services. Training would emphasize issue-spotting, jurisdictional problems, procedural problems, correct use of forms, and what constitutes competent assistance to the litigant.

Access programs should continue to be open to all pro se litigants with no income qualification test. An unassisted pro se litigant creates docket control and impartiality problems for the court regardless of income.

LEGAL RESEARCH

Research attorneys are a valuable asset to a judge, especially where they are assigned on a one-on-one basis. In pro se cases, few motions or trial briefs will come with attached memoranda of law. Facilitator research attorneys could review files, clarify the issues, direct the court to the supporting facts in the declarations, and provide the applicable law. Even pro se cases can present complex legal issues, and necessary in-depth research could be done prior to hearing. The assistance of the research attorney, however, should not be limited to pro se cases, but should be available to the court in all family law cases. Providing research assistance on all cases will increase the breadth of the facilitator's knowledge of family law and, again, will be valuable to the facilitator on return to the access portion of the program.

PROGRAM ADMINISTRATION

Attorneys usually come to the court with little or no background in administration or management. Working within a court structure is very different from almost all other legal environments. Training in administration and management must be ongoing throughout the facilitator's employment at the court. By the time the facilitator has completed the first full rotation, he or she should have participated in numerous in-house training programs. Because facilitators must function as an integral part of the court, candidates for supervisory positions should be

selected on the basis of their management skills as well as their legal and professional skills. Ultimately, the program manager or director must have an accurate perspective on how the program fits into the framework of the court as a whole and must be prepared to participate in court administrative duties.

Program administrators are key to making the system work better for unrepresented litigants: they can assist the court in making systemic changes designed to make the system more accessible to the public. For example, administrators should provide suggestions for local family law rules, assist in developing methods of obtaining testimony in less intimidating ways, and assist in expanding court services to evenings and weekends so they are more accessible to working litigants. Fresno County has developed a facilitator's Office on Wheels that travels to outlying communities on certain days of the week.

Facilitators have the ability to be a force for positive change in the court's relationship to the community it serves. The facilitator's office should be a resource through which the community can access family-related services and provide outreach and develop ties to community-based organizations that provide services to families. Such ties will help improve the community's understanding of the courts and assist in development of therapeutic court models. Facilitators should also coordinate services with local traditional legal assistance groups to maximize their resources.

A number of California facilitators have developed prison outreach programs to educate inmates who have parental responsibilities, assisting them with obtaining suspensions of their support orders during incarceration and with preparing to meet their obligations after release.¹⁵⁸

Facilitators are in a particularly good position to assist the schools in development of curricula that will prepare students for adult life by teaching practical, applied due process of law, how the courts function, and how to access the court system. Programs should be developed to educate students about law and the family, parental rights regarding custody and visitation with their children, and obligations of support.

Finally, facilitators can assist in opening a dialogue with other court-based legal assistance groups and those planning to establish such groups at other courts throughout the country. The ideas presented in this article are not necessarily the entire solution to the pro se problem facing the courts in the 21st century, but they show what one state has accomplished thus far and can form the basis of that dialogue.

1. See Robert B. Yegge, *Divorce Litigants Without Lawyers*, 28 FAM. L.Q. 408–10 (1994).
2. Known in California as “dissolutions of marriage.” See CAL. FAM. CODE §§ 2000–2129, 2300–2406 (West 1994 & Supp. 2000).
3. The term “pro se,” meaning “for oneself,” refers to self-represented litigants. California uses the term “pro per.”
4. See Maggie Vincent, Note, *Mandatory Mediation of Custody Disputes: Criticism, Legislation, and Support*, 20 VT. L. REV. 280 (1995).
5. Based on San Diego County Superior Court data. The variation in pro se cases from court to court within the county is also interesting. The family court in downtown San Diego is close to the offices of many attorneys; the percentage of self-represented litigants in that court has been comparatively low. Recently, San Diego has begun to require filing in a “district” (the boundaries approximate those of the former municipal court districts) where at least one of the litigants lives. The downtown family court is experiencing an overall decrease in number of cases filed; however, a larger percentage of those cases may now be self-represented.
6. See Vincent, *supra* note 4; see also Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 954, 957 (2000).
7. See Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999); see also ACCESS TO JUSTICE WORKING GROUP, STATE BAR OF CALIFORNIA, AND JUSTICE FOR ALL (1996) (estimating that an additional \$250 to \$300 million (in 1993 dollars) would be required to fill the gap between the 1993 level of funding (about \$100 million) and the amount required to provide justice to almost 6 million poor people in California).
8. The conference was co-sponsored by 10 different entities and involved close to 100 individual participants. Articles relating to the conference theme and recommendations growing out of the conference meetings were subsequently published as *Conference on the Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues*, 67 FORDHAM L. REV. 1713 (1999). This special issue is a valuable compendium and overview of the programs, issues, and recommended solutions at that time. The California family law facilitator program had been operating for only about one year; some counties had not yet appointed facilitators. The conference participants mention the program only in passing. The conference addressed several considerations distinctive to providing services to low-income persons. These considerations were:

- (1) [L]ow-income persons generally cannot afford a lawyer;
- (2) [C]onsequently, to the extent that legal assistance is available to them, it is likely to be funded by a third party (e.g., a government entity, a private foundation or other private contributors, or a private lawyer or law firm);
- (3) [B]ecause of the limited availability of outside funding, the demand for legal assistance will far exceed the supply of lawyers available to serve individuals who cannot afford to pay; and
- (4) [I]n the absence of adequate legal resources, some low-income persons may seek assistance from (a) other institutions and agencies, including personnel of the courts or administrative agencies in which they appear; or (b) representatives of the social service agencies from which they may seek assistance with respect to nonlegal problems that are related to their legal problems.

Bruce A. Green, Foreword, *Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 FORDHAM L. REV. 1716 (1999).

9. Michael Millemann et al., *Rethinking the Full-Service Legal Representational Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1180 (1997). Professor Millemann is director of the Clinical Law Program at the University of Maryland School of Law and was a member of the Working Group on Limited Legal Assistance at the Fordham conference. Co-author Nathalie Gilfrich is director of the Family Law Assisted Pro Se Project; co-author Richard Granat was a consultant on the project. The Maryland project was developed “to help pro se litigants protect basic rights, to identify the types of cases in which the assisted pro se approach might work, and to give [the school’s law] students experiences with alternative representational models.”

10. *Id.*

11. *Id.*

12. AB 1058, 1996 Cal. Stat. 957, § 9 (codified as amended at CAL. FAM. CODE §§ 10000–10015 (West Supp. 2000)).

13. CAL. FAM. CODE § 10002.

14. *Id.*

15. The act speaks of services to “parents,” “litigants,” and “parties.” See *id.* §§ 10004–10005. Section 10008 states that “[i]n cases in which the services of the district attorney are provided pursuant to Section 11475.1 of the Welfare and Institutions Code, either parent may utilize the

NOTES services of the family law facilitator that are specified in Section 10004.” *Id.* § 10008(b).

16. *Id.* § 10013.

17. *Id.*

18. *See id.* § 10004.

19. *See id.* § 10003. The lack of an income test was controversial early in the program. Many feared that litigants who could afford to hire their own counsel would use the program. As shown in the demographics portion of this article, these fears have proved to be unfounded. Most of the very few higher-income litigants seeking facilitator assistance learn that self-representation is inadvisable. Some come to ask whether they need an attorney and, if so, how to go about finding one. The services facilitators provide simply cannot meet the needs of litigants with even moderate assets.

The lack of an income test has also gone far to eliminate resentment and complaints about court access by working litigants, who, although employed, may actually have fewer expendable dollars than litigants on public assistance.

20. *See infra* Appendix, Table 2 (Facilitator Customers, by Monthly Income) and Table 4 (Facilitator Customers, by Source of Income). Also unable to afford traditional legal services are litigants whose incomes are well above poverty guidelines but who have expended all their resources and are in debt to attorneys for previous services. In some cases these litigants are referred to the facilitator’s office by attorneys who seek to be relieved of the burden of providing services for which they may never receive payment.

21. *See* CAL. FAM. CODE §§ 20010–20026, 20030–20043 (West 1994).

22. *Id.* § 20010.

23. *Id.* § 20012.

24. *See id.* §§ 20010, 20012.

25. Section 20012 of the Family Code provides that the duties of the family law evaluator “may include, but are not limited to,” the following:

(a) Requiring litigants in actions which involve temporary child support, temporary spousal support, and temporary maintenance of health insurance in which at least one litigant is unrepresented, to meet with the Family Law Evaluator prior to the support hearing.

(b) Preparing support schedules based on standardized formulae accessed through existing up-to-date computer technology.

(c) Drafting stipulations to include all issues agreed to by the parties.

(d) Prior to, or at, any hearing pursuant to this chapter, reviewing the paperwork by the court, advising the judge whether or not the matter is ready to proceed, and making a recommendation to the court regarding child support, spousal support, and health insurance.

(e) Assisting the clerk in maintaining records.

(f) Preparing a formal order consistent with the court’s announced oral order, unless one of the parties is represented by an attorney.

(g) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants’ needs.

Id. § 20012.

26. *Id.* § 20026(a)(2).

27. Judith Whitmer Kozloski, *Report of the Presiding Judge: Rita Mah and the San Mateo Family Law Pilot Project*, 34 DOCKET 8 (1998).

28. *Id.*

29. Conversations with Rita Mah, Family Law Facilitator, San Mateo, California (July 2000).

30. CAL. FAM. CODE § 20031.

31. *Id.* § 20034(a).

32. *See id.* §§ 20034(a), 20034(c)(1).

33. Section 20034(c) suggests the following duties:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Preparing support schedules based on statutory guidelines accessed through existing up-to-date computer technology.

(3) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 20031.

(4) If the parties are unable to resolve issues with the assistance of the Attorney-Mediator, prior to or at the hearing, and at the request of the court, the Attorney-Mediator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(5) Assisting the clerk in maintaining records.

(6) Preparing formal orders consistent with the court’s announced order in cases where both parties are unrepresented.

- (7) Serving as a special master to hearing proceedings and making findings to the court unless he or she has served as a mediator in that case.
- (8) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.
- (9) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to Family Court. These programs shall specifically include information concerning underutilized legislation, such as expedited temporary support orders . . . , modification of support orders . . . and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.
- Id.* § 20034(c)(1)–(9).
34. *Id.* § 20034(c).
35. *Id.* § 20034(b).
36. CAL. FAM. CODE §§ 2000–2406 (West 1994 & Supp. 2000).
37. *Id.* §§ 7600–7730.
38. *Id.* §§ 6200–6390.
39. Records of the Superior Court of California, County of Santa Clara.
40. *See* Child Support Enforcement Act, 42 U.S.C. §§ 651–669 (1994 & Supp. III 1997).
41. Because the word “client” implies representation, all the facilitator programs have adopted some other term to refer to the persons for whom they provide services, such as “customers,” “litigants,” “parties,” or “consumers.” Santa Clara County uses the term “customers”; however, for purposes of clarity and comparison, the term “litigants” is used throughout this article.
42. Information provided by attorney Connie Jimenez, Facilitator, Santa Clara County.
43. The Dispute Resolution Programs Act was passed in 1986. *See* 1986 Cal. Stat. 1313 (codified as amended at CAL. BUS. & PROF. CODE §§ 465–471.5 (West 1990 & Supp. 2000)). The act permits counties (not courts) to add between §1 and §8 to their civil court filing fees for the purpose of supporting community dispute resolution programs. The money goes into a pot that each county distributes in the form of matching grants to local community and government entities that provide dispute resolution services for no fee or on a sliding fee scale. Participation in the funded dispute resolution programs must be voluntary.
44. Attorney Katherine Yavenditti, certified by the Board of Legal Specialization, State Bar of California.
45. Barbara Funkenstein.
46. Conversations with Barbara Funkenstein, Attorney, SDVLP, San Diego (July 2000). In addition, one of the authors, Frances Harrison, worked as a volunteer early in this program, which was called the Family Law Access Project.
47. Conversations with Katherine Yavenditti, Attorney, SDVLP, San Diego (July 2000).
48. The experience of the SDVLP was of great value to the facilitator program. For example, the SDVLP helped identify the characteristics of the target population and showed that there was a large, low-income, frequently non-English-speaking population in need of services.
49. Irate litigants asked, “Why is the court giving my [husband/wife] a free attorney, and why won't they give me one?” The “working-poor” litigants questioned why someone on public assistance received help from the court when the working litigant, also unable to afford an attorney, did not.
50. Hon. Julia Spain, History of the Volunteer Legal Services Corporation—Heart of the Bar (1996) (unpublished paper on file with the Alameda County Bar Ass'n).
51. Personal communication of author Deborah Chase with Marina Jimenez, Legal Assistant, VLSC, Oakland, California (June 2000).
52. *See* CAL. FAM. CODE § 10004 (West Supp. 2000).
53. Assembly Bill 1058 contained the legislation eventually codified as the Family Law Facilitator Act. *See* 1996 Cal. Stat. 957, § 9 (codified as amended at CAL. FAM. CODE §§ 10000–10015 (West Supp. 2000)). The bill enacted California's child support enforcement system in compliance with Title IV-D of the federal Social Security Act, 42 U.S.C. §§ 651–669 (1994 & Supp. III 1997).
54. CAL. FAM. CODE § 10001(4)(b).
55. *Id.* § 10004.
56. *Id.* § 10005.
57. *Id.* § 10011.
58. *See* Child Support Enforcement Act, 42 U.S.C. §§ 651–669.
59. CAL. FAM. CODE § 10004.
60. CAL. FAM. CODE § 10005.
61. Attorney Gay Conroy of Ventura County.
62. Statewide, a total of 50 full-time-equivalent (FTE) facilitator positions exists. Not all counties have a full-time

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facilitator; some have more than one. Some counties share a facilitator with another county or counties; some counties have one or more part-time facilitators. The total number of facilitators (persons) is 69.

63. CAL. FAM. CODE § 10002.

64. JUDICIAL COUNCIL OF CALIFORNIA, CALIFORNIA'S CHILD SUPPORT COMMISSIONER SYSTEM: AN EVALUATION OF THE FIRST TWO YEARS OF THE PROGRAM 33–34 (May 2000).

65. *Id.* at 34–35.

66. The 1998 statistics for San Diego County family law cases (excluding district-attorney-established or -enforced child support cases) show that 72 percent of the filings were made by self-represented petitioners. There is no meaningful data regarding self-represented respondents; however, it is readily observable that most cases filed by self-represented petitioners also have self-represented respondents. In addition, the great majority of respondents in district-attorney-established or -enforced child support cases are not represented by an attorney. (Statistics are available from the Superior Court of California, County of San Diego.)

67. Bruce D. Sales et al., *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 564 (1993).

68. Ralph C. Cavanagh & Deborah L. Rhode, Project, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 161 n.225 (1976).

69. Margaret Martin Barry, *Assessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1884 n.31 (1999).

70. Sales et al., *supra* note 67, at 563.

71. Barry, *supra* note 69, at 1891–94.

72. Information on service delivery by county may be found on the California Courts Web site at www.courtinfo.ca.gov/programs/community/.

73. *Id.*

74. See California Courts Web site at www.courtinfo.ca.gov/cgi-bin/forms.cgi for a listing.

75. Professor Millemann concluded from his work on the Maryland project that an assisted pro se's success depends heavily on the use of simplified pleading forms:

The law students would have been unable to help many pro se litigants if the parties had been required to prepare and file traditional pleadings. With limited help, most litigants understood and properly completed the check-the-box forms that were relevant in their cases.

Millemann et al., *supra* note 9, at 1182.

76. *Reifler v. Superior Court*, 114 Cal. Rptr. 356 (Cal. Ct. App. 1974).

77. The Maryland project litigants often did not effectively handle court hearings in which production of documents and testimony of witnesses were required. "It quickly became apparent to most students that the hearings themselves served little purpose." Millemann et al., *supra* note 9, at 1184 n.4.

78. CALIFORNIA DEP'T OF FINANCE, INTERIM COUNTY POPULATION PROJECTIONS (1997).

79. Certified by the State Bar of California, Board of Legal Specialization.

80. For a discussion of "diagnostic interviews," see *infra* text accompanying notes 91–93 and 123.

81. See *id.*

82. Population figures as of January 1, 2000, are available on the San Diego Association of Governments (SANDAG) Web site. See www.sandag.cog.ca.us/data_services/estimates/dof_estimates.pdf (estimating San Diego County's population to be 2,911,468).

83. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 64, at 39, 49–50, 56; conversations with San Diego County commissioners and judges.

84. Situating the facilitator assistance centers inside courthouses has greatly enhanced the facilitator's ability to provide services to litigants and to the court.

85. The full text of the San Diego County disclosure form, based on the Judicial Council-approved disclosure form, is as follows:

The Family Law Facilitator is available to help both parents and all other parties who have questions about family law issues, including child support, spousal support, and health insurance and the availability of community resources to help families. The Family Law Facilitator can help you in preparing your own forms and can give you general information. The Family Law Facilitator cannot go with you to court.

The Family Law Facilitator IS NOT YOUR LAWYER but is a neutral person who does not represent any parent or party. There is no attorney-client relationship between you and the Family Law Facilitator.

The Family Law Facilitator may provide information and services to the other party in your case.

Communications between you and the Family Law Facilitator are not confidential. You should consult with your own attorney if you want personalized advice or strategy, to have a confidential conversation, or to be represented by an attorney in court.

The Family Law Facilitator is not responsible for the outcome of your case.

[The following is taken only from San Diego County's version:]

Many family law matters involve complex and valuable legal rights. You should consult with an attorney before attempting to use assisted self-help. Some rights cannot be adequately protected without the assistance of an attorney. To find out how to hire an attorney, and/or to obtain a free one-half-hour consultation with a Family Law Attorney, call the Lawyer Referral and Information Service of the San Diego County Bar Association at (619) 231-8585 or in North County at (760) 758-4755.

I have read this Disclosure or have had it read to me. I understand this document.

[Date]

[Name] [Signature]

I have translated or read the statement to the person requesting services.

[Date]

[Name] [Signature]

86. *Id.*

87. In a large county such as San Diego, the litigant's name may not be sufficient to locate the correct file.

88. *See* CAL. FAM. CODE § 20034(a) (West 1994).

89. *See supra* note 2.

90. Facilitators do not recommend specific attorneys. They give litigants information about the Lawyer's Referral and Information Service of the San Diego County Bar Association and the volunteer facilitator attorneys. They discuss the attorneys' education, experience, and usual retainer and hourly fees for retained cases; the types of family law cases they handle; and whether or not they will do partial representation in an "unbundled" case.

91. Millemann et al., *supra* note 9, at 1180; *see also* Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 FORDHAM L. REV. 2620 (1999). A diagnostic interview is also required under the recommendations of the *Conference on the Delivery of Legal Services to Low-Income Persons*, 67 FORDHAM L. REV. 1777 (1999) (Recommendation 60(b)).

92. Millemann, et al., *supra* note 9, at 1182.

93. *Id.*

94. Other researchers have found that numbers of participants must be limited for the clinics to be effective. *See* Barry, *supra* note 69, at 1897 n.107. Dissolutions with children are more complex and require more forms than dissolutions without children. A higher number of litigants probably could be handled in a clinic on dissolutions without children. A clinic on dissolutions with children would be better with fewer litigants.

95. A chart showing the steps to a divorce (by default, uncontested, or contested) helps the litigant understand the process and mark his or her progress. Litigants need assurance that the facilitator will assist them at each step. A University of Florida study found that when litigants are given instruction but no additional assistance, fewer than half succeed in getting a divorce. *See* Elizabeth McCulloch, *Let Me Show You How: Pro Se Divorce Courses and Client Power*, 48 FLA. L. REV. 488-89 (1996).

96. Facilitators have found that forms prepared and filed on the same day are more likely to be correct and complete. Often, when litigants take forms home, they lose them, forget instructions, and make errors. Litigants sometimes find the entire process so daunting that they simply give up in frustration only to return months later to try again. Similar reactions have been reported elsewhere. *See id.* at 483.

97. California family law courts often use noticed motions and orders to show cause interchangeably, although some courts have a preference for one or the other. San Diego prefers the use of orders to show cause; however, for consistency, all are referred to as "motions" here.

98. Jessica Pearson, *Court Services: Meeting the Needs of Twenty-first Century Families*, 33 FAM. L.Q. 620 (1999); Donald B. King, *Is Justice Served by More People Representing Themselves in Court?*, 33 FAM. & CONCILIATION CTS. REV. 163 (1995).

99. *See* Veronica S. McBeth, *Judicial Outreach Initiatives*, 62 ALB. L. REV. 1379 (1999); *see also* CAL. R. CT. 6.700(a), which mandates that "[t]rial courts shall manage their budgets in a manner that is both responsive to local needs and ensures equal access to justice."

100. *See* Russell Engler, *And Justice for All: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987-2070 (1999).

101. *Id.* at 2070.

102. *See generally* *Conference*, *supra* note 8, at 1713-2791.

103. Engler, *supra* note 100; *see id.*

104. *See generally* *Conference*, *supra* note 8.

105. Engler, *supra* note 100, at 2028.

106. *Id.* at 2028-29 (citing cases). *See generally* *Conference*, *supra* note 8.

107. *See generally* *Conference*, *supra* note 8.

108. Engler, *supra* note 100, at 1989.

109. *Id.*

110. *Id.* at 2031.

111. *Id.* at 1991.

NOTES

NOTES 112. *Id.*

113. The Code of Judicial Ethics focuses on maintaining and promoting the competence, independence, and impartiality of judicial officers. As attorneys providing legal assistance to the public from the court, facilitators must also maintain competence, independence, and impartiality. The duties of an advocate do not impact the facilitator, as the facilitator never forms an attorney-client relationship with a customer. Facilitators have found the Code of Judicial Ethics extremely helpful when forming their own ethical guidelines.

In 1999, the California Legislature took steps to clarify the status of facilitator attorneys by passing section 10013 of the Family Code. This section provides that no attorney-client relationship exists between the facilitator and those seeking the facilitator's assistance. In addition, section 10014 of the code defines the facilitator's confidentiality requirement as that applicable to judges, not practicing attorneys. See Cal. Fam. Code §§ 10013–10014 (West Supp. 2000).

114. The first gathering of newly appointed facilitators took place in Sacramento, California, in September 1997.

115. John M. Greacen, in *"No Legal Advice From Court Personnel": What Does That Mean?*, 34 JUDGES' J. 10 (Winter 1995), discusses the concept of "legal advice" from a court clerk's perspective. Greacen persuasively argues that the effort to make operative the admonition that "court clerks may not give legal advice" has negatively affected the ability of the court to deliver full and consistent service to the public. He argues that the term "legal advice" has no inherent meaning.

116. See, e.g., Carol A. Needham, *Permitting Lawyers to Participate in Multidisciplinary Practices: Business as Usual or the End of the Profession as We Know It?*, 84 MINN. L. REV. 1331 (citing *Spivak v. Sachs*, 211 N.E.2d 329, 331 (N.Y. 1965) (stating that the purpose of New York's unauthorized-practice-of-law (UPL) provision is to "protect our citizens against the dangers of legal representation and advice given by persons not trained, examined and licensed for such work"))).

117. The complete text of section 10013 provides:

§ 10013. Facilitator; attorney-client relationship; notice

The family law facilitator shall not represent any party. No attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator. The family law facilitator shall give conspicuous notice that no attorney-client relationship exists between the facilitator, its staff, and the family law litigant. The notice shall include the advice that the absence of an attorney-client relationship means that communi-

cations between the party and the family law facilitator are not privileged and that the family law facilitator may provide services to the other party.

CAL. FAM. CODE § 10013; see also *supra* note 85.

Another related issue is whether the party should be required to acknowledge receipt and understanding of the notice. Some feel that this is the best way to ensure that these points are understood. Others feel that it looks too much like an attempt at a waiver, which would in turn imply that some right is being waived, when in fact there is nothing to be waived.

118. Although some facilitators are still independent contractors rather than employees, that status should not relieve them of the ethical duties applicable to court employees when those facilitators are serving in an employee-like capacity.

119. The code antedates the existence of court-employed facilitators and needs certain revisions to include them. For example, Tenet Seven should be revised to clarify that it relates to the unauthorized practice of law by non-attorney personnel, and, if necessary, one or more tenets specific to attorneys should be considered. As it stands, the code consists of 12 tenets:

Tenet One: Provide impartial and evenhanded treatment of all persons;

Tenet Two: Demonstrate the highest standards of personal integrity, honesty, and truthfulness in all our professional and personal dealings, avoiding the misuse of court time, equipment, supplies, or facilities for personal business;

Tenet Three: Behave toward all persons with respect, courtesy, and responsiveness, acting always to promote public esteem in the court system;

Tenet Four: Safeguard confidential information, both written and oral, unless disclosure is authorized by the court, refusing ever to use such information for personal advantage, and abstain at all times from public comment about pending court proceedings, except for strictly procedural matters;

Tenet Five: Refrain from any actual impropriety, such as:

- breaking the law,
- soliciting funds on the job,
- receiving gifts or favors related to court employment,
- accepting outside employment that conflicts with the court's duties, or
- recommending private legal service providers;

Tenet Six: Avoid any appearance of impropriety that might diminish the honor and dignity of the court;

Tenet Seven: Serve the public by providing procedural assistance that is as helpful as possible without giving legal advice;

Tenet Eight: Furnish accurate information as requested in a competent, cooperative, and timely manner;

Tenet Nine: Improve personal work skills and performance through continuing professional education and development;

Tenet Ten: Guard against and, when necessary, repudiate any act of discrimination or bias based on race, gender, age, religion, national origin, language, appearance, or sexual orientation;

Tenet Eleven: Renounce any use of positional or personal power to harass another person sexually or in any other way based on that person's religious beliefs, political affiliation, age, national origin, language, appearance, or other personal choices and characteristics;

Tenet Twelve: Protect the technological property of the court by preserving the confidentiality of electronically stored information and abstain from personal use of court computer systems and hardware.

120. An attorney is "an officer of the court, and, like the court itself, an instrument of justice." *Cohen v. Hurley*, 366 U.S. 117, 124 (1961).

121. The need to avoid giving strategic advice serves as an important boundary between what is permissible and what is not. "Strategic advice" is most easily understood as an answer to the question "What should I do?" Facilitators and their staff, in the course of explaining the law and applicable procedures to litigants, are frequently asked what the litigant should do or what the best course of action would be. This type of inquiry is best handled with a uniform response: that the facilitator's office does not provide advice but only presents options; the litigant must make the choice.

Another practical method to avoid giving strategic advice is not to make statements to one party that the facilitator would not make if the other party were also present, i.e., information designed to give one party an advantage over the other. This test relies on each individual's subjective sense of neutrality in any situation, and as imprecise as it is, it provides guidance in an area that calls for individual judgment and common sense.

122. CAL. FAM. CODE § 10013 (West Supp. 2000); *see supra* note 85.

123. *See supra* text accompanying notes 91–93.

124. "The child's mother is an alcoholic" is a conclusion. "I see the child's mother regularly drink three fifths of whiskey a week" is a fact.

125. Judges tell facilitators that most pro se paperwork fails at the proof of service.

126. Some courts continue to require a memorandum of points and authorities even though the California Rules of Court do not. *See* CAL. R. CT. 1225, 1280.3.

127. King, *supra* note 98.

128. *See* CAL. EVID. CODE § 1119 (West Supp. 2000).

129. For example, if the issue is support, often the most helpful information is a computer printout of support calculations. If the parties are in disagreement about the information used to make the calculation, then the printout should provide alternative results using each party's inputs. Each party should be given a copy of the printout, and the facilitator should explain in detail any other information he or she is providing to the judicial officer.

130. One situation that presents particular difficulty in maintaining the facilitator's role arises when one party is represented by counsel and the other is referred by the judge to the facilitator in the courtroom setting for on-the-spot assistance. In such a situation it is nearly impossible for the facilitator to avoid the appearance that he or she is speaking for the self-represented party.

131. CAL. FAM. CODE § 10014 (West Supp. 2000); *see* CAL. CODE JUD. ETHICS Canon 3(B)(9): "A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing."

132. Section 10013 requires conspicuous notice "that the absence of an attorney-client relationship means that communications between the party and the family law facilitator are not privileged." CAL. FAM. CODE § 10013.

133. This type of collaboration was anticipated in the Family Law Facilitator Act, which speaks of "[d]eveloping programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court." CAL. FAM. CODE § 10005(b)(2).

134. *See* McBeth, *supra* note 99.

135. CAL. FAM. CODE § 10001(a)(4).

136. Ethical guidelines adopted at the facilitators meeting on Feb. 17, 1999, defined one of the duties of a facilitator to be "[b]ringing to the attention of the Court any rule, practice or policy which tends to restrict access of pro se litigants to their legal remedies, and acting in a manner most likely to assist the Court in removing such barriers."

137. *See, e.g.*, CAL. CIV. PROC. CODE § 170.6 (West 1982 & Supp. 2000).

138. Recently renamed the Family Law Facilitator Survey Project.

139. Kris Pierson, the technical expert for this project, is handling SCANTRON input in Stanislaus County. She

- NOTES works closely with Suzanne Whitlock, the Stanislaus County family law facilitator. Their tireless efforts have earned the respect and gratitude of facilitators statewide.
140. Alameda, Amador, Contra Costa, Humboldt, Kern, Lake, Marin, Merced, Mono, Napa, Nevada, Orange, Plumas, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, Santa Barbara, Shasta, Sierra, Sonoma, Stanislaus, Trinity, Tulare, Ventura.
141. Alameda, Contra Costa, Kern, Lake, Marin, Merced, Napa, Nevada, Orange, Sacramento, San Bernardino, San Diego, San Francisco, Santa Barbara, Shasta, Sierra, Sonoma, Stanislaus, Trinity, Tulare, Ventura.
142. The Los Angeles system is being developed with the assistance of Family Law Facilitator Julie Paik.
143. *See supra* note 141 and accompanying text.
144. Los Angeles preliminary ACCESS data reports, Aug. 2000; raw data available in Los Angeles County.
145. Facilitators funded by AB 1058 alone may only assist customers with child support, spousal support, and health insurance matters.
146. Data are derived from the 21 SCANTRON counties. Data for Los Angeles are identified and reported separately.
147. The geographic regions of the responding counties are as follows:
 Northern California—Lake, Nevada, Sacramento, Shasta, Sierra, Trinity
 Bay Area—Alameda, Contra Costa, Marin, Napa, San Francisco, Sonoma
 Central California—Merced, Stanislaus, Tulare
 Southern California—Kern, Orange, San Bernardino, San Diego, Santa Barbara, Ventura
148. While the smaller counties (populations under 100,000) report the highest percentage of customers over 50 years of age, in terms of *actual volume* of customers served, the urban counties (populations over 1 million) see nearly ten times as many customers over age 50.
149. Interest on Lawyers' Trust Accounts (IOLTA) funds are administered by the State Bar of California, Legal Services Trust Fund Commission, to support qualified legal services in California.
150. As a group, the Central California counties reported 53% employment and 25.7% unemployment.
151. As a group, the Southern California counties reported that 7.8% of their customers receive public assistance, and the Bay Area counties reported 5.1%.
152. As a group, the Central California counties reported that 12.9% of their customers receive public assistance, and the Northern California counties reported 11.1%.
153. Private Establishment of Paternity actions.
154. *See supra* text accompanying notes 125–126.
155. Facilitators in smaller courts will rightly raise the point that their courts cannot afford sufficient staff to avoid having overlapping positions; however, one of the major problems currently encountered by some smaller-court facilitators is that they are trying to “wear all hats” at once.
156. The California Rules of Court require that a facilitator have a minimum of five years' practice, including substantial family law litigation and/or mediation experience. CAL. R. CT. 1208.
157. Although the statute requires litigation or mediation experience (*see* CAL. FAM. CODE § 10002 (West Supp. 2000)), litigation experience has proven to be far more important than mediation experience. In addition, the separation of the more extended mediation functions such as custody (usually done by Family Court Services counselors with training in psychology or social work) and “whole case” mediation (a very time consuming process that includes preparation of the paperwork) have been shown to work very well. Mediation done by facilitators is usually part of courtroom assistance and usually involves single issues only.
158. For example, Marin, San Francisco, and Napa Counties.

Table 1. Facilitator Customers, by Age

P O P U L A T I O N									
AGE	GROUP A <i>n</i> =11,209	GROUP B <i>n</i> =6,083	GROUP C <i>n</i> =4,470	GROUP D <i>n</i> =1,383	GROUP E <i>n</i> =602	URBAN <i>n</i> =12,360	RURAL <i>n</i> =5,090	MIXED <i>n</i> =6,297	AGGREGATE TOTALS <i>n</i> =23,747
15–19	1.7%	3.5%	2.6%	1.7%	1.7%	1.5%	2.7%	3.6%	2.3%
20–29	29.9%	26.7%	30.0%	24.0%	19.6%	27.5%	30.1%	29.1%	28.5%
30–39	40.7%	38.6%	40.5%	40.6%	39.5%	41.4%	39.0%	38.6%	40.1%
40–49	21.0%	22.8%	20.9%	25.8%	26.6%	22.3%	21.6%	21.2%	21.9%
50–59	4.9%	5.7%	4.6%	6.7%	9.5%	5.5%	5.2%	5.2%	5.3%
60+	1.3%	2.2%	1.1%	1.2%	2.5%	1.5%	1.2%	1.8%	1.5%
Data Missing	0.4%	0.3%	0.2%	0.1%	0.7%	0.3%	0.3%	0.5%	0.4%

Table 2. Facilitator Customers, by Monthly Income

P O P U L A T I O N									
MONTHLY INCOME	GROUP A <i>n</i> =11,298	GROUP B <i>n</i> =6,029	GROUP C <i>n</i> =4,746	GROUP D <i>n</i> =1,463	GROUP E <i>n</i> =1,145	URBAN <i>n</i> =12,413	RURAL <i>n</i> =5,951	MIXED <i>n</i> =6,317	AGGREGATE TOTALS <i>n</i> =24,681
\$0–500	18.2%	20.7%	24.4%	21.4%	15.5%	18.3%	23.6%	20.2%	20.1%
\$501–1,000	23.9%	26.2%	27.6%	29.0%	28.4%	23.8%	29.1%	26.1%	25.7%
\$1,001–1,500	22.4%	21.0%	20.2%	18.6%	24.9%	22.5%	20.6%	20.3%	21.5%
\$1,501–2,000	14.6%	13.2%	12.0%	11.8%	15.5%	14.5%	11.8%	13.9%	13.7%
\$2,001–3,000	12.7%	9.7%	9.7%	11.0%	11.1%	11.9%	9.6%	11.3%	11.2%
\$3,000–over	7.0%	7.9%	5.6%	7.0%	3.8%	7.7%	4.7%	7.0%	6.8%
Data Missing	1.2%	1.2%	0.4%	1.3%	0.7%	1.2%	0.6%	1.2%	1.0%

APPENDIX

KEY:
POPULATION

GROUP A
Over 1,000,000
Alameda, Orange, Sacramento, San Bernardino, San Diego

GROUP B
500,000–999,999
Contra Costa, Kern, San Francisco, Ventura

GROUP C
250,000–499,999
Santa Barbara, Sonoma, Stanislaus, Tulare

GROUP D
100,000–249,999
Marin, Merced, Napa, Shasta

GROUP E
Under 100,000
Lake, Nevada, Sierra, Trinity

URBAN
Alameda, Contra Costa, Marin, Orange, San Diego, San Francisco, Santa Barbara, Ventura

RURAL
Lake, Merced, Nevada, Shasta, Sierra, Stanislaus, Trinity, Tulare

MIXED
Kern, Napa, Sacramento, San Bernardino, Sonoma

APPENDIX

Table 3. Facilitator Customers, by Ethnicity

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**

*Alameda, Orange,
Sacramento,
San Bernardino,
San Diego*

**GROUP B
500,000–999,999**

*Contra Costa, Kern,
San Francisco,
Ventura*

**GROUP C
250,000–499,999**

*Santa Barbara,
Sonoma, Stanislaus,
Tulare*

**GROUP D
100,000–249,999**

*Marin, Merced,
Napa, Shasta*

**GROUP E
Under 100,000**

*Lake, Nevada,
Sierra, Trinity*

URBAN

*Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura*

RURAL

*Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare*

MIXED

*Kern, Napa,
Sacramento,
San Bernardino,
Sonoma*

P O P U L A T I O N									
ETHNICITY	GROUP A <i>n</i> =11,075	GROUP B <i>n</i> =6,280	GROUP C <i>n</i> =4,374	GROUP D <i>n</i> =1,353	GROUP E <i>n</i> =878	URBAN <i>n</i> =12,253	RURAL <i>n</i> =5,257	MIXED <i>n</i> =6,450	AGGREGATE TOTALS <i>n</i> =23,960
Asian/ Pacific Islander	5.0%	3.3%	2.2%	2.9%	1.1%	5.6%	2.2%	1.8%	3.8%
Black/ African	19.0%	14.7%	4.7%	6.6%	0.8%	18.6%	3.8%	13.1%	13.9%
Hispanic (all)	33.8%	38.1%	35.0%	20.2%	14.5%	35.0%	28.4%	35.3%	33.7%
Native American/ Eskimo	1.2%	1.1%	1.8%	2.4%	2.6%	1.2%	2.3%	1.1%	1.4%
White (non-Hispanic)	37.3%	40.6%	52.8%	65.3%	79.8%	36.4%	60.2%	45.7%	44.1%
Other	2.2%	1.4%	2.2%	1.0%	0.3%	1.9%	1.8%	1.7%	1.8%
Multiethnic	1.4%	0.9%	1.4%	1.8%	0.8%	1.3%	1.4%	1.2%	1.3%

Table 4. Facilitator Customers, by Source of Income

P O P U L A T I O N									
SOURCE OF INCOME	GROUP A <i>n</i> =12,714	GROUP B <i>n</i> =7,048	GROUP C <i>n</i> =5,577	GROUP D <i>n</i> =1,747	GROUP E <i>n</i> =1,343	URBAN <i>n</i> =13,985	RURAL <i>n</i> =7,068	MIXED <i>n</i> =7,376	AGGREGATE TOTALS <i>n</i> =28,429
Unemployed	18.5%	18.9%	24.5%	22.2%	13.5%	18.0%	23.6%	19.5%	19.7%
Unemployment Insurance	1.7%	1.8%	3.1%	2.6%	2.5%	1.7%	3.1%	1.8%	2.1%
Employed	68.9%	62.1%	55.0%	57.3%	65.7%	69.0%	54.5%	62.0%	63.7%
Retired	1.3%	1.5%	1.3%	1.6%	0.4%	1.4%	1.1%	1.3%	1.3%
Public Assistance	6.1%	11.1%	11.5%	12.7%	8.3%	5.3%	12.8%	12.1%	8.9%
Disability/Workers' Compensation	6.3%	7.3%	9.3%	8.3%	15.1%	6.7%	10.2%	7.1%	7.6%
Family/Friends	3.8%	3.9%	4.2%	4.5%	4.0%	4.1%	4.4%	3.2%	3.9%
Child/Spousal Support	3.6%	3.5%	5.2%	6.5%	5.4%	3.7%	5.9%	3.3%	4.1%
Student	4.4%	4.8%	5.2%	4.7%	2.9%	4.0%	5.0%	4.6%	4.4%

Table 5. Facilitator Customers, by Number of Children

P O P U L A T I O N									
NUMBER OF CHILDREN	GROUP A <i>n</i> = 11,399	GROUP B <i>n</i> = 6,274	GROUP C <i>n</i> = 4,852	GROUP D <i>n</i> = 1,486	GROUP E <i>n</i> = 1,155	URBAN <i>n</i> = 12,608	RURAL <i>n</i> = 6,061	MIXED <i>n</i> = 6,497	AGGREGATE TOTALS <i>n</i> = 25,166
None	10.8%	12.2%	9.5%	8.4%	4.7%	10.4%	8.8%	12.2%	10.5%
One	35.2%	32.9%	33.8%	33.2%	27.2%	36.0%	31.0%	32.3%	22.8%
Two	29.5%	29.4%	30.9%	28.7%	40.3%	29.3%	32.5%	29.8%	30.2%
Three	14.0%	14.5%	15.5%	17.6%	13.1%	13.9%	15.9%	14.7%	14.6%
Four or More	8.8%	9.4%	9.4%	11.1%	13.2%	8.8%	10.6%	9.6%	9.4%
Parentage Contested	0.6%	0.1%	0.1%	0.1%	0.3%	0.6%	0.2%	0.1%	0.4%

**KEY:
POPULATION**

GROUP A
Over 1,000,000
Alameda, Orange, Sacramento, San Bernardino, San Diego

GROUP B
500,000–999,999
Contra Costa, Kern, San Francisco, Ventura

GROUP C
250,000–499,999
Santa Barbara, Sonoma, Stanislaus, Tulare

GROUP D
100,000–249,999
Marin, Merced, Napa, Shasta

GROUP E
Under 100,000
Lake, Nevada, Sierra, Trinity

URBAN
Alameda, Contra Costa, Marin, Orange, San Diego, San Francisco, Santa Barbara, Ventura

RURAL
Lake, Merced, Nevada, Shasta, Sierra, Stanislaus, Trinity, Tulare

MIXED
Kern, Napa, Sacramento, San Bernardino, Sonoma

Table 6. Facilitator Customers, by Number of Court Hearings

P O P U L A T I O N									
NUMBER OF COURT HEARINGS	GROUP A <i>n</i> = 11,109	GROUP B <i>n</i> = 5,937	GROUP C <i>n</i> = 4,852	GROUP D <i>n</i> = 1,438	GROUP E <i>n</i> = 656	URBAN <i>n</i> = 12,047	RURAL <i>n</i> = 5,204	MIXED <i>n</i> = 6,263	AGGREGATE TOTALS <i>n</i> = 23,514
None	53.7%	48.4%	53.2%	50.5%	41.8%	51.9%	51.9%	51.2%	51.7%
One	20.4%	22.8%	20.0%	16.5%	21.0%	20.2%	18.0%	23.0%	20.5%
Two	10.0%	13.1%	11.9%	9.5%	7.3%	10.6%	11.1%	11.7%	11.0%
Three	5.4%	6.4%	5.4%	6.8%	4.1%	5.7%	5.5%	6.0%	5.7%
Four	3.0%	3.1%	3.3%	3.3%	3.2%	3.3%	3.2%	2.6%	3.1%
Five	1.5%	1.2%	1.2%	2.1%	1.5%	1.4%	1.5%	1.3%	1.4%
Six or More	5.3%	4.3%	4.6%	10.3%	29.4%	6.2%	8.1%	3.5%	5.9%
Unreadable Errors	0.8%	0.8%	0.4%	1.0%	0.6%	0.7%	0.6%	0.8%	0.7%

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Table 7. Facilitator Customers, by Educational Level

P O P U L A T I O N									
HIGHEST EDUCATIONAL LEVEL COMPLETED	GROUP A n=11,108	GROUP B n=5,910	GROUP C n=4,398	GROUP D n=1,443	GROUP E n=597	URBAN n=12,143	RURAL n=5,067	MIXED n=6,246	AGGREGATE TOTALS n=23,456
3rd Grade	1.4%	2.0%	2.0%	1.2%	2.0%	1.5%	1.7%	1.9%	1.7%
6th Grade	3.7%	3.7%	3.0%	1.1%	0.3%	4.0%	2.3%	2.8%	3.3%
8th Grade	9.1%	9.2%	12.0%	8.6%	10.7%	9.2%	11.7%	9.0%	9.7%
12th Grade	42.1%	47.7%	40.8%	40.0%	42.7%	41.1%	41.7%	48.4%	43.2%
Some College	32.5%	27.5%	30.8%	34.4%	31.1%	32.1%	31.4%	28.6%	31.0%
College Graduate	8.2%	6.7%	8.1%	10.1%	10.0%	8.7%	7.7%	6.8%	8.0%
Postgraduate/ Professional	2.3%	2.3%	2.2%	3.4%	2.8%	2.7%	2.3%	1.7%	2.4%

KEY:
POPULATION

GROUP A
Over 1,000,000
Alameda, Orange, Sacramento, San Bernardino, San Diego

GROUP B
500,000–999,999
Contra Costa, Kern, San Francisco, Ventura

GROUP C
250,000–499,999
Santa Barbara, Sonoma, Stanislaus, Tulare

GROUP D
100,000–249,999
Marin, Merced, Napa, Shasta

GROUP E
Under 100,000
Lake, Nevada, Sierra, Trinity

URBAN
Alameda, Contra Costa, Marin, Orange, San Diego, San Francisco, Santa Barbara, Ventura

RURAL
Lake, Merced, Nevada, Shasta, Sierra, Stanislaus, Trinity, Tulare

MIXED
Kern, Napa, Sacramento, San Bernardino, Sonoma

Table 8. Facilitator Customers, by Gender and Case Characteristics

P O P U L A T I O N										
	GROUP A	GROUP B	GROUP C	GROUP D	GROUP E	URBAN	RURAL	MIXED	n=	AGGREGATE TOTALS
GENDER										
Male	53%	43%	47%	48%	54%	55%	46%	40%	26,109	49%
Female	47%	57%	53%	52%	46%	45%	54%	60%		51%
D.A. Involvement (any case)	49%	48%	51%	60%	75%	53%	56%	41%	21,852	51%
CASE TYPE										
Dissolution/Legal Separation/Nullity	42.8%	49.1%	29.7%	33.1%	49.3%	38.0%	34.5%	54.6%	34,496	40.5%
Private Paternity	11.7%	8.5%	8.1%	9.3%	10.1%	8.9%	9.2%	13.3%		9.9%
Domestic Violence Prevention Act	8.8%	9.8%	5.4%	3.1%	3.9%	7.9%	5.5%	9.4%		7.5%
Title IV-D Action	36.7%	27.0%	16.9%	38.3%	43.6%	41.3%	19.9%	17.6%		30.2%
Other	3.9%	3.3%	0.9%	1.9%	2.7%	3.8%	1.4%	2.4%		2.8%
Two or More Cases	19.4%	15.3%	11.5%	17.8%	29.7%	20.5%	14.1%	12.5%	20,120	17.4%

Table 9. Assistance Requested by Facilitator Customers

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ISSUE	P O P U L A T I O N								
	GROUP A n= 11,380	GROUP B n= 6,490	GROUP C n= 4,836	GROUP D n= 1,490	GROUP E n= 1,166	URBAN n= 12,545	RURAL n= 6,074	MIXED n= 6,743	AGGREGATE TOTALS n= 25,362
Child Support	39.1%	35.1%	34.2%	39.0%	69.8%	40.8%	38.5%	34.5%	38.5%
Spousal Support	5.5%	6.6%	6.7%	6.5%	9.9%	5.7%	6.9%	6.8%	6.3%
Child Custody	26.8%	27.0%	28.7%	33.3%	14.8%	25.5%	27.8%	29.2%	27.0%
Child Visitation	20.6%	21.7%	15.3%	19.9%	8.3%	20.5%	13.8%	21.7%	19.2%
Divorce	24.9%	23.5%	25.7%	20.4%	12.7%	20.4%	24.4%	29.8%	23.9%
Establish Paternity	6.1%	5.6%	3.9%	4.2%	5.7%	6.1%	4.2%	5.1%	5.4%
Responsive Papers	10.8%	8.4%	10.0%	11.7%	10.8%	11.1%	10.0%	8.3%	10.1%
Driver's License	3.3%	2.0%	2.6%	1.8%	2.7%	3.8%	2.3%	1.1%	2.7%
Arrears	7.5%	6.7%	6.8%	7.3%	21.4%	8.5%	9.0%	5.4%	7.8%
Wage Assessment	7.0%	6.1%	5.4%	4.3%	11.6%	6.8%	6.1%	6.4%	6.5%
Violence	1.9%	2.7%	2.1%	1.7%	1.5%	2.0%	2.2%	2.3%	2.1%
Restraining Order	6.5%	12.3%	8.9%	6.9%	1.9%	6.9%	8.3%	10.7%	8.2%
Other	10.8%	18.4%	9.0%	12.0%	5.7%	11.7%	9.1%	16.1%	12.2%

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**
Alameda, Orange,
Sacramento,
San Bernardino,
San Diego

**GROUP B
500,000–999,999**
Contra Costa, Kern,
San Francisco,
Ventura

**GROUP C
250,000–499,999**
Santa Barbara,
Sonoma, Stanislaus,
Tulare

**GROUP D
100,000–249,999**
Marin, Merced,
Napa, Shasta

**GROUP E
Under 100,000**
Lake, Nevada,
Sierra, Trinity

URBAN
Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura

RURAL
Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare

MIXED
Kern, Napa,
Sacramento,
San Bernardino,
Sonoma

APPENDIX

Table 10. Assistance Provided by Facilitator

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**

*Alameda, Orange,
Sacramento,
San Bernardino,
San Diego*

**GROUP B
500,000–999,999**

*Contra Costa, Kern,
San Francisco,
Ventura*

**GROUP C
250,000–499,999**

*Santa Barbara,
Sonoma, Stanislaus,
Tulare*

**GROUP D
100,000–249,999**

*Marin, Merced,
Napa, Shasta*

**GROUP E
Under 100,000**

*Lake, Nevada,
Sierra, Trinity*

URBAN

*Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura*

RURAL

*Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare*

MIXED

*Kern, Napa,
Sacramento,
San Bernardino,
Sonoma*

ISSUE	POPULATION								
	GROUP A n=12,094	GROUP B n=5,435	GROUP C n=5,012	GROUP D n=1,881	GROUP E n=1,657	URBAN n=14,454	RURAL n=6,319	MIXED n=5,306	AGGREGATE TOTALS n=26,079
Child Support	60.9%	51.5%	73.1%	74.9%	82.7%	61.1%	75.6%	56.6%	63.7%
Spousal Support	8.5%	7.5%	23.4%	9.7%	13.9%	7.5%	22.0%	10.2%	11.6%
Custody/ Time Share	17.3%	11.2%	57.2%	16.0%	22.9%	19.6%	45.2%	10.6%	24.0%
Health Insurance	4.3%	3.8%	7.1%	3.2%	10.5%	3.3%	6.9%	7.5%	5.0%
Support Arrears	9.4%	13.8%	7.7%	14.6%	15.9%	13.3%	7.8%	7.7%	10.8%
Child-Care Expenses	1.2%	1.5%	2.8%	3.1%	0.6%	1.8%	1.5%	1.7%	1.7%
Multijurisdictional	1.5%	2.3%	1.0%	0.7%	2.9%	1.8%	0.9%	1.8%	1.6%
Other	44.6%	61.9%	9.0%	29.0%	12.0%	44.0%	11.1%	54.7%	38.2%

Table 11. Assistance With Forms

TYPE OF FORM	POPULATION								
	GROUP A n=6,724	GROUP B n=4,468	GROUP C n=3,128	GROUP D n=655	GROUP E n=500	URBAN n=7,294	RURAL n=3,431	MIXED n=4,750	AGGREGATE TOTALS n=15,475
Fee Waiver	33.7%	28.0%	39.0%	20.0%	27.0%	31.2%	36.4%	31.1%	32.3%
Income and Expense	40.5%	23.1%	34.2%	21.4%	41.8%	39.6%	32.7%	24.7%	33.5%
Petition	19.1%	17.5%	16.6%	22.8%	13.2%	15.8%	18.5%	21.4%	18.1%
Response/ Answer	14.4%	11.3%	12.0%	20.5%	19.0%	14.5%	13.8%	11.5%	13.4%
OCS/Motion	50.9%	48.5%	53.8%	44.2%	27.0%	53.5%	49.5%	44.6%	49.7%
Ex Parte	6.4%	5.9%	18.6%	3.5%	0.2%	7.6%	16.7%	3.7%	8.4%
License Revocation Review	3.8%	.8%	1.3%	0.3%	0.2%	3.9%	0.8%	0.4%	2.1%
Stipulation & Order	2.4%	2.8%	3.8%	4.9%	12.0%	3.3%	4.5%	2.2%	3.2%
Order After Hearing	1.7%	7.0%	2.6%	1.8%	1.4%	3.3%	2.5%	4.2%	3.4%
Wage Assessment	4.7%	4.1%	2.7%	1.4%	6.0%	3.9%	2.6%	5.3%	4.0%
Judgment	8.0%	7.9%	8.5%	4.4%	9.2%	6.3%	8.6%	10.0%	8.0%
Other	24.0%	31.9%	24.0%	7.2%	25.4%	23.2%	20.2%	33.1%	25.6%

Table 12. Courtroom Assistance

COURTROOM SERVICE PROVIDED	P O P U L A T I O N								
	GROUP A n=1,378	GROUP B n=459	GROUP C n=196	GROUP D n=149	GROUP E n=121	URBAN n=1,746	RURAL n=398	MIXED n=159	AGGREGATE TOTALS n=2,303
Readiness Review	47.5%	25.3%	79.6%	3.4%	76.9%	41.6%	59.5%	38.4%	44.5%
Interview Litigants	28.2%	29.0%	65.8%	68.5%	82.6%	28.9%	79.1%	21.4%	37.0%
Financial Mediation	5.9%	11.8%	4.6%	1.3%	24.0%	6.8%	9.5%	11.9%	7.6%
Support Calculations	9.5%	18.1%	52.6%	6.7%	39.7%	11.2%	38.4%	17.0%	16.3%
Order After Hearing	40.7%	12.9%	51.5%	0.7%	0.8%	35.1%	25.6%	5.0%	31.4%
Financial Stipulations	2.1%	7.4%	3.6%	2.7%	3.3%	3.3%	2.5%	6.3%	3.4%
Procedural Information	42.3%	65.5%	55.1%	27.5%	86.0%	47.7%	57.8%	45.9%	49.3%
Educational Materials	1.6%	9.2%	44.4%	2.7%	0.0%	3.6%	21.9%	3.1%	6.7%
Special Master	0.1%	0.0%	0.5%	0.0%	0.0%	0.1%	0.3%	0.0%	0.1%
Referrals	7.4%	8.5%	15.3%	0.7%	4.1%	7.6%	8.8%	5.7%	7.7%
Other	3.9%	15.3%	12.2%	5.4%	9.9%	7.6%	5.3%	9.4%	7.3%

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**
Alameda, Orange,
Sacramento,
San Bernardino,
San Diego

**GROUP B
500,000–999,999**
Contra Costa, Kern,
San Francisco,
Ventura

**GROUP C
250,000–499,999**
Santa Barbara,
Sonoma, Stanislaus,
Tulare

**GROUP D
100,000–249,999**
Marin, Merced,
Napa, Shasta

**GROUP E
Under 100,000**
Lake, Nevada,
Sierra, Trinity

URBAN
Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura

RURAL
Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare

MIXED
Kern, Napa,
Sacramento,
San Bernardino,
Sonoma

Table 13. Telephone Assistance

SERVICE REQUESTED	P O P U L A T I O N								
	GROUP A n=3,226	GROUP B n=872	GROUP C n=3,657	GROUP D n=770	GROUP E n=585	URBAN n=4,607	RURAL n=3,622	MIXED n=881	AGGREGATE TOTALS n=9,110
General Information	52.2%	81.1%	75.3%	91.2%	41.7%	65.0%	66.7%	77.3%	66.9%
Procedural Information	27.6%	57.2%	24.4%	39.6%	20.0%	26.8%	25.7%	60.7%	29.7%
Case Registry Status Information	4.8%	28.0%	2.5%	5.9%	17.6%	8.0%	5.1%	10.1%	7.0%
Support Calculations	0.7%	5.5%	1.2%	3.1%	1.2%	1.2%	1.2%	5.4%	1.6%
Referrals	11.6%	5.8%	2.9%	19.0%	8.4%	11.4%	3.9%	6.8%	8.0%
Call Back/ Follow-up	71.3%	27.6%	2.1%	23.2%	19.1%	54.8%	3.9%	27.8%	32.0%
Make Appointment	38.3%	12.6%	7.3%	29.0%	25.0%	35.0%	8.6%	6.4%	21.7%

APPENDIX

Table 14. Other In-Office Assistance

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**

*Alameda, Orange,
Sacramento,
San Bernardino,
San Diego*

**GROUP B
500,000–999,999**

*Contra Costa, Kern,
San Francisco,
Ventura*

**GROUP C
250,000–499,999**

*Santa Barbara,
Sonoma, Stanislaus,
Tulare*

**GROUP D
100,000–249,999**

*Marin, Merced,
Napa, Shasta*

**GROUP E
Under 100,000**

*Lake, Nevada,
Sierra, Trinity*

URBAN

*Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura*

RURAL

*Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare*

MIXED

*Kern, Napa,
Sacramento,
San Bernardino,
Sonoma*

ASSISTANCE REQUESTED	POPULATION								
	GROUP A n=9,685	GROUP B n=5,233	GROUP C n=4,527	GROUP D n=1,270	GROUP E n=983	URBAN n=11,191	RURAL n=5,390	MIXED n=5,117	AGGREGATE TOTALS n=21,698
Document Review	61.6%	69.0%	67.0%	34.4%	53.7%	58.4%	59.6%	74.8%	62.6%
Support Calculations	14.3%	16.6%	11.3%	18.3%	35.3%	18.0%	11.6%	13.7%	15.4%
Financial Mediation	2.0%	2.4%	0.5%	0.7%	7.1%	2.7%	1.4%	1.0%	2.0%
Financial Stipulations	0.8%	1.8%	0.5%	0.9%	0.5%	1.3%	0.2%	1.1%	1.0%
Procedural Information	87.7%	79.7%	89.4%	81.6%	72.1%	87.9%	87.9%	75.9%	85.1%
Educational Literature	9.4%	6.7%	6.4%	8.6%	1.3%	11.7%	2.5%	4.5%	7.7%
Educational Videos	7.3%	0.3%	0.7%	0.2%	1.0%	6.6%	0.2%	0.3%	3.5%
Referrals	20.7%	6.3%	6.5%	15.8%	7.3%	21.9%	5.4%	3.0%	13.4%
Arrearages	6.5%	9.4%	2.6%	9.2%	16.1%	9.6%	3.5%	5.0%	7.0%
Judgment Set-asides	2.7%	3.5%	0.5%	0.6%	2.7%	3.5%	0.7%	1.3%	2.3%
Other	10.4%	9.2%	2.1%	7.0%	15.8%	10.4%	3.6%	9.1%	8.4%

Table 15. Time per Customer Contact

TIME	POPULATION								
	GROUP A n=14,046	GROUP B n=6,840	GROUP C n=8,057	GROUP D n=2,064	GROUP E n=1,645	URBAN n=16,351	RURAL n=9,454	MIXED n=6,847	AGGREGATE TOTALS n=32,652
0–15 min.	53.8%	51.0%	50.7%	47.9%	39.8%	54.1%	52.2%	43.7%	51.4%
16–30 min.	17.9%	29.6%	30.6%	27.3%	29.8%	18.5%	31.5%	29.8%	24.7%
31–60 min.	12.6%	11.4%	14.1%	15.1%	22.5%	13.3%	12.0%	15.4%	13.4%
1–2 hrs.	8.5%	5.2%	3.8%	8.0%	7.0%	7.2%	3.6%	9.1%	6.6%
2–3 hrs.	3.6%	1.8%	.3%	1.0%	0.4%	3.4%	0.3%	1.3%	2.1%
3–4 hrs.	1.9%	0.3%	0.0%	0.0%	0.1%	1.7%	0.0%	0.1%	0.9%
4+ hrs.	1.4%	0.1%	0.0%	0.1%	0.0%	1.2%	0.0%	0.1%	0.6%
Unreadable/Errors	0.4%	0.6%	0.4%	0.5%	0.4%	0.5%	0.4%	0.5%	0.5%

Table 16. Sources of Referrals

SOURCE OF REFERRAL	P O P U L A T I O N								
	GROUP A n= 11,319	GROUP B n= 6,634	GROUP C n= 4,955	GROUP D n= 1,531	GROUP E n= 1,305	URBAN n= 12,636	RURAL n= 6,339	MIXED n= 6,769	AGGREGATE TOTALS n= 25,744
Judge	10.8%	7.9%	9.7%	6.2%	21.5%	11.4%	11.2%	6.5%	10.1%
Clerk's Office	23.5%	30.1%	24.1%	14.6%	19.4%	21.9%	23.3%	30.6%	24.6%
D.A. Family Support	20.7%	19.8%	23.2%	30.3%	37.1%	24.0%	25.2%	16.5%	22.3%
Bar Association	0.4%	0.4%	0.1%	0.2%	0.2%	0.5%	0.1%	0.3%	0.3%
Attorney	4.0%	2.9%	3.5%	3.4%	5.0%	4.1%	3.4%	2.9%	3.6%
Friend	14.7%	15.8%	16.2%	19.1%	10.6%	13.5%	16.2%	17.8%	15.3%
Family Court Services	10.2%	6.3%	8.0%	10.2%	4.6%	9.7%	7.5%	7.3%	8.5%
Other Facilitator	2.7%	2.3%	3.2%	3.3%	2.0%	2.7%	3.1%	2.3%	2.7%
Newspaper	0.1%	0.3%	0.6%	0.1%	0.0%	0.2%	0.5%	0.2%	0.3%
Pamphlet	2.4%	1.6%	3.9%	1.8%	3.0%	2.7%	2.9%	1.7%	2.5%
Other	17.7%	22.6%	15.9%	20.3%	13.6%	17.8%	16.6%	21.9%	18.6%

APPENDIX

**KEY:
POPULATION**

**GROUP A
Over 1,000,000**
Alameda, Orange,
Sacramento,
San Bernardino,
San Diego

**GROUP B
500,000–999,999**
Contra Costa, Kern,
San Francisco,
Ventura

**GROUP C
250,000–499,999**
Santa Barbara,
Sonoma, Stanislaus,
Tulare

**GROUP D
100,000–249,999**
Marin, Merced,
Napa, Shasta

**GROUP E
Under 100,000**
Lake, Nevada,
Sierra, Trinity

URBAN
Alameda, Contra
Costa, Marin,
Orange, San Diego,
San Francisco,
Santa Barbara,
Ventura

RURAL
Lake, Merced,
Nevada, Shasta,
Sierra, Stanislaus,
Trinity, Tulare

MIXED
Kern, Napa,
Sacramento,
San Bernardino,
Sonoma

Family-Focused Courts

Families come to court for many reasons, and some families return to court frequently.¹ In 1998, litigants filed 5 million domestic relations cases—divorce, child custody, child support, domestic violence, adoption, and paternity—in state courts. Domestic relations cases constituted 34 percent of all civil filings. In addition, 2.1 million juvenile cases—delinquency, truancy, and abuse and neglect—were filed that year.²

To provide effective service to the public as well as to cope with high caseloads, the court system must make itself more accessible, even friendly, to families who need to maneuver through it. This article discusses the development of a “family-focused court,” a consumer-oriented court of either special or general jurisdiction that responds to this need. Such courts view families not as cases to be disposed of, but as consumers entitled to delay-free and competitively priced services. Family-focused courts provide access to services that heal and protect children and their families wherever possible as they resolve cases in a timely and effective manner.

Some of the approaches available to family-focused courts include the “one-family/one-judicial-officer” model of case assignment (used even by jurisdictions that do not have separate family courts), innovative methods of case coordination, and effective coordination of both court-based and social services for families. This article reviews some of these practices as well as measures for assessing court performance in a family-focused court. When appropriate, the article highlights as examples the practices of particular courts currently using these approaches.

FAMILY-FOCUSED MODELS

A family-focused court usually assigns one judicial officer or a team of experts to handle a single family’s case from beginning to end. The way in which information about a family is shared among courts is an important concern of the family-focused court. The court also strives to provide consistent representation and appropriate services to families. Not every family-focused court will use all of the approaches discussed here, but each will employ some of them.

THE ONE-FAMILY/ONE-JUDICIAL-OFFICER MODEL

The one-family/one-judicial-officer model is often considered the heart of a family-focused court.³ This approach is based on the premise that a judicial officer who is aware of a family’s various legal concerns and social dynamics can make more informed and effective decisions than could several different judicial officers handling individual cases involving a single family. A single judicial officer can become more familiar with the details of each family’s crisis and better address the family’s needs and foresee future difficulties. Families might more readily obey court orders if they knew they would have to appear before the same judicial officer.

On the other hand, concern has arisen that a judicial officer’s familiarity with a family and its issues will lead to prejudgment and that one judicial officer may not



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The increasing volume and complexity of family caseloads place significant constraints on the ability of courts to both address the needs of families and effectively manage cases. Many jurisdictions have instituted a family court to improve handling of family cases and coordination of needed family services. Other jurisdictions have developed innovative approaches that do not require a change in organizational structure. This article discusses components of a “family-focused court,” defined as a court hearing cases involving children and families with a consumer orientation. It also reviews five principles, based on the *Trial Court Performance Standards*, by which to assess a court’s success. ■

Material for this article is drawn from the State Justice Institute project “Court Coordination of Family Cases” (SJI-96-12C-B-222). The monograph, How Are Courts Coordinating Family Cases?, is available for a nominal mailing charge from the National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185.

have the expertise needed to deal with them all. Experiments conducted in Oregon may help alleviate these concerns. In Bend, Oregon (Deschutes County), general-jurisdiction circuit court judges carry a general caseload but are also responsible for coordinating a limited number of family law cases. One judicial officer is assigned to a family and hears all matters, civil and criminal, related to that family. That judge becomes responsible for all matters relating to domestic violence, dissolution, substance abuse, criminal proceedings, and children's welfare involving the family's members. Because of their general experience, these judges have proved able to handle the diverse caseload of the unified court. Motions to recuse judges based on overfamiliarity and possible prejudice have been rare.⁴

THE ONE-FAMILY/ONE-JUDICIAL-OFFICER/ ONE-TREATMENT-TEAM MODEL

King County, Washington (Seattle), uses a team approach to oversee cases involving families engaged in multiple court proceedings or those who present single cases involving issues such as mental illness, substance abuse, or the physical or sexual abuse of children. The multidisciplinary team consists of a family court judge, a commissioner, and a case manager.⁵ The case manager develops a case profile from a review of active and inactive cases involving the family, including existing orders, reports, investigations, services, and pending hearing dates. After completion of the profile, the team reviews the case to see if it qualifies for case management by a judicial commissioner.

In Wisconsin and some other states, commissioners decide uncontested cases and narrow issues in contested cases, thereby saving valuable judicial time. Such a pragmatic approach may seem to run counter to the one-family/one-judicial-officer model. Nevertheless, the American Bar Association urges both the use of a family court and the use of hearing officers, mediators, court social workers, and other court personnel to handle numerous tasks currently performed by judges.⁶

Perhaps this variation—what we can call the “one-family/one-treatment-team” model⁷—better realizes the possibilities inherent in the family-focused court than does the “one-family/one-judge” model. According to Catherine Ross, chair of the ABA's Committee on the Unmet Legal Needs of Children, “[c]ourts should have well-trained resource personnel at all levels, including magistrate hearing-officers, special masters, mediators, court clerks, social workers, and other service providers, who can perform triage.”⁸ Teams composed of professional court staff can proactively manage each case by providing intake, screening, assessment, calendar coordination, and case-monitoring services to the parties and to the judicial officers.⁹

CASE COORDINATION: SHARING INFORMATION

In Miami, Florida, case managers and other staff of the family court and the domestic violence court coordinate cases that affect both courts. Judicial officers in each court are informed of other cases involving the parties and of actions taken in those cases at the time of hearings on their respective cases. For example, the Miami-Dade County Domestic Violence Court obtains information on related cases from the restraining order petition prepared by an intake counselor from a personal interview with the “client” and from searches of civil, family, and criminal court databases. In addition, specialized court administration staff members assist all clients in preparing petitions for restraining orders, refer domestic violence petitioners to social services available in the community, and consider safety planning.¹⁰

This case management model facilitates coordination among courts to ensure that custody and visitation disputes involving domestic violence are adjudicated appropriately and do not result in conflicting orders. The model may require organizational, staffing, and data management changes, but it can be effective in addressing domestic violence issues coming before the court through its civil, family, and criminal divisions.

CASE COORDINATION: CONTINUITY IN LEGAL REPRESENTATION

Continuity of legal representation is an important feature of the family-focused model. Unnecessary delays may result when new attorneys replace old ones. Valuable treatment time is sacrificed while the new attorney becomes familiar with the facts and issues of the case. Family members feel more comfortable with attorneys who know them and are familiar with their problems.

Design of a family-focused court therefore should address whether continuity of nonjudicial actors who come in contact with a family (such as prosecutors, public defenders, and court-appointed attorneys) is important in a single case and whether one representative should participate in all of the proceedings involving a single family. For example, a court should consider whether a guardian ad litem who represents a child in juvenile court should also represent that child in criminal court. Different courts address these issues in different ways. In St. Paul, Minnesota, one prosecutor is responsible for all child abuse and neglect cases in the juvenile division and also oversees the attorneys who prosecute criminal charges that involve the same children as victims in the criminal division.¹¹ In some courts, one staff member specializes in screening cases. Examples include the courthouse facilita-

tor in Seattle, Washington, and the Family Advocate Screening Team in Bend and Medford, Oregon.¹²

CASE COORDINATION: USING CASAS

Court-Appointed Special Advocates (CASAs) assist children involved in dependency, abuse, and neglect proceedings in thousands of courts nationally. The CASA's role is twofold: he or she is both an investigator and the child's advocate in court. The CASA gathers all relevant facts concerning a child's well-being and presents them to the court. In jurisdictions where attorneys do not represent child dependents of the court, CASAs may present recommendations to the court and act as advocates. In jurisdictions where an attorney represents the child, the attorney may use the recommendations of the CASA to assist in the legal representation of the child.

In King County, Washington, the court, through its CASA program, obtains the information it requires to determine which services are needed by children and families and how these services can be coordinated. With ongoing CASA assistance, the court is apprised of the effectiveness of its orders and of case supervision. If a subsequent petition in dependency is filed, the CASA continues to represent the child and may be appointed in that action as well. Research involving CASAs suggests that children and families served by CASAs receive more services from child welfare agencies than do children without CASA representation.¹³

CASE COORDINATION: USING A COURTHOUSE FACILITATOR

Courts that administer family law cases have needed to implement strategies to assist the large number of litigants not represented by attorneys (*pro se*). For example, King County Superior Court uses trained paralegals as "family law facilitators" to help *pro se* litigants. Law facilitators provide a wide range of services, from instructing court clients on which legal forms are needed to providing information on how to initiate or respond to a marriage dissolution. Facilitators also provide information about court rules, procedures, hearing schedules, and ways to improve pertinent court- or community-sponsored services and resources.

The assistance of family law facilitators enables a court to be significantly more efficient in its work process and product. With basic procedural questions being addressed prior to the hearing date, far fewer continuances of scheduled hearings should occur. More adequate self-representation should result in higher-quality judgments and provide more balance to proceedings when an attorney represents the other party.

CASE COORDINATION: USING FAMILY GROUP CONFERENCING

Family group conferencing is an important means by which to advance child and adult safety and strengthen family unity. The family group conferencing model was adapted from a practice in New Zealand, where this approach was legislated in 1989 to address child welfare and youth justice issues.

In Bend, Oregon, where family group conferencing is employed, family members and related cases are first identified at intake. Families with cases before the family court are then referred to a screening team composed of legal counsel and representatives from agencies and local schools. This team is known as the Family Advocacy Screening Team (FAST); its primary task is to review the family status and decide if a coordinated treatment plan would be beneficial. It considers several factors: availability of family members, prior history of services with social service agencies, a family's willingness to allow agencies to share confidential information, and the complexity associated with the family's social, legal, and administrative issues. Following the screening team's review, many families are referred to a multidisciplinary treatment team for coordination of services.

The multidisciplinary treatment team, preferably with the family's input, develops a comprehensive plan based on family needs and interest. The team is composed of line staff and representatives of the agencies working with the family, staff from the children's schools, and the family's legal counsel. It meets jointly with the family and shares information consistent with signed confidentiality waivers. With extensive input, it develops a comprehensive treatment plan for the family and assigns a lead agency representative. The plan is filed with the court and monitored actively for compliance by the court coordinator through ongoing contacts with family and team members and at subsequent family-team meetings. Those accepted for coordination as a family case are assigned to a judicial officer. The court coordinator files reports with the judicial officer and participates in ongoing judicial hearings.¹⁴

COORDINATING SERVICES TO FAMILIES

Work to remedy the family crisis begins once the case starts moving through the court. In many instances, courts are service coordinators of last resort for dysfunctional families, matching the needs of individuals to the services available in the community. Courts are involved as direct service providers in some proceedings, performing custody evaluations, domestic violence assessments,

probation services, juvenile detention administration, mediation, CASA service provision, and certain community corrections functions. A single child may require the services of a number of professionals, whether provided within the court context or by service providers outside of courts. These might include, for example,¹⁵

- A custody evaluator
- A visitation counselor
- A child support officer
- A child protection worker
- A school district representative in a truancy case
- A mental health case manager
- A guardian ad litem
- A public defender in a delinquency proceeding
- A probation officer in a delinquency proceeding
- Court-appointed attorneys in a delinquency proceeding
- Court-appointed attorneys in a custody proceeding
- Foster parents

The court's role in the provision and coordination of services involving children and families is expanding, not because courts are assuming responsibilities once held by child welfare and social service agencies, but because they now recognize the need for coordination across courts and agencies. State legislatures often impose a responsibility on courts to see that services are delivered, and indeed, federal law calls on courts to monitor social service agencies.

No matter what models they employ, in all the services they provide, the courts must maintain the role of neutral arbiter. Social service agencies may advocate treatment or side with one parent against the other, but courts must maintain impartiality during the process and when making their rulings. In child abuse and neglect cases, courts can ensure that families obtain the services required by their case plans and live up to their agreements in other respects, such as attending anger management classes. At times, the sanctioning power of courts can ensure treatment. For example, juvenile delinquents may be ordered to attend counseling or therapy, perform community service, or attend residential treatment or training programs. By the same token, courts can hold social service agencies accountable to ensure that they provide quality services in a timely manner and to determine whether written permanency plans are sound. Agencies may need to defend their actions in court.

Effective processing in family law requires coordination with social service agencies. Courts must order, monitor, and enforce case plans recommended by social services professionals, sanctions carried out by law enforcement agencies, and mandates imposed by federal and state legislation. Professional staff is needed to coordinate the delivery of the multiple services necessary for children and their families.

COORDINATING SERVICES: USING LIAISONS

Several models of coordination between courts and social service agencies are in use. Under one such model, courts appoint liaisons to various social service agencies. In Delaware, for example, social workers from the Department of Services to Children and Families are located at the family court to coordinate the agency's activities. These liaisons also serve as an informational resource on community agency services to any official engaged in family court work.¹⁶

Representatives from social service agencies work at the Louisville, Kentucky (Jefferson County), court.¹⁷ Each judicial officer has a social worker on staff who is present in the courtroom to assist in making determinations as well as in linking families to social services and to provide other nonlegal public and private assistance.

COORDINATING SERVICES: REACHING OUT TO THE COMMUNITY

Coordination may also occur at the community level, with both courts and social service agencies involved as active participants. Jackson County, Oregon, is a statewide leader in the comprehensive integration of services. Working closely with the state's Department of Human Resources, partner agencies have made great strides in eliminating fragmented service delivery to their clientele.

Recognizing the importance of creating a partnership with the community it serves, the Jackson County Court created a Family Law Advisory Committee (FLAC).¹⁸ It consists of 12 judges, court administrators, attorneys, and court-related professionals and is staffed by the state judicial department. After considering several alternative models of coordination, in 1998 the Jackson County Court and FLAC created a Community Family Court, so named to reflect its commitment to partnerships with the community and service providers. This court not only recognizes that early identification of families in need of services requires both court and social services support, but also holds families accountable for compliance with court mandates and social services requirements.

In Jackson County, a "one-stop shop" houses 17 agencies and brings the local agencies together to work with

family cases. Of course, all 17 agencies are not to be involved in each family's case, but the new family court is an active sit-down participant with the agencies. The family court coordinator attends team meetings to provide information on court proceedings, participates in assessing whether additional agency services might be needed, and carries information back to the court. The court's administrator, Jim Adams, has suggested, "The family is our focus, not the court, not the court staff. So we're just one of the folks. We want to be flexible. We'll facilitate and coordinate when appropriate, otherwise not."¹⁹

EVALUATING FAMILY-FOCUSED COURTS

With so many different issues affecting families and their successful court experience, gauging the success of family-focused courts is difficult. Creating a family court does not automatically guarantee that service delivery will be efficient and effective. Evaluation is needed to see where success is achieved and where opportunities for improvement persist. Some jurisdictions that do not have family courts may be more successful at delivering services to children and families.

To determine which procedures work best, courts must establish evaluation criteria. All procedures should be evaluated against stringent outcome criteria so that children and families benefit regardless of the court structure used by the various states.

Five proposed criteria for evaluating court performance on family matters are:²⁰

1. Highest-quality professional court decision making

This criterion means that each case is given individual attention and similar cases are treated alike. It also means resolving the underlying issues so that families do not repeatedly return to court and are not required to make frequent, unnecessary appearances in court. Families' active involvement in determining a mutually acceptable settlement of the issues in dispute enhances the probability of a final resolution. It is very important to give each individual case the attention it deserves and to give each family member his or her day in court. Whether through structure or process, jurisdictions should move to consolidate legal issues when dealing with a single family.

To meet these objectives, a family-focused court must have judicial leadership that is committed, specialized, and in place long enough to mobilize community support. Judicial leadership is needed to promote the growth of resources and processes that will realize society's goals for the court and achieve coordi-

nated jurisdiction over the family. This type of involvement in the community is different from the traditional role played by judicial officers, but it is absolutely critical for a family-focused court.

2. Collaboration of courts and social service agencies to tailor services to the strengths and needs of families

Family-focused courts are most successful in a supportive environment where the community and all of its agencies work together to strengthen families and move them toward self-sufficiency. Some social service agencies have implemented policies requiring that the development of case plans be based on the strengths of a family and its members, and not be strictly deficit driven. The basic premise is that an integrated approach, through a family-focused court, will promote better-quality court decision making by providing judicial officers and judicial hearing officers with accurate and complete information about the family. It also will make the best use of limited community resources to strengthen families.

Indeed, by working together, courts, social service agencies, and the community may be able to increase the total amount of treatment and other services available to families. "Services" are broadly defined to include not only social services, but also community, school, and enforcement services. Both courts and service agencies need to ask, "Are families receiving the services they need, and are services delivered in a fashion needed to produce the desired results?" Courts need to coordinate with executive-branch departments, schools, and community organizations to avoid duplication of service programs and to prevent issuance of orders that unknowingly are counterproductive to existing treatment and rehabilitation efforts. Courts and human social service agencies benefit when liaisons are established and they communicate regularly with one another.

The Family Self-Sufficiency Scale developed by Jackson County, Oregon (see figure, page 104), is a particularly helpful index to measure family progress. A copy of this scale is kept in each family's folder, and the family court coordinator administers the scale periodically to measure outcomes.

3. Expedient and cost-effective dispute resolution

Courts need to provide families with the forum to resolve disputes without undue hardship, cost, or inconvenience. Court procedures that adjudicate cases involving children and families need to be simplified and readily accessible to the public, especially to unrepresented litigants. Economic barriers should not

Family Self-Sufficiency Scale

Client Name: _____ Rating: Pre Progress Post Follow-up Date: _____

Rater (Name/Role): _____

Circle most descriptive rating words in each area. Use N/R to indicate "unable to rate."

Self-Sufficiency Area	Self-Sufficiency Continuum and Ratings				
	0	1	2	3	4
Program Participation	Refusing/resisting	Minimal/passive	Some involvement	Moderate involvement	Regular/active
Child Care	None	Friend/relative/unstable	Noncertified/stable	Certified/stable	Stable with backup
Housing	Homeless	Unstable/unsafe	Friend/family/residential program	Substandard rental	Adequate rental/own home
Employment	No/poor work history or job search	Employment training/job search	Subsidized work/ Jobs Plus	Part time/seasonal/ temp*	Full time*
Partner Relationship	Current domestic violence/stalking	Recent DV harassment	Big conflict/issues/ recent sep/divorce	Adjusting/single	Healthy relationship or self-sufficient single
Parent-Child Relationship	Founded case abuse/neglect	Issues of abuse/neglect/poor parent-child relationship	Need parent-child relationship improvement	Adequate parent-child interaction	Healthy parent-child relationship
Parent Education/Literacy	HS dropout/ low literacy	Educational/ literacy assessment completed	Participating in ABE/GED/ESL literacy program	Finished basic ed/ functional literacy	Career training/ college
Youth Risk/Resiliency	Severe risk A&D/ delinq/drop out	High risk/multiple Problems	Moderate risk/ some issues	Low risk/ few issues	Successful youth development
School Attendance	Dropped out/ not enrolled	Frequent absences (without good cause)	Sporadic attendance/ chronic tardiness	Moderate absences/ tardiness	Regular attendance
Family Health	Emergent care only/ serious medical prob	Neglect of care/ no health provider	Identified medical provider	Periodic health care	Regular/preventative care
Substance Abuse	Suspected/denial/ no treatment	Admitted/confirmed/ no treatment	Screened/started TX/ little progress	In treatment/ making progress	Ongoing recovery/ functional
Mental Health	Severe or chronic/ in crisis/no TX	Assessed/needed TX; refused	Assessed/started TX	In treatment/ making progress	Ongoing recovery/ functional
Community Involvement	None/unhealthy community conflicts	Minimal; some previously	Occasional/uses community resources	Involved in 1+ community activities	Regular volunteer
Level of Public Assistance	Eligible but not participating	TANF/ cash assistance	FS/OHP/ERDC with co-pay retention	Off public assistance	Off public assistance 6 months
Family Income	Unable to meet basic needs	Meets basic needs/ debt/unpaid bills	Able to meet basic needs/ timely debt payment	Able to meet basic needs/some discretionary income	Able to pay bills with some discretionary income/savings
Criminal Justice	In jail	Supervised probation	Unsupervised probation	Finished probation	No recidivism for 6 months
Transportation	No vehicle and suspended/no license	Either no vehicle or no license	Unreliable car/ no insurance	Vehicle OK/ has license	License/insurance/ reliable vehicle

Pretest Date: _____

Put a #1 in scale boxes indicating pretest score

Post-test Date: _____

Put a #2 in scale boxes indicating post-test score

Protocol: standard confidentiality procedure

*Write hourly wage in corner of these boxes

Reprinted, with changes, from Carol R. Flango et al., *How Are Courts Coordinating Family Cases?* 88 (National Ctr. for State Courts 1999).

prevent families from using courts. Night courts, information kiosks, and court child-care centers are examples of court efforts that give clients easier access to courts.²¹ Clarifying legal proceedings for lay persons and eliminating confusion caused by excessive use of “legalese” are also priorities. Courts must acknowledge the difficulties encountered by the public in interpreting complex legal concepts, rules of law, and terms of art and must accept the responsibility to proactively assist unrepresented litigants.

4. Timely case resolution

Timeliness is a consideration in the resolution of all disputes. It is especially critical when children are involved. Delay in resolution may cause a child to remain in a potentially dangerous situation or postpone his or her return to the home of a parent or placement with another relative. The length of time required to resolve general family issues also should be expedited, but not to the extent that the speed infringes on the parties’ due process rights. Timely resolution limits the exposure of families to emotionally charged issues that can have a detrimental impact on children and adults. In addition, family courts must always be mindful of the child’s sense of time.

To ensure timely case resolution, courts need to provide aggressive case management. From intake to case resolution, courts need to track a family’s progress through the court system. Eliminating duplicative and conflicting orders will also help move cases through the system.²² Over the long term, a unified system can help cut costs through prevention efforts that help break the cycle of violence, so that in the future some families may avoid the courts altogether. It can also assist a community to pool its resources in innovative and useful ways, such as offering social services within the courthouse and using the community more as a service tool.

5. Satisfaction of litigants

Client assessment of the judicial officer’s courtroom demeanor, the helpfulness of court staff, and the timeliness of court proceedings can measure whether children and families are treated with objectivity, dignity, and respect. Court clients, however, also have responsibilities to complete service plans, comply with court orders, and, ultimately, achieve sufficient strength to leave the supervision of courts and service agencies.

CONCLUSION

A family-focused court provides an effective judicial response to intrafamilial problems.²³ Courts make critical

decisions in the lives of children, and these decisions need to be made thoughtfully and at the proper pace. Many of the family-focused models discussed here, such as the one-family/one-judicial-officer model, the unified case management approaches, and the coordination of services between courts and agencies, will help courts to help families.

Courts need to make a real commitment to families not only so that their cases are heard and resolved, but also so that the problems of families and children are actively addressed and treated rather than exacerbated. Family-focused courts treat families holistically by placing each case within the context of their overall family history. Family-focused courts should treat families efficiently to coordinate the delivery of services, humanely to minimize the strain of the court process, and fairly to respect each member’s due process rights. Finally, all of these practices need to be evaluated to determine how well the family-focused court is operating.

1. H. TED RUBIN & VICTOR EUGENE FLANGO, COURT COORDINATION OF FAMILY CASES (National Ctr. for State Courts 1992). Research found that 40 percent of families came to court for more than one case. These repeat litigants generate a disproportionate number of family law cases.
2. EXAMINING THE WORK OF STATE COURTS 1998: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT (Brian J. Ostrom & Neal Kauder eds., National Ctr. for State Courts 1999).
3. *See* COMMISSION ON STANDARDS OF JUDICIAL ADMIN., AMERICAN BAR ASS’N, COURT ORGANIZATION (American Bar Ass’n 1990).
4. CAROL R. FLANGO ET AL., HOW ARE COURTS COORDINATING FAMILY CASES? 34–35 (National Ctr. for State Courts 1999). This monograph discusses the approach developed in Bend, Oregon.
5. *King County Unified Family Court Project*, in ABA SUMMIT ON UNIFIED FAMILY COURTS: EXPLORING SOLUTIONS FOR FAMILIES, WOMEN, AND CHILDREN, at R-1 (American Bar Ass’n 1998).
6. AMERICAN BAR ASS’N, AMERICA’S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 54 (ABA 1993) (report of the Presidential Working Group on the Unmet Legal Needs of Children and Their Families).
7. Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAM. L.Q. 17 (Spring 1998).

NOTES

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8. *Id.* at 18.
 9. Jeffrey A. Kuhn, *A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium*, 32 FAM. L.Q. 77-79 (1998).
 10. FLANGO ET AL., *supra* note 4, at 40.
 11. *Id.* at 43.
 12. *Id.* at 44; Stephen N. Tiktin & Ernest J. Mazorol III, *Family Court Coordination of Human Services, Deschutes County, Oregon*, 35 FAM. & CONCILIATION CTS. REV. 344 (July 1997).
 13. Donald N. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 U. MICH. J.L. REFORM 341 (1987).
 14. Tiktin & Mazorol, *supra* note 12, at 344-45.
 15. MINNESOTA STATE BAR ASS'N, COMBINED JURISDICTION COMMITTEE REPORT (1995) (unpublished report adopted by the General Assembly June 23, 1995).
 16. FLANGO ET AL., *supra* note 4, at 64.
 17. *Jefferson Family Court Project*, in ABA SUMMIT ON UNIFIED FAMILY COURTS, *supra* note 5, at T.
 18. FLANGO ET AL., *supra* note 4, at 77.
 19. Interview with Jim Adams, Jackson County Court Administrator, in Jackson County (Sept. 1998).
 20. *See* BUREAU OF JUSTICE ASSISTANCE & NATIONAL CTR. FOR STATE COURTS, TRIAL COURT PERFORMANCE STANDARDS (U.S. Dep't of Justice 1997).
 21. A national conference on the future of courts suggested that courts extend their hours of operation and stay open on weekends. JAMES DATOR & WILLIAM ROGERS, THE FUTURE AND THE COURTS CONFERENCE, executive summary at 17 (National Ctr. for State Courts 1990).
 22. Pursuant to federal regulation, juvenile dependency cases (and delinquency cases, if the ward is in foster eligible placement) must adhere to a strict timeline regarding the required scheduling of the overall process, detention, jurisdiction, disposition, reviews, permanency planning, and other issues. *See, e.g.*, 45 C.F.R. § 1356.21(b)(1)-(2), (h), (i) (2000).
 23. Robert W. Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*, 44 FAM. & JUV. CT. J. 1-57 (Winter 1993).

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Photograph by Jason Doiy

Attachment, Bonding, and Reciprocal Connectedness

Limitations of Attachment Theory in the Juvenile and Family Court

Family and juvenile court judges are asked daily to determine child custody and visitation issues. These are among the most difficult decisions that judges face. They must consider numerous factors: parental competence to rear children, family dynamics, possibly the wishes of the child, and the overriding concern, the “best interest” of the child.¹

It is no wonder that many judges turn to mental health experts²—psychiatrists, psychologists, marriage and family therapists, and social workers—for guidance in making these decisions.³ The law permits mental health experts to give opinions on many aspects of a case involving child custody and visitation issues. These include the mental status of family members, which living and visitation arrangements would be in the best interest of the child, and whether a parent-child relationship should be preserved or terminated.⁴

Several mental health concepts have crept into the legal vocabulary. An informal survey of judges in California revealed that many judges rely on mental health experts to give opinions on whether a parent or other caretaker is “bonded” or “attached” to the child and, conversely, whether the child is “bonded” or “attached” to the parent/caretaker.⁵ Some courts regularly order bonding studies, and attorneys on occasion ask for them to help guide the court’s decision on what the future relationship between a child and a parent/caretaker should be.⁶ Bonding studies are also used to assist courts in deciding questions regarding (1) permanency planning, (2) foster care, (3) a parent’s capacity to form a nurturing relationship, (4) the advisability of continued group-home care, (5) custody disputes between parents or between a parent and other potential caretakers, (6) the termination of parental rights, and (7) other placement decisions.

The purpose of this article is threefold. First, it reviews the history of the clinical concepts of bonding and attachment. It then introduces the concept of reciprocal connectedness along with its forensic and neurodevelopmental rationale. Second, it presents representative examples of different current legal applications of the concepts of bonding and attachment. It discusses the limitations and pitfalls of using these concepts to make child placement determinations and suggests that the concept of reciprocal connectedness takes better account of the child’s overall neurodevelopmental and emotional needs. Third, it offers some suggestions for how judicial officers might best use mental health expertise in child custody cases. In particular, it argues that the term “attachment” (as usually conceived) is too narrow to be of much use to the court because it focuses primarily on security-seeking on the part of the child. The article presents “reciprocal connectedness” as more suitable for judicial use because it comprises both the processes of bonding and attachment and the broader spectrum of human interactions necessary for normal brain and social



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The terms “bonding” and “attachment” are used in legal proceedings to describe critical factors considered in child custody matters. The authors believe these terms have outlived much of their usefulness in the setting of juvenile and family courts. Because both terms point primarily to the responses of one person to another, they place insufficient focus on the *reciprocity* of relationships between persons. That reciprocity, the authors propose, should be the principal area of the court’s concern. Furthermore, the categorical nature of attachment relations (as they are currently described) is inadequate to describe the spectrum of human relatedness seen in court. A review of relevant case law reveals that mental health evaluators, attorneys, and courts use the terms

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“bonding” and “attachment” loosely and casually. The authors suggest the term “reciprocal connectedness” to denote a construct that describes a spectrum of relationships between children and their caregivers. A summary of the history of attachment theory and a review of recent research in brain development lead to the conclusion that reciprocal connectedness is a broad, accurate, and useful concept. The authors also propose 14 points for consideration to maximize the reliability and usefulness of mental health evaluations in the setting of juvenile and family courts. ■

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development. Its use will enable judges to assess more accurately the true condition of parent-child relationships and, thus, to make better decisions.

RATIONALE AND BACKGROUND

It could be reasonably asked why there is a need to introduce a new term (reciprocal connectedness) into the forensic lexicon. The reasons are multiple, but they can be summarized as follows: Attachment and bonding have evolved as concepts that focus on security-seeking (the desire for proximity to a caretaker) to the relative exclusion of other critically important aspects of human relationships in the context of development. The eminent British child psychiatrist Michael Rutter has perhaps stated this most succinctly:

One of the major achievements of the initial attachment concept was the careful distinction between attachment qualities and other features of relationships. Unfortunately, the attractiveness of attachment theory has been rather a neglect of these other features, together with an implicit tendency to discuss relationships as if attachment security was all that mattered. Both Sameroff and Emde and Dunn have drawn attention to the evidence that children's relationships with other people are complex and involve a range of different dimensions and functions. These include connectedness, shared humor, balance of control, intimacy, and shared positive emotions. If we are to understand the interconnections between relationships, it will be necessary for us to take into account the range of dimensions that seem to be involved. It seems unlikely that these will be reducible to a single process involving attachment security or any other postulated quality.⁷

Furthermore, once it is clearly understood that children can, do, and should have relationships with more than one caregiver or sets of caregivers,⁸ “[t]here is a need both to consider dyadic relationships in terms that go beyond attachment concepts, and to consider social systems that extend beyond dyads.”⁹

Modern attachment theory addresses the dyadic nature of relationships but excludes the wider system of relatedness in which most children participate. It draws on historical and experimental psychological theory as its basis. Forensic mental health professionals, however, have extended the concept of attachment beyond its scientific and theoretical basis. When testifying about attachment, experts may thus inadvertently give the false impression that their subjective clinical impressions possess scientific validity. For example, the authors have heard experts declare that because a child was bonded to her foster mother, she could not be bonded to her biological mother.

This position assumes that a child bonds exclusively with one adult, that such bonds admit no degrees, and that the existence and intensity of bonds do not change as the child develops. All of these assumptions are dangerously misguided. Consider that, “[a]lthough secure attachments predominate in most general samples, they are far from universal. In American samples, they average about 60%. It would not seem sensible to regard 40% of infants as showing biologically abnormal development.”¹⁰ Yet that is exactly what attachment theory would lead a fact-finder to believe. If he or she accepts the testimony of experts on attachment, the fact-finder may decide that the bonding/attachment or lack thereof conclusively determines the quality of the relationship at issue. It is often the case, though, that the expert may have no insight regarding the actual connectedness between the adult and the child and little information on the *quality* of the child's relationship with that adult.

Forensic testimony based on attachment theory may mislead courts in three ways. First, the concept of attachment draws distinctions in black and white, whereas courts often need to decide questions in the gray areas of human rela-

tions. For heuristic purposes, theoreticians and research scientists classify attachments into four or five rigidly defined categories (secure, insecure-avoidant, insecure-resistant, ambivalent, or disorganized).¹¹ Though appropriate for research purposes, these categories are insufficiently subtle to describe in a forensic setting the rich and complex spectrum of dimensions of human interrelatedness. Forensic experts need to recognize and openly acknowledge this limitation of their testimony. The full range and complexity of human relationships and the developmentally dynamic context in which they occur do not permit categorization in a manner sufficiently valid to make them useful to juvenile and family court. In a forensic setting, attachment theory is critically limited because it describes attachment in terms of *categories* instead of more accurately conceptualizing interrelatedness as a *spectrum* of continuously distributed variables.¹² The concept of reciprocal connectedness openly acknowledges the difficulty of categorizing human relationships. Instead, it points to a *spectrum* of relatedness.

Second, attachment theory may mislead courts because it excludes from its scope the attitudes of adult caregivers—and those of most children, too. As applied, the concept of attachment implies a unidirectional process: A child bonds *to* an adult, with no action, or even awareness, required on the part of the adult. In addition, attachment theory is linked to a research paradigm with very narrow application.¹³ By contrast, the concept of reciprocal connectedness more sensitively characterizes the child-caregiver relationship. It purposely points out the bidirectional or reciprocal nature of a healthy relationship: Not only does the child connect with the caregiver, the latter acknowledges and actively participates in the relationship with the child. In addition, reciprocal connectedness allows recognition of the multifaceted character of a wide range of child-caregiver relationships.

Third, the concept of attachment is vague. As applied in both research and forensic psychology, the terms “bonding” and “attachment” have multiple meanings that sometimes diverge from their ordinary meanings. When several experts and child protection workers testify in court about attachment, each may use the term to mean something different from the others. This failure to converge on a single meaning can confuse and possibly mislead the court.

The new concept is also more compatible with the current state of developmental neurobiology and modern theories of personality and inborn temperaments. “Reciprocal connectedness” is a more apt term for describing contemporary conclusions about the requirement of two-way interaction for normal child development. Developmental neurobiology has shown the importance of both

reciprocity and connectedness for normal cognitive, emotional, and social development. It offers a method of approaching those issues that is essential for determining the best interest of a developing child. “Reciprocal connectedness” can help to capture and explain these findings for courts. Fortunately, one does not need to be a neuroscientist to understand it.

BONDING AND ATTACHMENT

As suggested above, “bonding” and “attachment” can possess several different meanings depending on context. One strain of meaning emerged with the development of psychological attachment theory in the mid 20th century. The research actually began by looking at human formation of bonds. For example, John Bowlby, the father of attachment theory, has stated: “Ethological theory regards the propensity to make strong emotional bonds to particular individuals as a basic component of human nature, already present in germinal form in the neonate and continuing throughout adult life into old age.”¹⁴

Tautologically, “bonding” would be the process of forming bonds. Over the years, the term has come to be used synonymously with “attachment.” Thus, Bruce Perry and others describe “bonding” as the “process of forming an attachment.”¹⁵ They explain:

The word attachment is used frequently by mental health, child development, and child protection workers but it has a slightly different meaning in these different contexts. ... In the field of infant development, attachment refers to ... the special bond that forms in maternal-infant or primary caregiver–infant relationships. ... In the mental health field, attachment ... has come to reflect the global capacity to form relationships.¹⁶

Sometimes child protection workers, foster parents, and group home providers do not differentiate unhealthy dependency or emotional neediness from healthy “attachment.” Failure to differentiate a healthy relationship from an unhealthy one is a principal reason that the term “attachment” (as used in practice) is too vague to be useful to a court. Unhealthy dependency and indiscriminate emotional neediness are two examples of situations that practitioners refer to as “attachments” even though they may reflect thwarted or distorted human development (as in the case of exploitative, neglectful, or grossly abusive relationships).

All primates are born with an instinctive desire to form bonds with available adults.¹⁷ This is a feature of their biological makeup and is independent of any characteristic of those adults.¹⁸ That is, bonding is unidirectional; it occurs independent of any special characteristics, behaviors, or efforts of those adults.¹⁹

Human infants and children likewise form attachments (bonds) to adults that can be strongly emotionally charged but are independent of the nature or quality of the care provided by those adults.²⁰ Sometimes these attachments form and are sustained despite the destructive quality of the relationship (as with an abusive parent).²¹ As with other primates, these attachments are essentially unidirectional.²² The biological drive for attachment resides within the child and is not fundamentally determined by the qualities or actions of the adults to whom the child is attached (in the usual and customary sense of the word “attachment”).²³ This explains why many children are firmly attached to abusive or neglectful parents.²⁴

RECIPROCAL CONNECTEDNESS

“Reciprocal connectedness” paints a more comprehensive and subtle picture of relationships than do “bonding” and “attachment.” In the context of decision making in the family court setting, we can define it as a mutual interrelatedness that is characterized by two-way interaction between a child and an adult caregiver and by the caregiver’s sensitivity to the child’s developmental needs. The concept is more useful than “attachment” to courts because it describes a child’s requirements for healthy neurobiological, social, and emotional development and distinguishes them from simple dependency (security-seeking). It more closely approximates the knowledge necessary for a judge to make decisions about the neurobiological best interest of the child. This neurodevelopmental concept describes a phenomenon that does not reside within the child alone but depends on an available adult who interacts reciprocally with the child.²⁵ Reciprocal connectedness is thus comparable to Bowlby’s postulated “cybernetic system, situated within the central nervous system of *each partner*, which [has] the effect of maintaining proximity or ready accessibility of each partner to the other.”²⁶

The difference between this “cybernetic system” and the concept of reciprocal connectedness is that the latter is not limited to the goal of maintaining proximity (security). It encompasses a broader range of childhood needs, including interactive verbal and nonverbal communication, responsiveness, modeling, reciprocal facial expressiveness, social cues, motor development, and other dimensions necessary for normal neurodevelopment. Reciprocally connected adults sense and respond to the individual needs of developing children for responsive neural interaction *in addition to* proximity (security). These bidirectional, interactive dimensions are essential for the normal development of a child’s capacities for empathy, compassion, and other higher-level human emotions and social skills.²⁷

THE HISTORY OF BONDING AND ATTACHMENT STUDIES AND THE CONTRIBUTIONS OF MODERN NEUROSCIENCE

Modern bonding studies trace their roots back to a landmark series of studies of “imprinting,” “bonding,” and “attachment” that began during the 1930s.²⁸ In one of the most famous of these, Konrad Lorenz demonstrated that, during a particular time of early development (a developmental window), young goslings would “imprint” on cortical structures their impressions of his relationship to them and follow him exactly as if he were their mother.²⁹ Lorenz also found these results to be generalizable. The goslings would “imprint” to other animals, including his Labrador retriever, which happened to be present during that specific developmental phase.³⁰ Thus imprinting, a simple form of infant-to-mother bonding, was demonstrated to be an innate and instinctive process with a specific and predictable developmental window for its occurrence.³¹ It was also an essentially unidirectional process.

John Bowlby was convinced that disruptions in the mother-child relationship led to psychological problems later in life.³² Another landmark set of studies regarding the fates of British war orphans led him to conclude that infants raised in institutions without stable and continuous relationships with caregiving adults grew up with deficits in cognition, language, attention, and the capacity for durable interpersonal relationships.³³ These findings were incontrovertibly supported by a 30-year follow-up study of 25 children, half of whom were moved to a more nurturing, stable, and interactive environment before the age of 3.³⁴ Ongoing, caring relationships, stimulation, and human interactions were demonstrated to be essential for healthy development.³⁵

A third extremely influential set of studies carried out by Harry F. Harlow involved infant rhesus monkeys.³⁶ In these dramatic studies, Harlow separated infant monkeys from their biological mothers and observed their attachment to inanimate surrogate mothers (wire monkey mannequins), demonstrating quite conclusively that in the absence of a living mother (or living mother surrogate), the infant monkeys would become quite attached to the mannequins.³⁷ In some of the experiments, he attached feeding bottles to some of the mannequins and covered others with terrycloth. Although the infant monkeys would go to the uncovered wire mannequins for feeding, they would return to the terrycloth-covered mannequins to whom they had already become attached. This behavior demonstrated that the monkeys’ desire for food was not the determining factor in their attachment to the surrogates. Harlow recognized that it would be extremely important to note what happened to these infant monkeys as they developed, especially in the context of John Bowlby’s

observations of British war orphans. The findings were similar—both monkeys and humans deprived of adequate mothering grew up to be grossly socially impaired.³⁸ Again, attachment to an inanimate surrogate mother was unidirectional. The monkey-child was psychologically attached to its wire mother without any reciprocity or nurturing interaction at all. The effects of this deprivation on subsequent social development were disastrous.

Mary Ainsworth and others carried out another set of studies of human infants during the 1960s and 1970s that supported and extended the work of Bowlby and Harlow.³⁹ These studies constitute the theoretical and experimental basis for the modern bonding and attachment studies that are most often presented in the context of juvenile and family court litigation.⁴⁰ These experiments employed variations of a laboratory paradigm known as the Strange Situation Procedure.⁴¹ In brief, a caregiver and her (or his) 12-to-20-month-old child would sit in a sparsely furnished playroom while a stranger entered and then left. Subsequently, the caregiver would leave and reenter. During the various permutations of presence and absence of caregiver and stranger, the researchers would observe the child for signs of distress, attachment, and exploratory behaviors.⁴² Infants were eventually classified into secure, insecure-avoidant, and insecure-resistant categories. In high-risk groups, many children were categorized as insecurely attached. Whether a child falls into a particular category is an “either/or” proposition.

It is important to note, however, that under this paradigm 40 to 50 percent of abused and neglected children were classified as securely attached to their maltreating parent.⁴³ This indicates that bonding or attachment studies alone are insufficient to differentiate nurturing and reciprocally involved parents from indifferent, abusive, or uncaring parents. A further limitation in the context of the family court is the attempt by some experts to use attachment theory to reduce the entire spectrum of human relatedness into a limited number of discrete categories. However useful this approach is for research (and it *is* useful for research), it is of limited value in the context of the juvenile and family court—especially when the myriad of special-needs children and families are taken into account.

RECENT CONTRIBUTIONS OF DEVELOPMENTAL NEUROBIOLOGY

The last 40 years have seen an exponential increase in our understanding of the human brain and the vicissitudes of its development. David Hubel and Torsten Wiesel did some of the most influential work at Harvard during the sixties and seventies.⁴⁴ By meticulously mapping the brain of developing mammals, they demonstrated conclusively

that brain development depends heavily on experience and, specifically, that enduring features of the brain depend heavily on early experiences.⁴⁵ An example of this phenomenon is the learning of a second language. Before the age of 10, most children can pick up a new language easily.⁴⁶ As they grow older, this developmental window gradually begins to close.⁴⁷ The window never closes completely, but it becomes more difficult to access the brain's capacity to acquire a new language as the child approaches adulthood. The same holds true for the acquisition of musical, mathematical, verbal, and athletic abilities.⁴⁸

In terms of evolution, the cerebral cortex is the part of the brain that was last to appear and the part that is most quintessentially human. In addition to language and speech (e.g., reading, comprehension, writing), it is home to mathematical abilities. More important to decision makers such as judges, however, is the fact that the cortex is the home of conscience, abstract reasoning, empathy, compassion, moral development, and social skills.

The developing cerebral cortex is exquisitely sensitive to external experiences. In other words, early childhood experiences in interaction with the outside world will, in part, determine the child's subsequent capacities in the higher human faculties. It is the bidirectional interaction (reciprocal connectedness) with a responsive external environment that supports the development of internal brain capacity for higher mental functions such as interpersonal sensitivity, empathy, compassion, and resilience.⁴⁹

DIMENSIONS OF RECIPROCAL CONNECTEDNESS

As discussed above, reciprocal connectedness is a mutual interrelatedness characterized by reciprocity and developmental sensitivity.⁵⁰ To assess the health of caregiver-child relationships, the developmental age and particular needs of a child must always be taken into account because developing children have different needs and express their relatedness to caregivers in very different manners. Furthermore, the temperaments of both child and adult must be considered because of the inherent sensitivity of such a relationship. To facilitate accurate assessments of relationship health, reciprocal connectedness is conceptualized as a continuous spectrum of many variables including, but (unlike attachment) not limited to, the child's instinctive search for security and the caregiver's instinct to possess and/or protect.

Dimensions of reciprocal connectedness with younger children include:

- Frequency and quality of eye contact
- Frequency of affectionate touching or soothing

- Spontaneous anticipation of the child's needs or desires
- Empathic response to the needs of the child for attention
- Spontaneous smiling in both directions
- Bilateral initiation of affectionate interactions
- Understanding the child's unique temperament
- Affectionate speech or "cooing"
- Singing, reading, and playing with the child

Dimensions with older children might include:

- Recognition of the child as a unique individual
- Recognition of the particular needs of the developmental stage of the child
- Valuing the child for who he or she is
- Trying to understand the child's world from his or her perspective
- Trying to teach the child
- Trying to learn from the caregiver
- Seeking guidance or comfort from the caregiver
- Sharing positive experiences
- Maintaining a relationship that allows the child some measure of control while setting limits and maintaining boundaries

Of course, all these dimensions must be examined in a context that is familiar with the norms of the familial and larger social culture in which they take place. Put simply, child-caregiver relationships must be considered with sensitivity to cultural and ethnic differences. The connectedness between a truly loving caregiver and child is not based on intellectual understanding and is never forced or contrived. It is easily recognized by anyone who has witnessed a child being lovingly raised.

USES OF BONDING AND ATTACHMENT CONCEPTS IN JUVENILE AND FAMILY COURTS

When faced with decisions involving child custody, lawyers and judges often turn to mental health professionals for assistance. Among the many issues that these professionals address is the quality of the relationship between a parent figure and a child. The quality of the parent-child relationship may determine the nature and extent of the custody or contact that the court will award the parent figure.

The majority of reported cases in which bonding and/or attachment is discussed are in juvenile dependency court. Discussions of bonding/attachment studies can be found when a psychologist testifies to the extent of a child's bond to a parent, a foster parent, or a prospective adoptive parent, and to the potential consequences of placement with or removal from one of these persons. In addition, there are cases in which a different type of professional—a social worker, for example—offers an opinion to the court on whether there is bonding in a relationship. The judge may also state, with or without an explanation, that a parent-child attachment exists.

In some cases, the psychologist or other mental health expert testifies about the significance of bonding/attachment. In a few cases, the legal issue is whether the court erred in ordering or not ordering a bonding study. In others, the court is asked to order a bonding study or the method of conducting the bonding study is under scrutiny. The vast majority of cases involve the court discussing or simply mentioning bonding or attachment with or without explaining what is meant by either term.

CASES INVOLVING PARENT-CHILD RELATIONSHIPS

A series of cases raises the issue whether a parent-child bond or attachment is so significant that, in spite of legal grounds sufficient for termination of parental rights, the court should maintain the parent-child relationship. According to California law, a trial court must terminate parental rights at a permanency planning hearing if it finds that the child is adoptable, unless it also finds one of three exceptions. The most significant of these exceptions is found in section 366.26(c)(1)(A) of the California Welfare and Institutions Code, which states that termination should not take place if the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the parent-child relationship.⁵¹ This exception has been the focus of substantial litigation and appellate case law.

In re Autumn H.

The leading case clarifying the meaning of this section is *In re Autumn H.*⁵² In this case, the trial judge changed the permanent plan for the child from long-term foster care to adoption and terminated the father's parental rights. The court found that the child was adoptable and that terminating the father's parental rights would not be detrimental to the child. The court further found that the father did not have a father-daughter relationship with the child, but only a "friendly visitor" relationship.

Autumn had been removed from her father's care in September 1991 because he was seriously physically abus-

ing her. During the reunification period, her father visited Autumn on a weekly basis. At the 18-month review, the father was not in a position to have Autumn returned to his care. The court chose as a permanent plan to place Autumn in long-term foster care. Six months later, in October 1993, the Department of Social Services requested that the judge change the plan for Autumn to adoption.

The father had visited with Autumn 22 times in 1993. A court-appointed advocate who had observed some of the visits testified that the father's interaction with Autumn was that of a family friend. The social worker agreed, stating that the father had not developed a father-daughter relationship with Autumn. The foster mother testified that the father attended about half of the visits offered, that he did not ask her about Autumn's needs but focused on his own problems, and that he was more a playmate for her. The adoption social worker referred to the father as a "friendly visitor." The father testified that he resisted having Autumn for overnight visits because he saw no reason for them.

The Court of Appeal affirmed the trial court's decision, finding that the trial court had properly interpreted the law. First, it examined section 366.26(c)(1)(A), which permits a trial court to forgo the preferred permanent plan of adoption and retain parental rights when "the parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship."⁵³ The Court of Appeal found that those terms were not unconstitutionally vague: "benefit" within the child dependency scheme means that the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. The Court of Appeal observed:

Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. The relationship arises from day-to-day interaction, companionship, and shared experiences. The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.⁵⁴

Second, the Court of Appeal found that such an attachment did not exist. It further found that Autumn was "bonded to her foster family" and would suffer if that placement were disrupted.⁵⁵

In re Elizabeth M.

The appellate court in *Autumn H.* set a standard that other California courts have followed. Thus, when deter-

mining whether the parent-child relationship is of such a nature that it prevents the termination of parental rights under the California statute, most often the appellate courts follow an analysis similar to that undertaken in the *Autumn H.* case.

For example, in the case of *In re Elizabeth M.*,⁵⁶ the juvenile court examined the same question at a termination-of-parental-rights hearing. The mother had regularly visited Elizabeth during most of the reunification period except for the last six months. Several professionals testified that, during the visits, the mother did not occupy a parental role; at best, she occupied a pleasant place in Elizabeth's life. The court found that this relationship was insufficient to invoke the statute and permit the court to find that the "child would benefit from continuing the relationship."⁵⁷ The Court of Appeal affirmed the order terminating the mother's parental rights.

In re Zachary G.

Another apt example is *In re Zachary G.*⁵⁸ The child had been taken into protective custody at birth because his father had seriously physically abused one of his older siblings. He was placed with his maternal grandmother, and the parents were offered family reunification services. At the six-month review hearing, the mother was homeless and staying with friends. She had an off-and-on relationship with the father, living with him from time to time. The juvenile court continued to offer family reunification services. At the 12-month review, the social worker's report said that the mother was not attending therapy regularly, that her relationship with the father continued, and that a psychologist opined that the mother was unlikely to protect her children. The court terminated services and ordered a permanency planning hearing pursuant to section 366.26.⁵⁹

Just prior to the hearing, the mother filed a petition to modify the juvenile court order terminating her reunification services with Zachary. She alleged in her petition that she had changed her life, that she had been visiting the child regularly, that she had had weekly in-home services for a newborn sibling, and that she had engaged in biweekly therapy sessions. A therapist's report indicated that the mother had shown no inclination to return to the child's father and was capable of caring for and safeguarding the child. The social worker's assessment report indicated that the mother and Zachary enjoyed regular visits, but that Zachary did not look to his mother for his needs. Instead, he turned to the foster parents for his needs 90 percent of the time during supervised visits. The social worker recommended termination of parental rights and adoption.

At the hearing on the petition to modify, the mother filed additional evidence in the form of a bonding study performed by a psychologist, Dr. Jesse, a few days before

the hearing. According to that study, Dr. Jesse had observed the mother's interaction with Zachary during a single office visit and approved of it. She also opined that Zachary showed a psychological bond selective for his mother because of his reactions upon being separated from her. When the mother left the room where the meeting was taking place, Zachary cried and did not seek comfort from the caretaker grandfather. He had no similar reaction when the caretaker left while the mother stayed in the room.

The court denied the motion to modify and terminated parental rights; the mother appealed. The appellate court affirmed the trial court's findings and orders, stating that there was no showing in the motion to modify that the change in plan would have benefited Zachary or that his best interest would have been served.⁶⁰ The appellate court did not comment on the procedures followed by Dr. Jesse in conducting the "bonding study" or the weight that should have been given to them.⁶¹

Cases in Other States

In other states, trial and appellate courts have faced similar issues involving the parent-child relationship. In *O.R. v. State*,⁶² the Alaska trial court terminated parental rights based upon parental abandonment. The social worker's testimony was that the child did not have "any attachment [to her parents] other than [as] someone she comes to visit."⁶³ An expert witness concluded that lack of contact during the first nine months of the child's life "had destroyed the parent-child bond."⁶⁴ On appeal, the Alaska Supreme Court affirmed the trial court's decision and agreed with the finding that the parents' lack of contact with the child during the first nine months of the child's life had destroyed the parent-child bond.⁶⁵

In the Maine case of *In re Peter M.*,⁶⁶ the trial court terminated the parental rights of the mother, finding that she had been unwilling to take responsibility for her son in a timely fashion and that termination was in the best interest of the child. In affirming the trial court, the Supreme Court of Maine indicated that, in determining whether termination was in the best interest of the child, the trial court should consider "the child's age, the child's attachment to relevant persons, periods of attachment and separation, the child's ability to integrate back into the parent's home and the physical and emotional needs of the child."⁶⁷ Examining these criteria, the Supreme Court found that the termination was proper because the child had a strong attachment to the caretaker and virtually no contact with his mother.

In the Nebraska case of *In re D.*,⁶⁸ the court terminated the parents' rights with regard to D., finding that the parents were not interested in maintaining contact with their child and not interested in rehabilitative programs

offered by the welfare department. Noting that the child had developed a sound, affectionate relationship with his foster parents and only minimal emotional attachment to his parents, the Supreme Court found that termination of parental rights was in the best interest of the child.

In *In re Mr. & Mrs. J.M.P.*,⁶⁹ the mother surrendered her child for private adoption. She was assisted by the same attorney who arranged for the adoption with the adopting parents. She appealed her surrender, and the Supreme Court of Louisiana reversed and remanded the case to the trial court. The Supreme Court did not find that the surrender was improper because of the attorney's dual representation; instead it addressed child development considerations, instructing the trial court to consider the psychological relationship between the child and parent or parent figure, stating: "The court should prefer a psychological parent over any claimant (including a natural parent) who, from the child's perspective, is not a psychological parent."⁷⁰

In summary, the court rulings in these cases appear to focus on child development principles as a basis for their decisions. While the terms "bonding" and "attachment" are used throughout the decisions, it appears that the courts are using them in their unidirectional sense. That is, the courts are focusing on the child's relationship to a parent and not on the relationship or reciprocal connection between them. In addition, courts seem to use these terms in an all-or-nothing manner—either the child is bonded or attached or the child is not. They do not acknowledge the spectrum of intensity in relationships. From a neurodevelopmental point of view, the courts' use of these terms is imprecise.

CASES INVOLVING FOSTER PARENT-CHILD RELATIONSHIPS

In proceedings for termination of parental rights, some courts have found that the relationship between the foster or adoptive parent and the child is critical to determining the best interest of the child and whether the child should be removed from the foster or adoptive parents.

In re Colby E.

In *In re Colby E.*,⁷¹ the trial court terminated parental rights even though the parent was not found to have committed any wrongdoing. The child had been in the same foster home for over 40 months, since he was 19 months old. The evidence supported the conclusion that the child would be in jeopardy if removed from the foster home. The Supreme Court affirmed, finding that if removed from the stable foster home environment, the child "would likely suffer severe emotional trauma and be inhibited in his ability to form personal attachments in the future."⁷²

In re Guardianship of J.C.

In this case,⁷³ the trial court terminated the parents' rights because of its finding that the children would be harmed by removal from the foster parent. The trial court had heard extensive psychological testimony concerning the children's bond to their foster parents. The evidence was contradictory, and on appeal the New Jersey Supreme Court reversed, finding that the evidence did not support the statutory and constitutional standards that govern the termination of parental rights. The Supreme Court remanded the case to the trial court so that it could determine whether the children had bonded to the foster parents and, if so, whether breaking such bonds would cause the children serious psychological or emotional harm.

In re J.L.D.

In *In re J.L.D.*,⁷⁴ the trial court terminated parental rights and the incarcerated father appealed. The North Dakota Supreme Court affirmed, noting that the child had developed "strong emotional attachments with his foster family,"⁷⁵ and that adoption would provide the child with an opportunity to live a normal life in which love and care were provided on a consistent basis. The court noted that continuing foster care indefinitely would only solidify and magnify his attachments to the foster family, making his eventual dislocation more traumatic and placing his later assimilation into a permanent home at greater risk.⁷⁶ The Supreme Court concluded that the child would probably suffer serious mental or emotional harm if parental rights were not terminated.

In re Blunk

In the case of *In re Blunk*,⁷⁷ the parental rights of the mother of seven children were terminated because of abandonment and failure to provide and because the children had been placed in foster and adoptive homes for two years and had developed attachment and love in those homes. The mother asserted that she had reformed, but the trial court found that that was insufficient given the children's current situation. The Supreme Court of Nebraska affirmed the trial court, indicating that the children's attachment to the adoptive home was sufficient to support the termination of parental rights, stating: "[I]t would be unconscionable to wrench these three children away from their adoptive parents and the other four from the Nebraska Children's Home Society during their impressionable years and restore them to their mother upon the mere representation that she had reformed."⁷⁸

In re J.K.S.

In *In re J.K.S.*,⁷⁹ the trial court terminated parental rights and authorized adoption by the caretaking family. In

proving a portion of its case, the State established that removing the child from the foster parents would result in serious physical, mental, moral, or emotional harm. The Supreme Court affirmed, noting:

There was overwhelming evidence that J.K.S. has established strong bonding and attachments to her foster parents and foster brother with whom she has resided for the past five years. ... [E]ven a gradual change from the foster home to G.S.T.'s home would be emotionally traumatic to J.K.S. and there would be a very significant risk of permanent emotional damage if J.K.S. were removed from her foster home. That testimony clearly supports the conclusion that J.K.S. would be harmed by the lack of bonding or emotional attachment in G.S.T.'s home.⁸⁰

In re William L.

In the case of *In re William L.*,⁸¹ the trial court terminated the parental rights of one mother to her three sons and another mother to her daughter. Both mothers appealed. In the former case, the mother's inability to raise her sons and long periods of separation from them formed the basis for the termination. In affirming the decision, the Supreme Court pointed out that a biological parent's claim can be weakened by long separation, "causing the parent's relationship with the child to dwindle, while the child develops other, more stable ties."⁸² Citing authority, the court stated:

[A] child will become strongly attached to those "who stand in parental relationship to it and who have tenderly cared for it. Its bonds of affection [may] have become so strong that to sunder them suddenly may result not only in the child's unhappiness, but also in its physical injury. ... Nothing could be crueler than the forcible separation of a child from either its real or foster parents by whom it has been lovingly cared for and to whom it is bound by strong ties of affection."⁸³

In re Baby Boy Smith

In *In re Baby Boy Smith*,⁸⁴ the baby's mother moved to annul her surrender of parental rights. The trial judge denied her motion, finding in part that the child's best interest would be served if he were to remain with the prospective adoptive parents. The testimony at trial included that of Dr. Jepson, who explained that the bonding process occurs during the first six to eight months of life and "lays the groundwork for all future interpersonal relationships,"⁸⁵ and that disruption of that process will interfere with interpersonal relationships later in life. Dr. Jepson further testified that he had observed the child with the prospective adoptive mother and that the child had fully bonded with her.⁸⁶ Dr. A. James Klein testified further about the bonding process, stating that removal of

the child from the prospective adoptive parents could have catastrophic consequences affecting every aspect of the child's functioning.⁸⁷ The Louisiana Supreme Court affirmed the trial court's decision, citing an early decision in which the court said: "[I]f the adoptive parents are fit, and the child has formed a psychological attachment to one or both of them, the adoptive parents should be preferred so as to avoid the grave risk of mental and emotional harm to the child which would result from a change in custody."⁸⁸

In re Ashley A.

In the case of *In re Ashley A.*,⁸⁹ the trial court terminated the rights of both parents regarding Ashley and the mother's rights regarding half-siblings. The parents appealed the decision and the Supreme Court of Maine affirmed. The Supreme Court analyzed the statute and found that the best interest of the child "may be determined by considering such factors as the needs of the child, attachment to relevant persons, periods of attachment and separation, ability to integrate into substitute placement or back into parent's home, and the child's physical and emotional needs."⁹⁰

These cases involving the relationship of foster parents to children reflect a judicial consensus on a number of issues:

1. Parental absence can reduce any bond/attachment between that parent and the child.
2. Children can become bonded/attached to foster parents.
3. Children suffer emotional harm by removal from homes in which such bonding/attachment has developed.
4. Removal in some cases can lead to lifelong problems, including the inability to form attachments with others in the future.
5. Reciprocal connectedness is tacitly relevant in determining whether termination of parental rights is appropriate.

As in the parent-child relationship cases discussed above, these courts stress child development consequences in their decisions. They, too, refer to "bonding" and "attachment" as unidirectional concepts, focusing on the child's relation to the caregiver and not on the caregiver's relation (connectedness) to the child. The use of such imprecise language has led to decisions in which important questions about the quality of the relationship between the caretaker and the child have gone unanswered.

PSYCHOLOGICAL/DE FACTO PARENT

The term "psychological parent" first came to prominence in Goldstein, Freud, and Solnit's landmark publication,

*Beyond the Best Interests of the Child.*⁹¹ Perhaps no book has had a greater impact on judicial decision making in child custody cases. In the book, the authors focus on child development and its implications within the court system, defining several terms that have become important in child custody litigation. They make a distinction between biological and psychological parents: the former is the parent who biologically produced the child, and the status of the latter is developed through "day-to-day attention to [the child's] needs for physical care, nourishment, comfort, affection, and stimulation."⁹² Of course, the same person can be both the biological and psychological parent, but in some situations the biological parent can be a stranger to the child and a different person can be the psychological parent.

The authors explain the psychological complexities of the parent-child relationship. If the parent figure provides care only for the child's bodily needs, the child may remain involved in his own body "and not take an alert interest in his surroundings."⁹³ When, however, the adult becomes personally and emotionally involved with the child, interaction between the two will occur, focusing the child's attention on the human object and the outside world.⁹⁴ These first attachments form the basis for further relationships that meet the child's demands for affection, companionship, and stimulating intimacy. When someone can respond to these needs reliably and regularly, the child-adult relationship can develop and provide a strong basis for emotional, social, and intellectual development.

The authors point out that the parent-child relationship can be very complex: "Children may also be deeply attached to parents with impoverished or unstable personalities."⁹⁵ Such relationships may be a threat to the healthy development of the child. Indeed, children may have emotional ties to the "worst" of parents. The authors note that, in extreme cases, state intervention may be necessary. Yet, if there is interference with the child-psychological parent relationship, however unhealthy that relationship may be, it will be emotionally painful for the child.⁹⁶

The concept of psychological/de facto parent developed by Goldstein, Freud, and Solnit has been applied by a number of courts in different types of child custody litigation, including the *Autumn H.* case.⁹⁷ It was first recognized in California in the case of *In re B.G.*⁹⁸ In that case, the mother sought to regain custody of her children, who had been placed with foster parents after their father had died. The trial court would not permit the caretaking foster parents to participate in the legal proceedings to determine custody. The California Supreme Court acknowledged that the foster parents had legal standing to appear as parties in the proceeding. In making its finding,

the California Supreme Court cited *Beyond the Best Interests of the Child*⁹⁹ and observed that biological parenthood

is not an essential condition; a person who assumes the role of parent, raising the child in his own home, may in time acquire an interest in the 'companionship, care, custody and management' of that child. ... We conclude that de facto parents, such as the foster parents in this case, should be permitted to appear as parties in juvenile court proceedings.¹⁰⁰

Other appellate courts have applied the concept.¹⁰¹ The California Legislature codified it in 1969,¹⁰² and juvenile courts adopted it in their rules.¹⁰³ In juvenile dependency proceedings, the de facto parent has become an important part of the legal process. Substantial case law defines who may be a de facto parent and what is the appropriate level of participation in the legal proceedings by that parent. The leading case on this issue is *In re Kieshia E.*,¹⁰⁴ in which the stepfather who had been found to have sexually abused the minor asked to have the status of de facto parent. He claimed that he had a close bond with the child despite the sexual abuse. An expert witness testified that the sexual molestation might or might not damage the child or destroy the bond, and that while the victim and perpetrator should be separated until the perpetrator stabilized in therapy, the ultimate goal should be reunification. The trial court agreed with his position. On appeal the California Supreme Court reversed the de facto parent finding, stating that any adult who causes the onset of dependency proceedings by sexual or other serious physical abuse has betrayed and abandoned, not embraced, the role of parent. That person lacks the inherent rights of a parent and forfeits any opportunity to attain the legal status of de facto parent.¹⁰⁵

EXPERT TESTIMONY

In many cases in which the court is asked to make custody decisions, private or court-appointed experts write reports or testify on the child's best interest. An expert witness is one who has specialized knowledge, experience, or training that can assist the trier of fact. Often experts are asked to give opinions about the parent-child or caretaker-child relationship. On occasion, they will refer to bonding and/or attachment or the lack thereof as the basis for their opinions.

One reported case from Illinois stands out as an example of the different developmental theories a court might encounter in deciding whether to terminate parental rights. In *In the Interest of R.B.W.*,¹⁰⁶ the state brought an action to terminate a mother's rights over her child. The trial court denied the action and directed that the child be returned to her mother. On appeal the appellate court

reversed the trial court's decision and held that the mother had deserted her child when she sold him and that the trial court should have considered termination of parental rights and adoption.

The appellate court reviewed the extensive expert testimony at trial. Judith Ingram, an adoption specialist, testified about mother-child visitation and her observations of the child with the foster parents. She stated she believed that the child had bonded to the foster parents in that

R.B.W. gives them preference over anyone else in a group and he calls them mommy and daddy. These are the people to whom R.B.W. shows his insecurities. These are the people he chooses to help him when he falters or when he is hurt. These are the primary people he performs for in the park and from whom he needs recognition. He has an obvious preference for them. He is very comfortable and happy in their presence.¹⁰⁷

Ingram testified that she saw none of these things in the relationship between the child and his natural mother.¹⁰⁸

After several experts had testified, Sue Moriearty, a clinical psychologist, testified as an expert in the field of psychology for the purpose of evaluating the testimony and reports previously presented to the court. In addition, she conducted a literature review and interviewed others regarding attachment issues. She gave extensive testimony, quoted in part by the appellate court, stating that children or infants in institutional settings or who experience multiple homes with too many caregivers have difficulties in bonding. Furthermore, she said, children with exposure to too few caregivers may have difficulty adapting to school or other environments when their primary caretaker is absent. In her report, she quoted Mary D.S. Ainsworth, calling her "one of the pioneers in attachment research":

It is usual for an infant to form more than one attachment even in the first years of life. ... [T]he evidence does not necessarily suggest that it is essential or even optimal for mother and child to form an exclusive dyad. Indeed, a spreading of attachment relationships over several figures may be healthy and may, under some circumstances, prove to be highly adaptive. In one sense, "multiple" mothering is an insurance against separation disturbance.¹⁰⁹

The report also reviewed psychological literature on infant attachment and psychopathology, addressing the concept of infant temperamental variables as a predictor of attachment behavior. It concluded that, based upon the child's ability to form attachments even after two separations, the child's temperament indicated his ability to form other attachments. The report recommended that the child be given the opportunity to develop a relationship with his natural mother while remaining with his current

caregiver. Following the recommendations of the report, the trial court denied the petition to terminate parental rights. On review, the Illinois Court of Appeal reversed the trial court and, focusing instead on timely permanency for the child, ordered that court to consider out-of-home placement and adoption by the foster parents.¹¹⁰

In summary, reciprocity of connectedness, the possible desirability of multiple caregivers, and the influence of temperament on relationship formation are significant developmental considerations that properly interest courts and that mental health professionals and expert witnesses should take into consideration.

REQUESTS FOR BONDING STUDIES

Because the parent-child relationship can be critical to determining whether a court will terminate parental rights, some parties in the juvenile dependency process have asked for “bonding studies,” expert mental health evaluations addressing that relationship. For example, in the case of *In re Lorenzo C.*,¹¹¹ the juvenile court had commenced a permanency planning hearing at which the court was going to determine whether to terminate the parent’s rights over the child. The parent asked the court to order a bonding study so that the court could better decide whether the parent-child relationship was so strong that termination of rights should not be ordered. The court denied the motion, stating that once the court has determined that a child is adoptable, it is the burden of the parent to prove that termination of parental rights should not take place by demonstrating a parent-child relationship worthy of preservation. The Court of Appeal affirmed the trial court’s denial of the mother’s motion for a bonding study, finding that the request was untimely and unnecessary given the clear evidence of the child’s bond to the foster parents.

Similarly, in the case of *In re Richard C.*,¹¹² just prior to the termination of parental rights trial, the mother made an oral motion for a bonding study with an experienced psychologist and offered to pay for the study. The children’s counsel opposed the motion, saying that it would be cruel to put the children through psychological testing and a bonding study involving interviews with a stranger. The court denied the motion, finding that the children were bonded to their current foster parents. Later in the proceedings, the mother filed a written motion for a bonding study. Again the court denied the motion, noting that at such a late stage in the proceedings there was no right to develop evidence on the issue.

Some courts regularly ask for expert mental health input at the time when termination of parental rights or another permanent plan is going to be considered. The expert can

be asked to give an opinion on the relationship between the child and the parent, the child and the potential caretaker, and/or the mental status of one of the parties. Such information can be useful, particularly if both the expert and the questions to be answered are carefully selected.

EVALUATING MENTAL HEALTH EXPERT TESTIMONY

The court may decide to order a psychological evaluation or may, in the context of the hearing, receive expert mental health evidence. When courts consider mental health studies concerning parent-child relationships as evidence, they should understand the inherent difficulties faced by the evaluator. Many of these difficulties arise from three sources and should never be minimized or trivialized.

First, there are legitimate questions regarding the idea that there is, a priori, a single set of psychological or de facto parents. Current thinking indicates that gradations in attachment and connectedness exist. De facto parenthood in some cases may not be a dichotomous variable—that is, the question of de facto parents is not a question that can always be answered yes or no.¹¹³ There is commonly a spectrum of psychological relatedness not easily articulated in either legal or psychological terms.

Second, a clear distinction must be made between “emotional pain” and “permanent emotional damage.” Both “pain” and “damage” are loaded words when they are applied to a child. There is much potential here for rhetoric to displace reason in an emotion-laden context. No one wants to think of a child being hurt, much less “permanently damaged.” It is here that an experienced, highly trained, and unbiased mental health expert can be of the most use to the court. The judge should ask specifically if a particular decision will cause permanent emotional damage or (relatively) temporary emotional pain to a child. This question should be followed by a thorough inquiry into how the expert came to his or her opinion. The expert should also be queried about his or her opinion of “hurt versus harm” in every scenario that the court must consider. When possible, both a short and a long view should be considered for each scenario.

Third, while it is quite possible (even likely) that the child is connected to more than one set of caregivers, it is not unusual for young children, when prompted, to call different sets of caregivers “mommy” or “daddy” at different times. Young children have not developed the dualistic “either/or” thinking that characterizes the older child. Sometimes a child’s stated preference hinges on the last set of experiences he had with a given caretaker or on fears based on a misunderstanding of adult concepts.¹¹⁴ It is important not to project adult thinking patterns onto

children, who have a very different set of cognitive abilities and may be operating from cognitive constructs based on childhood distortions.¹¹⁵ The importance of evaluating the child in a developmental context is critical.

While keeping these concepts in mind, a judge should ask a series of practical questions when evaluating a mental health report:¹¹⁶

1. What qualifications and experience does the expert have?

There are differences in the expertise of a psychologist, a psychiatrist, a social worker, and a marriage, family, and child counselor. For example, only a psychologist can conduct certain tests, and only a psychiatrist can evaluate psychotropic medications. The professional's education and training, licensing and certification, professional work history, publications, status in the profession, and experience, including testimony in prior court cases, will indicate the weight that the court may wish to give to his or her opinions.

Related to this question is whether the expert is familiar with any of the professional standards that have been developed for child custody evaluations. These standards include the *Practice Parameters for Child Custody Evaluations*, by the American Academy of Child and Adolescent Psychiatry;¹¹⁷ *Guidelines for Child Custody Evaluations in Divorce Proceedings*, by the American Psychological Association;¹¹⁸ *A Report of the Task Force on Clinical Assessment in Child Custody*, by the American Psychiatric Association;¹¹⁹ *Model Standards of Practice for Child Custody Evaluations*, by the Association of Family and Conciliation Courts;¹²⁰ and *Specialty Guideline for Forensic Psychologists*, by the Committee on Ethical Guidelines for Forensic Psychologists.¹²¹ These standards recommend best practices in child custody evaluations in both juvenile and family court settings and, if followed, will lead to a higher quality of report in the courtroom.

2. What background information was reviewed, and when was it reviewed?

The expert must provide the court with a list of all reports and documentation he or she reviewed as well as when the expert reviewed them.

3. Which family members did the expert interview or see, and in what combinations?

The mental health expert should have face-to-face interviews with all relevant family members. The expert should inform the court about how he or she decided which family members to interview. The court should also be told which family members were not interviewed and why.

In addition, the expert should tell the court which interpersonal interactions he or she observed and in what settings these observations took place. It is critical to observe adult-child interactions when making evaluations of reciprocal connectedness. Ideally, there should be observations in natural (as opposed to office) settings.

4. What language was used during the evaluation interviews? Was the evaluation conducted in an ethnically sensitive manner?

The court must know what language the child and parents use between themselves and what language was used during any observations and interviews. If the adult-child or expert-family member communications were in a different language, the court should know what accommodations were made to ensure an accurate transfer of information. The court should be told what allowances were made for ethnic and cultural differences between the expert and those evaluated.

5. How many sessions were there, how long was each session, and where did the sessions take place?

Evaluating a person or a relationship takes time. Some time is necessary to develop a relationship with the subject. Taking this time is particularly important with a child, for whom several sessions may be necessary. Again, it is preferable to make observations in a natural, as opposed to an office, setting.

6. How did the expert gather information?

Did the expert make observations of interactions? Were individual temperaments considered (e.g., some children and adults are much more introverted than others)? Did the parties know that the expert was present? Did they know that the observations might be used in court? What questions were asked of whom? Were they age/language/culturally/developmentally appropriate? Did the expert utilize psychological tests? What tests were administered and why were they chosen? Who administered the tests? Who interpreted them? How reliable are they? How subjective is their interpretation? Could they have been interpreted differently?¹²²

7. What tools did the expert use?

Toys, sand trays, drawings, dolls, and other tools are often used in child interviews. Understanding which tools were used, what training the expert had in utilizing them, and the interpretations that can be drawn from them are all important for the court to know. Additionally, the court should inquire about the subjectivity of the interpretations. For example, intelligence testing

is usually considerably less subjective than projective tests such as the Rorschach.

8. What were the questions asked of the expert, who asked them, and how were the conclusions and recommendations reached? Are the conclusions admissible as evidence?

The court should know what questions the mental health expert was asked and the process by which the expert reached any conclusions or recommendations. Often the expert will answer questions that have not been asked or will misunderstand the questions and answer them differently from the way in which they were posed. If the court was responsible for approving the questions to be addressed, it is in an excellent position to review these issues with the expert.¹²³

In this regard, the practice in Charlotte, North Carolina (Mecklenburg County), is exemplary.¹²⁴ In that jurisdiction, the questions to be addressed by the mental health expert are written at a case conference that includes the judge, the attorneys, and the mental health expert. By writing the questions before the evaluation starts, the evaluator can focus on narrowly defined questions that all parties agree are critical to the custody determination.

In addition, the court should be certain to determine the basis for any expert opinions. In a number of areas, courts must be careful about the conclusions reached by experts based upon certain observed behaviors. For example, a child's play with anatomically correct dolls and a child's disclosure of or failure to disclose sexual abuse¹²⁵ may not be admissible as evidence that the child was sexually abused.¹²⁶

9. What were the subject's responses to the interview(s)?

It is important for the expert to inform the court about the quality of any interview. Was the subject comfortable? Was the expert able to develop any rapport with the subject? This is particularly important when interviewing a child. In this context the court should inquire whether the expert believes that the evaluation was adequate to answer fully the questions posed.

The court should not assume that the expert is satisfied that the evaluation is thorough enough to be conclusive.

10. What child development concepts did the expert rely upon to form the basis of his/her opinions?

The "best interest of the child" implies attention to what is the best result for the child from the child's perspective. This necessarily involves attention to child development principles. The court should determine

which principles the expert relied upon, how they affected the way in which the evaluation was conducted, and how the developmental stage of the child influenced any conclusions drawn from the interactions. This would include an opinion about the weight given to the desires expressed by the child. In addition, any impact of differences or similarities of temperament should be considered.

11. Were the expert's opinions consistent with the child's interest?

It must never be forgotten that the purpose of an expert's opinion is to offer to the court a plan to meet the best interest of the *child*.

12. Have the child's relationships with his or her siblings been examined?

Adults who tend to see the best interest of the child from their own perspective sometimes overlook the importance of sibling relationships in both the short and long term.

13. Who hired the expert? To whom is the expert responsible?

It is always relevant to determine who hired the expert and who is paying the expert.¹²⁷ It is preferable for any mental health expert who appears in juvenile court to be hired and paid for by the court.¹²⁸

14. Is the expert also involved with the child or parent as a therapist?

Therapeutic and forensic roles are fundamentally incompatible.¹²⁹

By being conscious of these questions and considerations, the court will be able to assess more accurately the weight that should be given to any expert opinion.

CONCLUSION

However useful they may be for research purposes, the terms "bonding" and "attachment" are of limited use in the juvenile and family court. There are several reasons for this:

1. They are terms that are used loosely and with different meanings by different mental-health-care professionals, attorneys, experts, and judges.
2. Attachment theory divides child and caregiver relationships into a limited number of types, which suggests that they are categorical variables. Furthermore, these types are generally treated as "either/or" propositions.
3. They do not explicitly address the issue of different child and caregiver temperaments.

4. The concept of attachment does not differentiate pathological dependency and emotional neediness from developmentally healthy human relatedness. In the authors' experience, this has led to situations detrimental to children. In particular, children have remained in group-home settings longer than necessary or desirable because the counselors mistook their dependence (and hence compliance) for developmental progress. Other situations have arisen in which counselors have mistaken a child's dependence on neglectful, exploitative, or abusive caretakers for "attachment" and weighted it inordinately in custody or visitation decisions. Some of these placement decisions never appear in court for judicial review and thus never appear in case reporters. It is therefore important that other decision makers, including social workers, probation officers, counselors, and placement workers, are aware of the dangers of relying upon "attachment" in making placement decisions.
5. The terms "bonding" and "attachment" refer primarily to the security- or proximity-seeking aspects of a child's relationship to a caregiver. They disregard other important developmental needs.

Reciprocal connectedness is a broader concept, including, but not limited to, security needs. By definition, it refers to a spectrum of interrelatedness that is inherently tied to the developmental stage of the child. It focuses the court on the reciprocity of relatedness that contemporary neurobiology shows us is so critical for healthy child development. Reciprocal connectedness exists as a *spectrum* of interrelatedness and is too broad a concept to be reduced to a limited number of categories. Hence, it more closely approximates the issues that are important to the court: Are the child's neurodevelopmental and emotional needs for reciprocal interactivity being met?

A child bonds or attaches *to* a caregiver. A child reciprocally connects *with* a caregiver. The question then becomes not only "To whom is this child attached?" but also "With whom is this child connected?"

Judges and attorneys need to approach all concepts referring to human relatedness with caution. Terms are not well defined in either statutory or case law, and their use in any case raises a number of questions. The cases reviewed in this article demonstrate that "bonding" and "attachment" are terms used loosely by attorneys, experts, and judges. They are not necessarily of positive valence when they refer to parent-child relationships. Although all language is subject to distortion of meaning, we believe that reciprocal connectedness is a more useful concept for courts to consider when making decisions concerning children and their parents or other caretakers. It affirms

the bidirectional nature of relationships between children and caretakers and emphasizes the spectrum of the intensity of those relationships instead of reducing them to the all-or-nothing categories implied by attachment and bonding.

Whether a court should turn to mental health expertise to assist it in making custody decisions is an issue to be addressed on a case-by-case basis. Courts should consider ordering adult-child reciprocal connectedness evaluations only in circumstances where it appears to be necessary. If the parents have visited regularly and appear to have a positive and reciprocal relationship with the child, it may be appropriate to order such a study prior to a hearing to terminate parental rights in order to determine the qualities of those relationships. Whenever an expert opinion is offered, it is hoped that addressing the issues and questions presented in this paper will assist the court in determining the weight to be given to that opinion.

1. The focus of a child custody evaluation is "to assess the individual and family factors that affect the psychological 'best interests' of the child." American Psychological Ass'n, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, 49 AM. PSYCHOL. 677 (1994).

2. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may otherwise testify thereto in the form of an opinion or otherwise." FED. R. EVID. 702.

In California, a "person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." CAL. EVID. CODE § 720(a) (West 1995).

3. Stephen P. Herman, *Child Custody Evaluations and the Need for Standards of Care and Peer Review*, 1 J. CENTER FOR CHILDREN & CTS. 145 (1999).

4. See, e.g., *In re Alexander K.*, 18 Cal. Rptr. 2d 22, 24-25 (Cal. Ct. App. 1993); see also George J. Alexander, *The State's Use of Mental Health Experts in Dependency Cases*, 24 PAC. L.J. 1465-83 (1993); Veronica Serrato, Note, *Expert Testimony in Child Abuse Prosecutions: A Spectrum of Uses*, 68 B.U. L. REV. 166 (1988).

5. In the survey, both authors discussed mental health evaluations with a selection of California's juvenile court judges during 1998 and 1999.

- NOTES
6. John C. Stokes & Linda J. Strothman, *The Use of Bonding Studies in Child Welfare Permanency Planning*, 13 CHILD & ADOLESCENT SOC. WORK J. 347–68 (Aug. 1996).
 7. Michael Rutter, *Clinical Implications of Attachment Concepts: Retrospect and Prospect*, in ATTACHMENT AND PSYCHOPATHOLOGY 26 (Leslie Atkinson & Kenneth J. Zucker eds., Guilford Press 1997) (citing JUDY DUNN, YOUNG CHILDREN'S CLOSE RELATIONSHIPS: BEYOND ATTACHMENT (Sage Publications 1993); RELATIONSHIP DISTURBANCES IN EARLY CHILDHOOD: A DEVELOPMENTAL APPROACH (Arnold J. Sameroff & Robert N. Emde eds., Basic Books 1989)).
 8. Especially as children get older, it is to their social and neurodevelopmental benefit to interact with more than one person.
 9. Rutter, *supra* note 7, at 25.
 10. *Id.* at 29 (citing Joseph J. Campos et al., *Socioemotional Development*, in 2 HANDBOOK OF CHILD PSYCHOLOGY: INFANCY AND DEVELOPMENTAL PSYCHOBIOLOGY 783–915 (Marshall M. Haith & Joseph J. Campos eds., Wiley 4th ed. 1983)).
 11. Mary D.S. Ainsworth & B.A. Wittig, *Attachment and Exploratory Behaviour of One-Year-Olds in a Strange Situation*, in 4 DETERMINANTS OF INFANT BEHAVIOUR 113–36 (Methuen 1965); Mary Main, *Cross-Cultural Studies of Attachment Organization: Recent Studies, Changing Methodologies, and the Concept of Conditional Strategies*, 33 HUMAN DEVELOPMENT 48–61 (1990); Judith Solomon & Carol George, *The Measurement of Attachment Security in Infancy and Childhood*, in HANDBOOK OF ATTACHMENT: THEORY, RESEARCH, AND CLINICAL APPLICATIONS 287–316 (Jude Cassidy & Phillip R. Shaver eds., Guilford Publications 1999).
 12. FRANK J. DYER, PSYCHOLOGICAL CONSULTATION IN PARENTAL RIGHTS CASES 178 (Guilford Publications 1999).
 13. Indeed, the procedure is invalid when applied to children outside the age range of 12 to 20 months. See *infra* notes 39–42 and accompanying text.
 14. JOHN BOWLBY, A SECURE BASE: PARENT-CHILD ATTACHMENT AND HEALTHY HUMAN DEVELOPMENT 162 (Basic Books 1988).
 15. Bruce D. Perry, *Bonding and Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood*, 4 CHILD TRAUMA ACAD. PARENT & CAREGIVER EDUC. SERIES 1–10, at www.bcm.tmc.edu/cta/attach_ca.htm (Oct. 1999) (adapted in part from BRUCE D. PERRY, MALTREATED CHILDREN: EXPERIENCE, BRAIN DEVELOPMENT AND THE NEXT GENERATION (W.W. Norton & Co. forthcoming 2000)).
 16. *Id.*
 17. Stephen J. Suomi, *Attachment in Rhesus Monkeys*, in HANDBOOK OF ATTACHMENT, *supra* note 11, at 181–97 (citing John Bowlby, *The Nature of the Child's Tie to His Mother*, 39 INT'L J. PSYCHO-ANALYSIS 124 (1958)).
 18. *Id.* at 181–97 (citing Harry F. Harlow et al., *The Maternal Affectional System of Rhesus Monkeys*, in MATERNAL BEHAVIOR IN MAMMALS 254–81 (Harriet L. Rheingold ed., Wiley 1963)); Harry F. Harlow & M.K. Harlow, *The Affectional Systems*, in 2 BEHAVIOR OF NONHUMAN PRIMATES 287–334 (Academic Press 1965).
 19. Jude Cassidy, *The Nature of the Child's Ties*, in HANDBOOK OF ATTACHMENT, *supra* note 11, at 12.
 20. Rutter, *supra* note 7, at 21.
 21. *Id.* at 29.
 22. *Id.* at 21.
 23. Cassidy, *supra* note 19, at 12.
 24. Charles H. Zeanah & Robert N. Emde, *Attachment Disorders in Infancy and Childhood*, in CHILD AND ADOLESCENT PSYCHIATRY: MODERN APPROACHES 490, 494 (Michael Rutter et al. eds., Blackwell 3d ed. 1994).
 25. David E. Arredondo, Essential Information on the Developmental Neurobiology of Children: Implications for Social Services, Juvenile Probation, and the Family Court (Apr. 1999) (unpublished paper presented at the Child Abuse Awareness Month Workshop); see FUTURES COMMITTEE, TERM, PARENTING ADEQUACY IN CHILD MALTREATMENT CASES: ASSESSMENT, INTERVENTIONS AND RECOMMENDATIONS 25 (TERM, Oct. 1999) (discussing Dr. Arredondo's presentation of the concept of reciprocal connectedness).
 26. BOWLBY, *supra* note 14, at 162 (emphasis added).
 27. STANLEY I. GREENSPAN, BUILDING HEALTHY MINDS: THE SIX EXPERIENCES THAT CREATE INTELLIGENCE AND EMOTIONAL GROWTH IN BABIES AND YOUNG CHILDREN 85–129 (Perseus Book Group 1999); STANLEY I. GREENSPAN, THE GROWTH OF THE MIND: AND THE ENDANGERED ORIGINS OF INTELLIGENCE 110–32 (Addison-Wesley 1997).
 28. BOWLBY, *supra* note 14, at 161.
 29. *Id.* (citing KONRAD Z. LORENZ, 83 DER KUMPAN IN DER UMWELT DES VOGELS (1935), translated in INSTINCTIVE BEHAVIOR (Claire H. Schiller ed. & trans., International Universities Press 1957)).
 30. PSYCHOLOGY: THE STUDY OF HUMAN EXPERIENCE 154 (Robert Ornstein & Laura Carstensen eds., Harcourt

Brace Jovanovich 3d ed. 1991) (citing ECKHARD H. HESS, *IMPRINTING* (Van Nostrand Reinhold Co. 1973)).

31. *Id.*

32. Cassidy, *supra* note 19, at 3 (citing John Bowlby, *Forty-four Juvenile Thieves: Their Characters and Home Life*, 25 INT'L J. PSYCHO-ANALYSIS 19–52, 107–27 (1944)).

33. Rutter, *supra* note 7, at 23 (citing JOHN BOWLBY, *MATERNAL CARE AND MENTAL HEALTH* (World Health Org. 1951)).

34. Zeanah & Emde, *supra* note 24, at 492 (citing HAROLD M. SKEELS, *ADULT STATUS OF CHILDREN WITH CONTRASTING EARLY LIFE EXPERIENCES* (University of Chicago Press 1966) (Monographs of the Society for Research in Child Development series 105, vol. 31, no. 3)).

35. MICHAEL RUTTER, *MATERNAL DEPRIVATION REASSESSED* (Penguin 1972).

36. Harry F. Harlow, *Mice, Monkeys, Men, and Motives*, 60 PSYCHOL. REV. 23–35 (1953); Harlow & Harlow, *supra* note 18, at 287–334.

37. Harlow, *supra* note 36, at 23–35; Harlow & Harlow, *supra* note 18, at 287–334.

38. 3 JOHN BOWLBY, *ATTACHMENT AND LOSS: LOSS: SADNESS AND DEPRESSION* (Hogarth Press 1980); Rutter, *supra* note 7, at 19 (citing BOWLBY, *supra* note 14, at 162).

39. Rutter, *supra* note 7, at 21 (citing MARY D.S. AINSWORTH ET AL., *PATTERNS OF ATTACHMENT: A PSYCHOLOGICAL STUDY OF THE STRANGE SITUATION* (Erlbaum 1978)).

40. Stokes & Strothman, *supra* note 6, at 347–68.

41. Solomon & George, *supra* note 11, at 289 (citing AINSWORTH ET AL., *supra* note 39).

42. *Id.* at 290 (citing AINSWORTH ET AL., *supra* note 39); Ainsworth & Wittig, *supra* note 11, at 113–36.

43. Zeanah & Emde, *supra* note 24, at 490–504.

44. David H. Hubel, *Effects of Distortion on Sensory Input on the Visual Cortex and the Influence of the Environment*, 10 PHYSIOLOGIST 17–45 (1967); David H. Hubel & Torsten N. Wiesel, *Receptive Fields and Functional Architecture in Two Nonstriate Visual Areas of the Cat*, 28 J. NEUROPHYSIOLOGY 229–89 (1965); *see* Anita M. Turner & William T. Greenough, *Differential Rearing Effects on Rat Visual Cortex Synapses: I. Synaptic and Neuronal Density and Synapses Per Neuron*, 329 BRAIN RES. 195–203 (1985).

45. DANIEL J. SIEGEL, *THE DEVELOPING MIND: TOWARD A NEUROBIOLOGY OF INTERPERSONAL EXPERIENCE* 1–22, 276–82 (Guilford Publications 1999).

46. Fred R. Campbell & Craig T. Ramey, *Effects of Early Intervention on Intellectual and Academic Achievement: A Follow-up Study of Children From Low-Income Families*, 65 CHILD DEV. 684–98 (1994).

47. *Id.*

48. GREENSPAN, *BUILDING HEALTHY MINDS*, *supra* note 27, at 2–14.

49. GREENSPAN, *THE GROWTH OF THE MIND*, *supra* note 27, at 1–53.

50. *See supra* note 25 and accompanying text.

51. CAL. WELF. & INST. CODE § 366.26(c)(1)(A) (West 1998 & Supp. 2000).

52. *In re* Autumn H., 32 Cal. Rptr. 2d 535 (Cal. Ct. App. 1994).

53. CAL. WELF. & INST. CODE § 366.26(c)(1)(A) (West 1998 & Supp. 2000).

54. Autumn H., 32 Cal. Rptr. 2d at 538–39 (citing JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 17, 19 (Free Press 1973)).

55. *Id.* at 539.

56. *In re* Elizabeth M., 60 Cal. Rptr. 2d 557 (Cal. Ct. App. 1997).

57. *Id.* at 560; *see also In re* Brittany C., 90 Cal. Rptr. 2d 737, 742 (Cal. Ct. App. 1999).

58. *In re* Zachary G., 92 Cal. Rptr. 2d 20 (Cal. Ct. App. 2000).

59. CAL. WELF. & INST. CODE § 366.26 (West 1998 & Supp. 2000).

60. Zachary G., 92 Cal. Rptr. 2d at 26.

61. For our view, *see infra* text accompanying notes 113–29.

62. O.R. v. State, 932 P.2d 1303 (Alaska 1997).

63. *Id.* at 1309.

64. *Id.*

65. *Id.*

66. *In re* Peter M., 602 A.2d 1161 (Me. 1992).

67. *Id.* at 1163.

68. *In re* D., 352 N.W.2d 566 (Neb. 1984).

69. *In re* Mr. & Mrs. J.M.P., 528 So. 2d 1002 (La. 1988).

70. *Id.* at 1013.

71. *In re* Colby E., 669 A.2d 151 (Me. 1995).

72. *Id.* at 152; *see also In re* David C., 546 A.2d 694 (Pa. Super. Ct. 1988), in which the trial court concluded that

- NOTES a child–great grandmother relationship and bond were so strong that the child’s mother could not be permitted to take custody in order for the child to be adopted.
73. *In re* Guardianship of J.C., 608 A.2d 1312 (N.J. 1992).
 74. *In re* J.L.D., 539 N.W.2d 73 (N.D. 1995).
 75. *Id.* at 79.
 76. *Id.*
 77. *In re* Blunk, 174 N.W.2d 194 (Neb. 1970).
 78. *Id.* at 197.
 79. *In re* J.K.S., 356 N.W.2d 88 (N.D. 1984).
 80. *Id.* at 92–93.
 81. *In re* William L., 383 A.2d 1228 (Pa. 1978).
 82. *Id.* at 1241–42 n.22.
 83. *Id.*
 84. *In re* Baby Boy Smith, 602 So. 2d 144 (La. 1992).
 85. *Id.* at 148.
 86. *Id.*
 87. *Id.*
 88. *Id.*
 89. *In re* Ashley A., 679 A.2d 86 (Me. 1996).
 90. *Id.* at 89.
 91. GOLDSTEIN ET AL., *supra* note 54, at 17.
 92. *Id.*
 93. *Id.* at 18.
 94. *Id.* at 18.
 95. *Id.* at 19.
 96. *Id.* at 20.
 97. *In re* Autumn H., 32 Cal. Rptr. 2d 535 (Cal. Ct. App. 1994).
 98. *In re* B.G., 523 P.2d 244 (Cal. 1974).
 99. GOLDSTEIN ET AL., *supra* note 54.
 100. *B.G.*, 523 P.2d at 253–54 & n.18 (citations omitted).
 101. *See In re* Kieshia E., 859 P.2d 1290 (Cal. 1993); *In re* Rachael C., 1 Cal. Rptr. 2d 473 (Cal. Ct. App. 1991); *In re* Patricia L., 11 Cal. Rptr. 2d 631 (Cal. Ct. App. 1992). Recently, the New Jersey Supreme Court adopted a 1995 Wisconsin test to define the de facto parenthood relationship. The test requires the petitioner to prove four elements: (1) that the biological or adoptive parent consented to and fostered the establishment of a parent-like relationship with the child, (2) that the petitioner and the child lived together in the same household, (3) that the petitioner assumed the obligations of parenthood without expectation of financial compensation, and (4) that the petitioner as been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature. *See V.C. v. M.J.B.*, 748 A.2d 539 (N.J. 2000).
 102. CAL. CIV. CODE § 4600 (West 1990) (repealed 1992 Cal. Stat. 162).
 103. CAL. R. CT. 1401(a)(6), 1412(e).
 104. *Kieshia E.*, 859 P.2d 1290.
 105. *Id.* at 1297.
 106. *In re* R.B.W., 548 N.E.2d 1085 (Ill. App. Ct. 1989).
 107. *Id.* at 1089.
 108. *Id.* at 1089.
 109. *Id.* at 1096–97.
 110. *Id.* at 1098.
 111. *In re* Lorenzo C., 63 Cal. Rptr. 2d 562 (Cal. Ct. App. 1997).
 112. *In re* Richard C., 81 Cal. Rptr. 2d 887 (Cal. Ct. App. 1998).
 113. *See* Rutter, *supra* note 7, at 26.
 114. *Id.*
 115. *Id.*
 116. The suggestions made in this section of the article borrow heavily from Ian Russ, *Evaluative Issues, in* CHILD DEVELOPMENT: A JUDGE’S REFERENCE GUIDE 29–31 (National Council of Juvenile and Family Court Judges 1993).
 117. American Acad. Child & Adolescent Psychiatry, *Practice Parameters for Child Custody Evaluations*, 36 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 57S (Supp. 1997).
 118. American Psychological Ass’n, *supra* note 1, at 677.
 119. AMERICAN PSYCHIATRIC ASS’N, CHILD CUSTODY CONSULTATION: A REPORT OF THE TASK FORCE ON CLINICAL ASSESSMENT IN CHILD CUSTODY (American Psychiatric Ass’n rev. ed. 1988).
 120. ASSOCIATION OF FAMILY & CONCILIATION COURTS, MODEL STANDARDS OF PRACTICE FOR CHILD CUSTODY EVALUATION (Association of Family & Conciliation Courts 1994).
 121. Committee of Ethical Guidelines for Forensic Psychologists, *Specialty Guidelines for Forensic Psychologists*, 15 LAW & HUM. BEHAV. 655–65 (1991).

122. On the general use of psychological testing in child custody evaluations and on the limitations of the tests usually utilized in these evaluations, see Randy K. Otto et al., *The Use of Psychological Testing in Child Custody Evaluations*, 38 FAM. & CONCILIATION CTS. REV. 312–40 (July 2000).

123. This is the procedure utilized in Santa Clara County, California. All mental health evaluation questions are submitted to the court for approval and signature after the parties have reviewed them. Usually this review takes place in open court with all parties present.

124. See Jonathan Gould, *An Interdisciplinary Collaborative Model for Developing Psycholegal Questions in Court Ordered Child Custody Evaluations*, 50 JUV. & FAM. CT. J. 43–51 (Winter 1999).

125. For example, an expert opinion that a child's apparently sexualized behavior with an anatomically correct doll showed that she had been sexually abused could not form the basis for a court finding that the child was sexually abused. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *In re Amber B.*, 236 Cal. Rptr. 623, 625–26 (Cal. Ct. App. 1987) (citing *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)).

126. For cases in which similar expert testimony was admitted into evidence, see *People v. Beckley*, 456 N.W.2d 391 (Mich. 1990); *Keri v. State*, 347 S.E.2d 236 (Ga. Ct. App. 1986); *People v. Gray*, 231 Cal. Rptr. 658 (Cal. Ct. App. 1986); *People v. Luna*, 250 Cal. Rptr. 878 (Cal. Ct. App. 1988). For cases in which such testimony was not admitted into evidence, see *Johnson v. State*, 732 S.W.2d 817 (Ark. 1987); *Lantrip v. Commonwealth*, 713 S.W.2d 816 (Ky. 1986); *People v. Bowker*, 249 Cal. Rptr. 886 (Cal. Ct. App. 1988); *State v. Hazeltine*, 352 N.W.2d 6723 (Wis. 1984).

127. "The compensation and expenses paid or to be paid to an expert witness by the party calling him is a proper subject of inquiry by any adverse party as relevant to the credibility of the witness and the weight of his testimony." CAL. EVID. CODE § 722(b) (West 1995).

128. Marc J. Ackerman, *American Psychological Association Guidelines for Child Custody Evaluations in Divorce Proceedings*, 8 AM. J. FAM. L. 129–34 (1994) (Guideline 15); Committee on Prof'l Practice & Standards, APA Bd. of Prof'l Affairs, *Guidelines for Psychological Evaluations in Child Protection Matters*, 54 AM. PSYCHOL. 586–93 (1999) (Guideline 16).

129. GERALD H. VANDENBERG, *Qualifications of the Forensic Psychologist*, in COURT TESTIMONY IN MENTAL HEALTH: A GUIDE FOR MENTAL HEALTH PROFESSIONALS

AND ATTORNEYS 97–98 (Charles C. Thomas Publ. 1993); Committee on Prof'l Practice & Standards, *supra* note 128, at 586–93 (Guidelines 4 & 8); American Psychological Ass'n, *supra* note 1, at 677 (Guideline 7); see also Ackerman, *supra* note 128, at 130; Paul S. Applebaum, *Ethics in Evaluation: The Incompatibility of Clinical and Forensic Functions*, 154 AM. J. PSYCHIATRY 44–46 (1997); Association of Family & Conciliation Courts, *supra* note 120, at 2; Theodore Remley, Jr., & Judith Miranti, *Child Custody Evaluator: A New Role for Mental Health Counselors*, 13 J. MENTAL HEALTH COUNS. 334 (July 1991).

NOTES

The Nexus Between Child Maltreatment and Domestic Violence

A View From the Court

Mary Jones has three children who are 4, 6, and 9 years old. The Jones family was referred to the child welfare system shortly after Mary's hospitalization for treatment of serious injuries. Even though her husband had inflicted her injuries, Mary told the emergency room staff that she had accidentally tripped and fallen down the stairs. The following day, her son's teacher observed suspicious bruises on the 9-year-old and initiated a child abuse investigation that led to the children's removal from their home.

Mary's family is not unlike many that end up in the nation's dependency courts. Despite the fact that Mary had not struck her children, the child welfare system deemed her an unfit mother because of her apparent failure to protect her children from their father. Yet Mary claimed adamantly that she had tried to protect the children. Indeed, her futile attempts to protect them from their father's violent outbursts extended as far as imposing an unbreakable rule in her home: the children were forbidden to remove their shoes at home—even when they went to bed. Ordinarily, child protection agents would have regarded Mary's bizarre "shoes-on" rule as evidence of her impaired judgment, possibly even as a sign of mental illness. Rarely would anyone in the child protection system have inquired into the reason for Mary's shoes-on rule, much less assumed that she had imposed the rule for her children's benefit or protection. Mary simply would have been held responsible for her failure to protect her children from their father's abuse.

In Mary's case, that would have been a mistake. By making the children keep their shoes on at all times, Mary was preparing them to escape from home at a moment's notice—that is, the moment their father became violent. Conceived carefully and practiced in much the same way schools practice fire drills, Mary's plan called for the children to run next door and alert the neighbors so they would call the police. The 9-year-old was to make sure that he took his younger siblings out of the house with him. That way, Mary reasoned, the children would avoid becoming targets of their father's drunken rage. They would be safe from harm. Every night after the children had gone to bed—and only after their father had fallen harmlessly asleep—Mary would go into the children's rooms and remove their shoes.

Mary is like thousands of other women in the nation's child welfare system: simultaneously victimized by domestic violence and at risk of losing her children for having failed to protect them from her batterer. Despite well-documented evidence that battered women are at greater risk of harm from their abusers during separation,¹ the child protection system's traditional approach has been to require battered women to leave their abusers immediately or face the loss of their children.² In such a system—one that does not include reaching out to battered mothers, building relationships with them, and providing support and resources—efforts are rarely made to determine whether children from violent homes can be protected and yet spared the trauma of removal from their mother's love and care. All too often, child protection agen-



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In a pioneering effort led by the judiciary, key systems and agencies have joined together to address the phenomenon of co-occurring domestic violence and child maltreatment. The Dependency Court Intervention Program for Family Violence (DCIPFV) employs a two-pronged strategy to enhance the safety and well-being of children. It conducts comprehensive assessments of children to identify and

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respond to their needs, and it helps battered mothers recover from their own victimization and regain their ability to protect themselves and their children. Domestic violence victim advocates help battered women navigate the complicated child welfare and court systems and obtain other remedies, such as civil protection orders and community resources. Working cooperatively toward the same goal—safety—the advocates and child protection agents reconcile objectives that they previously perceived as conflicting. As the child protection system focused exclusively on children's safety and well-being and victim advocates focused exclusively on battered women's safety and well-being, these groups came to see their objectives as inherently clashing. By shifting their attention to the safety of both abused children and their battered mothers, however, these service providers have overcome the previous barriers to cooperation. The recognition of both constituencies' compelling need for safety has led to joint efforts to increase children's safety and well-being by increasing the safety and autonomy of their battered mothers as well as efforts to hold the perpetrators accountable for their violence. ■

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cies attempt to enhance child safety by removing children from the nonabusive but victimized parent rather than helping the victimized parent to become safe and holding the batterer accountable for violent behavior.

ABUSED CHILDREN FROM VIOLENT HOMES

Children like Mary's come under the jurisdiction of a juvenile dependency court. They have been abused, neglected, abandoned, adjudged dependent, and usually removed from the parents who have hurt them. Every day, dependency court employees witness the brutality inflicted on society's youngest members. Children are beaten, bitten, maimed, burned, raped, starved, neglected, and abandoned by the people who are supposed to love them the most. The dependency court is usually the only institution to address the maltreatment because the criminal justice system rarely prosecutes their parents. Because of the increased risk of harm to children in cases of co-occurring intimate partner violence, dependency courts have both an opportunity and an obligation to address that violence when such cases come before them.

The number of children referred to child protection agencies nationwide—almost 3 million a year—is staggering.³ The most serious cases result in an adjudication of dependency, pursuant to which children are removed from their homes and the court assumes the legal role of parent. Approximately half a million children each year enter the jurisdiction of the courts; this figure represents nearly 2 percent of the children in every community.⁴ Often, these children have no social supports. No caring adults are available to guide them when their parents have failed. These children do not know what it feels like to be safe and nurtured. Their parents are often addicted to drugs and may engage regularly in criminal behavior. If they are poor (as are one-fourth of Miami's children), they probably live in environments where daily violence—both domestic and community—is pervasive.⁵ Given Miami's ethnically diverse population, immigration status can also factor into a battered mother's reluctance to seek assistance from the authorities there. Miami is an urban community of approximately 2 million people, 46.5 percent of whom speak Spanish as their primary language. Other minorities include African Americans (20.5 percent), Haitian immigrants, and Caribbean Islanders.⁶ The Miami courts have recognized that children from many of these families suffer cumulative disadvantages and that even their basic needs overwhelm the system.

The justice system as a whole is becoming more and more aware of the shocking amount of violence in the lives of these children. An emerging literature now estimates that between 30 and 60 percent of the children who witness domestic violence may also suffer from child maltreatment.⁷ Most of the early research on this phenomenon consisted of surveys of battered women in shelters showing a 50 percent rate of co-occurring child maltreatment and domestic violence.⁸ These studies were followed by efforts to understand the risk of death in such very violent homes. A New York investigation indicated that, between 1990 and 1993, a documented history of domestic violence was present in 55 percent of child homicide cases. These figures were similar to the results of other studies throughout the United States.⁹

MIAMI'S DEPENDENCY COURT INTERVENTION PROGRAM FOR FAMILY VIOLENCE

Given the complex issues faced by families struggling with co-occurring domestic violence and child maltreatment, the task of helping families like Mary's in the

context of the child welfare system is a difficult one. The question whether mothers like Mary are victims themselves is typically not considered relevant in the child protection system. Its relevance has, however, been demonstrated in research indicating that children face an increased risk of harm when their mother is battered by her domestic partner.¹⁰ If child protection is to be effective, the system responsible for its provision must recognize that crucial fact. In addition, it must acknowledge the importance and feasibility of court-initiated programs to identify co-occurring domestic violence and child maltreatment, to assess the needs of children who are doubly victimized, and to provide them with supportive services.

The Miami-Dade County Dependency Court Intervention Program for Family Violence (DCIPFV) was designed to address these issues. As a result of the efforts of the DCIPFV, Mary was identified as a victim of domestic violence and offered comprehensive case management services by DCIPFV staff advocates. DCIPFV psychologists examined Mary's children to assess their cognitive, emotional, and developmental progress so that early intervention services could help prevent long-term difficulties. This unique initiative is a national demonstration project funded by the Violence Against Women Office of the U.S. Department of Justice.

Miami's DCIPFV is the first in the nation in which the courts address the co-occurrence of child maltreatment and domestic violence. Since its inception in 1997, the DCIPFV has worked to advance within the child welfare system the principle that the goals of protecting maltreated children and protecting their battered mothers are not always in conflict, but instead are often the same.¹¹ The program has incorporated several specific goals. First, it tries to build awareness within the child welfare system that children suffer an increased risk of harm when domestic violence and child maltreatment co-occur. Second, it identifies battered mothers within the child welfare system and provides outreach-based advocacy services for those mothers both before removal of their children in response to child abuse allegations¹² and after the removal of the children and assignment of their case to the cooperating division of the dependency court.¹³ Third, the DCIPFV attempts to describe the effects of multiple forms of maltreatment and violence on children and to coordinate treatment for their mental health needs. Fourth, the program aims to facilitate and enhance a coordinated community response to the co-occurrence of domestic violence and child maltreatment. Finally, it conducts a rigorous evaluation of both its processes and its outcomes.¹⁴

To fulfill its mission, the DCIPFV has adopted a dual approach. First, it reaches out to battered mothers and provides supportive services so they can recover from the

effects of their abuse and regain their ability to protect themselves and their children. Second, it attempts to understand, through comprehensive assessment, the impact on and needs of abused children exposed to interparental violence.

SUPPORTIVE SERVICES FOR BATTERED MOTHERS

The DCIPFV has provided Mary and hundreds of mothers like her with advocates cross-trained in domestic violence and child maltreatment who discreetly approach mothers after child detention hearings, confidentially ask them whether they themselves are abused, and then offer voluntary, confidential, and comprehensive services to battered mothers. The University of Miami review board for the protection of human subjects approved the DCIPFV's carefully developed advocacy protocol. Mothers are fully informed of the nature and risks of the services before they consent to participate in the program. The advocacy services are based on the idea that if a battered mother's use of resources is facilitated and her recovery is encouraged, she will regain the ability to protect and care for herself and her children. From safety planning and counseling to crisis intervention and court accompaniment, services are comprehensive and tailored to meet the individual needs of each battered mother and her children.

The protection of confidentiality is an important element of the program. When a battered mother works with a DCIPFV court-based advocate, neither the court nor the child protective system knows whether she is a victim of domestic violence unless she shares that information herself or asks her advocate to do so. Likewise, the batterer does not know that his partner has disclosed her victimization. To maintain confidentiality while they assist battered mothers working to fulfill case plans successfully and be reunited with their children, advocates may meet with their clients at neighborhood schools, libraries, or other safe locations to strategize or exchange information.

The DCIPFV also collaborates with one of the child protection investigation units of Florida's Department of Children and Families in an effort to prevent removal of children from their homes, prevent repeat calls to child abuse hotlines, and prevent the future victimization of children. During investigations spurred by calls to child abuse hotlines, child protection workers ask mothers about their safety and refer battered mothers to DCIPFV advocates for voluntary, intensive case-management services. In these cases, as in court-based cases, DCIPFV advocates provide crisis intervention, emotional support, safety planning, counseling on the dynamics of domestic

violence, and access to substance abuse treatment, mental health services, emergency shelter, and other community resources. They also help battered mothers navigate the complicated justice and social systems as they strive to achieve safety for themselves and their children. When working with mothers prior to court involvement, advocates and child welfare workers may communicate carefully, respecting the needs of mothers and children, to coordinate better the efforts to prevent judicial intervention and additional family violence.

ASSESSING CHILDREN FOR EXPOSURE TO VIOLENCE

In 1997, the DCIPFV became the first judicial-research partnership in the country to begin to quantify the co-occurrence of child maltreatment and domestic violence in the lives of children and families under the jurisdiction of the dependency court. Understanding the needs of maltreated children in the dependency system is critically important. Lack of information about these children's lives and needs significantly hampers the effectiveness of the court's fulfillment of its obligation to protect the maltreated child.

In Miami, judges had previously recognized the harmful effects on children of domestic violence exposure. The team that designed Miami-Dade County's domestic violence court in 1992 made special efforts to respond to the needs of these children. The court was child-oriented from its inception. It included, for example, a parent-education component, delivered from the bench, about the effects of exposure to violence on children. Even so, not until DCIPFV psychologists began assessing dependent children for exposure to violence was the magnitude of the crossover between domestic violence and child maltreatment fully revealed. Before the advent of the DCIPFV, children aged 5 to 17 were commonly evaluated in the Miami Dependency Court by a court-based unit of forensic psychologists to assist in child treatment and permanency planning. Evaluation reports filed with the court provided information such as a child's level of cognitive functioning and made recommendations for community services and therapy, but they did not address issues of exposure to violence.

The DCIPFV expanded evaluations of dependent children to improve understanding of the nature, extent, and impact of violence in children's lives. Few measures exist to assess the extent to which children are exposed to violence.¹⁵ Because no appropriate measure of exposure to domestic violence was found for maltreated children in the court system, the DCIPFV has designed a structured interview to assess their exposure. The interview, carefully

constructed by a team of experienced forensic psychologists, includes questions regarding the kinds of violence between adult caretakers observed by a child at home and the nature of the child's responses to conflicts at home.

In addition, the DCIPFV has begun administering a modified version of an existing questionnaire on community and domestic violence to parents regarding their children's experiences. The interviewer instructs parents to respond from the perspective of their children's experiences. Because of its potential to incriminate parents/caretakers and expose them to court-imposed sanctions, including termination of their parental rights, this interview is optional. Parents may choose not to respond to questions about their children's exposure to domestic and community violence. The DCIPFV considers this interview, based on a measure called "Things I've Seen and Heard,"¹⁶ an effective indicator of violence in the child's environment. The information enhances the ability of the court to evaluate children's safety and provide resources to heal and protect them.

In the program's first year, as part of its efforts to determine the rate of co-occurring child maltreatment and domestic violence, the DCIPFV evaluated all children aged 5 to 17 in one division of Miami's Dependency Court upon removal from home. These assessments indicated that 50 percent of the children were exposed to high levels of interparental violence, including punching, beating, kicking, biting, and use of weapons.¹⁷ Sadly, most of these children themselves suffer from more than one form of maltreatment. Data from the first year of the DCIPFV's child assessments indicate that as many as one-half of the children who are in dependency court because of serious maltreatment are also exposed to severe acts of violence on a regular basis.¹⁸ More than 70 percent of these children are neglected and as many as one-half of these are emotionally or physically abused.¹⁹ In addition to protection, these children need early intervention to steer them away from later delinquent behavior. The first longitudinal study on the long-term effects of maltreatment showed that abused children are much more likely to engage in delinquent or violent behavior as adolescents or adults. If a child is abused or neglected, his or her probability of arrest as a teen increases 53 percent, of arrest as an adult increases 38 percent, and of arrest for a violent crime increases 38 percent.²⁰ The courts and the child welfare system have not traditionally recognized that efforts to protect abused and neglected children need to include asking questions about exposure to violence and intervening early to ameliorate the risk of delinquency and other harmful effects. The DCIPFV seeks to remedy this omission.

ASSESSING BABIES AND TODDLERS

Through the efforts of the DCIPFV, we are learning that even infants and toddlers can be harmed by exposure to violence. Courts have usually missed an opportunity for meaningful intervention by not eliciting information from these children until they could respond verbally to questions in forensic interviews. To understand the consequences of co-occurring maltreatment and interparental violence exposure for these children, courts must begin to ask questions about even the youngest children that come before them to ensure that proper services are provided. Courts can access community- and school-based resources to help children overcome identified deficits. It is especially critical to address the needs of the very young, as children under the age of 6 constitute nearly one-third of all children nationwide in the foster-care system.²¹ Evaluating infants and young children makes it possible to learn about their unmet developmental and cognitive needs and to intervene before violence has irreversibly affected their development. Such early intervention gives children an opportunity to develop at an appropriate rate; delays can make problems much more difficult to treat.

In the first effort to systematically examine developmental functioning and treatment needs of maltreated and violence-exposed young children, the DCIPFV's Prevention and Evaluation of Early Neglect and Trauma (PREVENT) initiative is developing a program to evaluate all infants, toddlers, and preschoolers who are found dependent by the court. During assessment sessions in a playroom setting, parents and children are videotaped engaging together in a number of tasks. Bonding and attachment are assessed, as are the child's developmental and cognitive functions. PREVENT has shown that observing these children with their caretakers and allowing them to speak through their actions can reveal a great deal about their development and need for safety and security.²² Preliminary data from PREVENT reveal that an astounding number of these children experience difficulties at the most basic levels of thought and speech development. Almost 70 percent of the maltreated young children seen through PREVENT suffer from significant delays in cognitive and language development. These delays place them at serious risk of an inability to learn, to express their thoughts and needs, and to understand their worlds. Without intervention, these children may develop social problems as well as learning deficits by the time they reach school age.

Observations of young children also reveal that even in infancy, many children exposed to domestic violence appear uninterested in adults, unable to play, and unable to explore the world around them. Many of the children examined thus far exhibit signs of traumatic stress, includ-

ing withdrawn behavior, fearfulness, and sadness.²³ Parents often do not understand these children, whose needs are significant and complex, leading to problems in the parent-child relationship.²⁴ Innovative models for therapeutic intervention with very young children and their parents have informed the DCIPFV's most recent initiative to assist this population.²⁵ The DCIPFV is currently developing a dyadic treatment model to help cultivate an appropriately supportive relationship between these very young children and their victimized parents/caretakers. This model will also strengthen the critically important bond between the nonabusive parent and the child—a bond that serves as the foundation for the promotion of the child's well-being and healthy developmental progress.

IMPLICATIONS FOR POLICY AND PRACTICE

The evidence of a staggering rate of co-occurrence of child maltreatment and domestic violence in families involved in the child welfare system demands important decisions with respect to policy and practice in the justice system. If we do not acknowledge that all children are at risk of harm from exposure to violence and that dependent children face a significantly higher risk, we cannot protect our children or help them heal. Courts must begin to think and ask about children of all ages as a matter of course. Violence in children's lives can breed more violence. The trauma inflicted on these children by the adults in their lives must be revealed, acknowledged, and treated. If it is not, society and its children will suffer the consequences.

In the dependency system, the knowledge of the dynamics of family violence and child development must inform decisions relating to child removal, charging parents, custody, and visitation. The system must be redesigned to identify domestic violence in the family and to provide the support and services necessary for parents to decrease the violence in their lives. There is no question that advocacy services for battered mothers are essential. In the child welfare system, the mother traditionally has not been viewed as a victim of violence, but rather as someone who had failed to protect her children by not leaving a violent relationship. The child welfare system must understand, however, that both the mother and the children have the same overriding need: to be safe. Interventions that increase the safety of the mother can, in many instances, also increase the safety of her children.

Initial aggregate data from the DCIPFV (gathered from confidential reports by mothers to advocates in court) reveal that more than one-half of the mothers who come to court after losing custody of their children on grounds of abuse and neglect suffer from severe domestic

violence.²⁶ They frequently fear for their own lives as well as those of their children. Hundreds of women have accepted services from DCIPFV advocates. Anecdotal accounts strongly suggest that it is possible for such meaningful intervention to help children and their mothers stay safe and together.

The DCIPFV is helping to change the child welfare system's perspective from one that always views mothers as perpetrators to one that sees that they are often victims doing their best to protect their children. The greatest strength our battered mothers possess is their ability to provide for, nurture, and parent their children. When asked, battered mothers say that their children are the reason they decide to stay with their abusers, and, when they see them harmed, their children are the reason that they ultimately leave. Mothers like Mary Jones work to keep their children safe every day. That justice system participants may not always understand their methods, or that their methods are not always successful, does not mean they are failing to do the best that they can do. Child welfare and justice system participants must realize that parental efforts are enormously important to the health and well-being of their children. If we do not ask about mothers' victimization, we will miss valuable opportunities to intervene and engineer more positive outcomes for both abused children and their battered mothers. If we ignore the efforts that mothers make to keep their children safe, we will deny them one of the most important and powerful strengths in their lives and also risk depriving their children of the most important person in their lives. So many of these mothers have no reason to believe in their strength. They are humiliated, demeaned, and violated. It is important to listen to them and their children and to recognize their heroism.

The DCIPFV's work and a growing ability to understand the lives and strengths of these mothers has led to a true paradigm shift. This shift has been enhanced by the growing collaboration, led by the judiciary, between child protection and domestic violence systems. The effect of judicial leadership in bringing these parties together to work for the best interest of children cannot be overestimated. Judges should use every opportunity to initiate court and systemic reform. We must find new ways to listen to and observe mothers like Mary and their children, even the youngest, to give them a voice and an opportunity to heal.

NOTES

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PERSPECTIVES



Photograph by Jason Doiy

Parens Patriae

The Federal Government's Growing Role of Parent to the Needy

"I want a home that will love me
and let me stay."

— Libby, adopted from foster care at age 14

Parens patriae, the idea of the government as "parent of the country," has deep roots in our legal system's history. Tracing its foundations back to English common law, *parens patriae* connotes the authority of a political sovereign, formerly a monarch, to care for children and other citizens who are unable to care for themselves. Our current child welfare system is the product of grafting our legal institutions, federal structure, and multiple strands of social work theory onto the principle of *parens patriae*.

Early on, the states worked alone to address problems of child welfare. Only in the years since the Great Depression has a coordinated national practice of dependent care begun to emerge in the United States. Federal legislation employing a combination of financial incentives and sanctions and the strong leadership of dedicated legislators, judges, and social service directors has resulted in improved accountability and delivery of services. A series of federal legislative acts has brought our courts and social service departments together as a cooperative parenting team. This alliance is awkward at best. The legal system is designed to reach final determinations based on clear rules and available evidence. The provision of social services, on the other hand, rests on subjective and conditional standards. The courts seek to hold individuals accountable for their actions, while social service agencies seek to modify those same actions and to provide support. In spite of their inherent tension, the child welfare system trusts this team to spend \$14.4 billion annually to provide approximately 500,000 children with out-of-home care.¹

The challenge of this responsibility is enormous, and in fact we have no real expectation that the state actually can be a good parent.² To begin with, inadequate planning caused by lack of coordination between courts and social service providers has crippled the foster-care system. Even if that were not so, children do not thrive emotionally or physically in institutional settings. Foster children live in extended legal limbo, experiencing multiple placements. All too often, high turnover at social service agencies precludes the formation of personal relationships between child-care workers and their young clients.³ And for all too many



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The American colonists brought a *parens patriae* model and good intentions from England to their new home, but it was not until 65 years ago that America began to develop a national plan for dependent care. A series of federal legislative acts, initiated by social welfare professionals, has given the courts and social service agencies the shared role of parent. Today, approximately 500,000 children receive out-of-home care at an annual cost of \$14.4 billion. But even as the child welfare "industry" continues to grow, problems with the delivery of services persist. This review of the development of dependent care in the United States may suggest reforms for the new century. ■

children, the damage—often manifesting as an inability to form emotional bonds with others—is permanent. Nevertheless, cultural changes have created a society where the power of the state is applied by force of necessity—actively, to remove children from unsafe homes; passively, to receive parentless children as it has done in the past. It has been this shift—from social services as a passive receiving entity to social services as an assertive agency that removes and protects children—that has involved the courts in a subjective, emotion-laden field unlike any other in the objective, rule-bound legal system.

THE EVOLUTION OF AMERICAN CHILD SERVICES

A historical examination of the provision of child services in America discloses a distinct trend. For the colonies, the interests of society were central. In their view (and that of their successor states) dependent children were threats to their stability and productivity; thus they sought to protect their own well-being by transforming dependents into productive members of society. As the country grew more stable and more unified, the focus of concern changed from promoting the survival of the states to mitigating the economic costs imposed on it by dependent children. Over time, the development of social welfare movements and psychological theory combined with the increasing prosperity of the country to encourage methods of care that focused more and more on caring for the well-being of children to the relative exclusion of other benefits.

English Roots: For the Good of Society

The principle of *parens patriae* appears in 12th-century English common law, according to which the monarch could dedicate personal resources to provide assistance to people with legal disabilities and to act as their guardian.⁴ The needy could gain assistance by petitioning the monarch, who distributed money, food, and other assistance on an ad hoc, discretionary basis. But by virtue of their disabilities, many needy subjects were not able to petition on their own behalf and had no legal voice. Their care then depended on members of their extended family or local charities. Orphaned children were often left on their own. Notably, there was no legal mechanism for removing a child from an abusive environment. Child protection was excluded from the traditional scope of the English ruler's parental duties.

During the Elizabethan period,⁵ economic pressures caused by urbanization and overpopulation demanded greater uniformity in the distribution of relief services. Parliament responded by passing the Elizabethan Poor Law in 1601. The Poor Law allocated governmental funds to local jurisdictions to provide services for three eligible categories of persons who had no one else to support them. First, the involuntarily unemployed were to be provided work. Second, helpless adults (the old, the sick, and the handicapped) were to be financially supported so they would be able to live on their own or with neighbors. Third, dependent children were to be given apprenticeships so they would be able to learn a trade and support themselves as adults. In addition to establishing this framework for public

care, Parliament encouraged private charity in 1601 by passing the Law of Charitable Uses. This law gave tax advantages to private contributors to charity. But the English legal system also maintained a strong disincentive to becoming dependent on public funds: it imprisoned or inflicted corporal punishment on beggars, vagrants, and others who were able, but unwilling, to work.

These were the first English attempts to create uniformity in relief efforts for the general well-being of the population. The services provided under the Elizabethan Poor Law were intended to decrease homelessness and to ensure a decent standard of living for the culture's neediest people.⁶ Although complete discretion rested with local distribution officials, society's duty to provide for its least fortunate members was now recognized by the law.

The settlement of the English colonies in North America (Jamestown in 1607 and Plymouth in 1620) occurred soon after the establishment of the policy of public care. The colonists adopted the Elizabethan Poor Law as their model for providing care to widows and orphans. Tax revenues were redistributed to needy individuals at the discretion of the local authorities. Private donations heavily supplemented the few available public funds, but, because of the relatively small population of the colonies, there was no need for widespread, organized charitable giving. The need for assistance arose most often in individual cases of misfortune such as death or injury. Ad hoc charitable efforts apparently sufficed to remedy those cases. The American colonists thus did not copy the Law of Charitable Uses as they had the Poor Law. In addition to the small colonial population and correspondingly low demand for charitable assistance, one probable reason for this omission was the relative lack of discretionary wealth in the early colonies.

The 19th Century: From Social Welfare to Child Welfare

The policy focus and resource allocation patterns in the colonies remained much the same throughout the 17th and 18th centuries. With the population growth and increased urbanization in early-19th-century America, however, public institutions were created to provide the services demanded by these phenomena. Jails, reform schools, hospitals, insane asylums, orphanages, and almshouses were established as it became more impracticable to provide charitable assistance on an ad hoc basis. Almshouses had appeared quite early in the eastern seaboard colonies, where the high-risk fishing industry left numerous widows and orphans. Their numbers increased dramatically from 1820 to 1850. By the 1850s, almshouses had become an established method of charitable housing of the destitute and disabled. People without means were housed together and supported by a limited amount of public funds. Living conditions in the almshouses were often deplorable, so only those least able or willing to care for themselves resided in them. Public expenditures for relief at that time along the eastern seaboard accounted for 10 to 35 percent of local tax revenues.⁷

As industrialization increased, and even more so as the Civil War disrupted American society, a shortage of institutional care facilities arose. Members of America's poorest families, usually urban immigrants, often died from illness and lack of medical care. Widowed mothers frequently found it financially necessary to place children in care

out of their own homes. These factors, combined with four economic panics between 1837 and 1857, caused a tremendous increase in the number of homeless children, both dependent and delinquent. Children came to account for an ever-larger percentage of the general population of the almshouses, which were intended to house children until they were old enough to enter apprenticeship. Advocates began urging reform as the press publicized conditions in the almshouses. As a more humane alternative, specialized institutions were established for the care of disabled children. In addition, by the late 1850s, states had begun to place children individually into foster-care homes.

One notable child advocate during the 1850s was Charles Loring Brace, who, in response to the growing number of delinquent children in New York, founded the New York Children's Aid Society in 1853.⁸ Brace is also credited with the idea of sending children west to provide farm labor in exchange for room and board with a family of settlers. Children traveled west on "orphan trains" sponsored both by individual benefactors and charitable organizations. At each stop, they disembarked to be inspected by local families. Children either were selected by a family or reboarded the train to travel farther west.⁹ This solution to placement was an alternative to apprenticeship, in which a child assisted a tradesman in return for housing. It reinforced the new practice of home placement that would evolve into the foster-care system, designed solely to benefit the child.¹⁰

The focus on the benefit to the child continued to increase. After the Civil War, Massachusetts established the first program that offered public money for room and board to working-class families who would accept children into their homes. Offering a solution to the problem of homeless children and reflecting a changing attitude toward their needs, it was, in effect, the nation's first foster-care program.

Early 20th Century: Focus on the Child

Beginning in the early 1900s, this shift in emphasis became more widespread. Child welfare professionals no longer viewed children solely as potential laborers. Instead, when making child placement decisions, they began to consider the emotional benefits a child received from living with a family. Social services began to place children in homelike settings or, when possible, allowed them to remain with their mothers, who received a stipend for their care.

A growing number of people became involved in providing assistance for dependent children. Public interest was strong enough that the first White House Conference on Children was held in 1909,¹¹ drawing national attention to the needs of dependent children. Many now-familiar practices, all designed to promote the well-being of the child, grew out of the 1909 conference. The conference first articulated on a national scale the desirability of preserving a child in his or her birth home when possible and placing a child in foster family care rather than in an institution when the birth home was not an option. The conference also led to the development of a voluntary Child Welfare League of America (still at the forefront of child advocacy issues) and the establishment of the Federal Children's Bureau in 1912 to conduct research and report on conditions affecting children.¹² By the late 1920s, the confer-

ence principles had taken hold. The public began to accept that the state's provision of services to her needy children could no longer depend on unfettered discretion. As *parens patriae*, the state owed her dependent children a duty of care. Professionals began to recognize the importance of a child's attachment to nurturing parents. For healthy orphaned children, foster care in family homes became widely preferred to placement in an institution.

Reforms in social services were not limited to child welfare. In the 20 years following the 1909 White House Conference on Children, 25 states voluntarily started publicly supported programs to help people regain their economic independence. This "social insurance" approach was intended to alleviate the four most common causes of dependence on charity.¹³ Programs established in various states included health insurance, workers' compensation, assistance for single mothers, old-age pensions, and unemployment compensation. The programs were by no measure generous. Mother's aid programs, for example, often used a rigid means test for eligibility and their payments ensured only subsistence living. They were, however, a first step in providing aid to families outside the context of institutional care. Illinois passed this type of assistance in 1911, and by 1926, 40 states had similar laws.

Summary

The goal of public aid and private charity in early America was to give individuals a boost out of difficult situations and to allow them to reenter society as fully contributing members.¹⁴ Children were given housing only until they were old enough to enter apprenticeship and learn a trade. By the mid-1800s, though, a change of policy in favor of children's welfare began to develop, as illustrated by the orphan trains heading west. Dependent children were placed in homes instead of institutions. However, the inducement to take a child into a home remained in large part the need for farm labor in the growing agricultural regions of the country.

By the early 1900s, social work had become more widely recognized as a profession. The new child welfare professionals saw earlier policies and practices as inadequate, failing particularly to meet the basic needs of children. Simply providing housing or short-term assistance was insufficient to provide real, meaningful help to children. Social services responded by beginning to provide active assistance, to seek out those in need.

In addition, social workers were incorporated into the social service institutions that had been established in the 1800s. Jails, hospitals, and orphanages put to use the specific skills and training of social workers to help their residents reenter mainstream society. The workers provided assistance in finding housing, financial aid, and other services, with the goal of helping the needy attain a respectable quality of life. This approach involved much more individualized care and more directed services for the recipient than did previous practices. Available public funding remained limited, so many of these services depended primarily on private donations. In particular, many religious groups established hospitals, orphanages, and other institutions to serve the less fortunate.

COMPETING JURISDICTIONS: THE FEDERALIZATION OF CHILD WELFARE SERVICES

The political development of the American colonies into separate, sovereign states bound together as one nation invited controversy over the division of powers between the states and federal government. The jurisdiction to provide social services did not escape this controversy. The Preamble to the Constitution enjoins the federal government to "promote the General Welfare"¹⁵ and Article I grants Congress specific power to do so.¹⁶ Initially, Congress was reluctant to intrude on a matter that had traditionally been the province of the states. In 1854, however, Congress passed a bill authorizing the use of federal public lands for the treatment of the insane. The President vetoed the bill on the ground that the Tenth Amendment to the Constitution reserved the power to promote the general welfare to the states and federal intervention would therefore be improper.¹⁷ Institutions of care and foster homes continued to depend entirely on state and charitable funding.

The sole 19th-century exception to the bar on federal provision of social services was the establishment of the Freedmen's Bureau in 1865. Newly freed slave families often faced extreme poverty, and the southern states had no money or will to assist them. Recognizing their predicament, Congress authorized the Freedmen's Bureau, a subsidiary of the War Department, to provide them with clothing, food, medicine, shelter, and employment assistance. The program was short-lived, however, as controversy grew over its cost and constitutionality. Congress withdrew its funding and abolished the Freedmen's Bureau in 1872.¹⁸

The Great Depression and the Beginning of Federalization

The Great Depression prompted an expansion of the scope of federal powers, the national government's next direct involvement in the provision of social services. In 1933, Congress established the Federal Emergency Relief Association to counteract the Depression's catastrophic poverty and unemployment. The Social Security Act (SSA) of 1935,¹⁹ the first general federal response to widespread social welfare issues, authorized funding for an array of programs designed to provide support for dependent children.²⁰ Under these programs, including Aid to Dependent Children (ADC), the federal government reimbursed the states for the care of needy persons according to federally mandated guidelines for relief.²¹ The SSA was a watershed; funding streams that it established, especially those under Title IV-E, continue to defray a substantial share of states' costs to fund child care.

The growth of federal involvement in local social service projects that began during the Depression obviously represents a major shift in the care of dependent children. Under the Elizabethan Poor Law's influence until the 1860s, state funds had been given to local authorities, which had the discretion to distribute them to meet local, immediate needs. Following the Civil War, state social service programs became more uniform. The SSA began the process of removing local authorities' discretionary power and placing it in the hands of federal bureaucrats, whose job was to establish centralized social service policies.

At the same time that the federal government took a financial role in the assistance of each state's needy population, state and local judges joined together to found the National Council of Juvenile and Family Court Judges in 1937.²² Courts began to evaluate their place in the system of care and protection of dependent children. Care of dependent children still fell under local jurisdiction, but already there was a growing trend to achieve nationwide uniformity in the treatment of children in foster care.

Increased Demand for Child Welfare Legislation

The fundamental aspects of the dependent-care system established during the Depression stayed more or less the same for almost four decades. The day-to-day administration and distribution of child welfare services continued to be based at the local level. Foster-care homes, some founded in the 1860s to provide care for Civil War orphans, continued to be used across the nation as a preferred placement for children. Under ADC, expanded and renamed Aid to Families With Dependent Children (AFDC) in 1962,²³ state child welfare systems provided aid for families who were unable to financially support their children.

In the 1970s, though, the population of children in care began to increase dramatically along with a developing new awareness of the effects of parental abuse and neglect on children. Increased reporting mandates combined with the social epidemic of inexpensive and damaging street drugs to create a population boom in children requiring out-of-home care. Certain categories of professionals (law enforcement officers, medical providers, and teachers) became mandatory reporters with an affirmative duty to report suspected abuse and neglect to their local Child Protective Services unit for investigation. Foster-care systems, theretofore able to effectively handle the uncommon situations of orphaned or abandoned children and to provide short-term care for poor or neglected children, found themselves overwhelmed.

Not only had the number of children taken into care ballooned, but the children themselves were also more needy. Physicians were beginning to understand the effects of prenatal drug and alcohol abuse on fetal neurological development. At the same time, psychologists were coming to grips with the repercussions of early childhood neglect on personality formation. This period also marked the beginning of an era when children were removed from "unsafe" homes. This category of children had not been served before by public welfare. As long as a child had a home or was not given up by his or her parents for financial reasons, the child welfare system had no contact with that child. Now, because of mandatory reporting, the child welfare system reached marginal families that had once been outside the scope of services.

In 1974, Congress moved to address these developments. Through passage of the Child Abuse Prevention and Treatment Act of 1974 (CAPTA),²⁴ which provided federal funds and technical assistance to local social service agencies, Congress attempted to prevent more children from being removed from their birth homes and placed in out-of-home treatment.²⁵ CAPTA also enlisted the courts in this effort. The act required a judicial determination whether "abuse or neglect" was occurring in a home and, in the event that it was, whether removal of the child was necessary.²⁶ Even

if a social worker investigated and established the existence of abuse or neglect in a home, only a judge could actually order a child removed and placed in foster care. The judiciary and social services agencies thus became partners in the growing enterprise of protecting dependent children.

In spite of these efforts, the numbers of children entering foster care continued to rise. Coupled with the stiffer reporting requirements of the 1970s, increases in drug dependence and poverty among caretakers of small children in the 1980s caused many more babies (children under age 4) taken into public care.²⁷ Children in this age group were four times more likely to be removed from their homes than were older children. By the 1990s, many of these children had not returned home as planned. Case admissions had leveled off, but the population in foster care continued to grow because very few children were exiting care.²⁸ Reunification of children with their birth families often depended upon their caretakers' successful completion of drug treatment and establishment of a stable home. In addition, children born exposed to drugs or alcohol presented more complex needs that took longer to address. In neighborhoods scarred by drug use, poverty, and unemployment, these conditions were difficult to meet.²⁹

A 1989 Boston survey concluded that parental drug and alcohol abuse was a significant factor in 89 percent of cases in which children entered foster care.³⁰ As America experienced an increase in drug usage, there was also an increase in children entering a public system of child care. In 1984, there were 246,000 children in care nationally; by 1993, there were 449,999, an 83 percent increase in less than a decade. By 1999, over 500,000 children were in foster care in the United States.³¹

Progress in the 1980s

Important progress in the provision of child welfare began in 1980 with the passage of the Adoption Assistance and Child Welfare Act (AACWA),³² which amended the SSA. The act's purpose was to "encourag[e] the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services."³³ Under the law, federal funds passing through to states for child welfare services were tied to new requirements. Each state was to develop a plan to include certain statutorily specified elements and to implement local versions of federal procedures for foster-care cases. Failure to comply would lead to the loss of federal funds amounting to 50 percent of a state's total child welfare budget.³⁴ Thus, the AACWA continued the process of removing discretion from local child services.

The AACWA also provided funding to prevent the removal of a child from his or her home. A primary focus of the legislation was to address the long-standing complaint of social services agencies that funding was not available to provide services to the family while the child remained in the home. Problems such as drug or alcohol addiction or homelessness could only be addressed after the child had been removed. This discouraged parents in need of help from coming forward and voluntarily seeking assistance because they feared that, if they did so, they would lose their children.

The AACWA authorized funds to cover 180 days of "voluntary placement" in a foster home.³⁵ The social service agency was still required to move the child out of the birth home, but the placement was a cooperative arrangement between the agency and the family with the goal of returning the child home. During the period that the child was out of the home, the social worker could assist the family with its particular needs, such as employment, addiction, and housing. In effect, the child welfare worker became a social worker for the parent's needs.

The AACWA also mandated a more active role for the courts. Courts were required to evaluate whether the local department of social services had provided "reasonable services" to a family sufficient to avoid removal of the child from the home. Specifically, courts now had to hold periodic review hearings in foster-care cases, to adhere to deadlines for permanency placing decisions, and to implement procedural safeguards concerning placement and visitation.³⁶ All stages of the child protection process, from determining that a child is in danger to deciding to remove that child from his or her home, came under judicial review.

Partly in response to the AACWA, the National Council of Juvenile and Family Court Judges established the Permanency Planning for Children Project in 1980. The project responded to the new need for juvenile judges to be involved more often, and in more depth, in the management of each dependency case. The project published recommended guidelines for judicial review of dependency cases and encouraged their use in all 50 states. Local solutions were still preferred, but the guidelines set as a goal a uniform national standard of judicial competence.³⁷

Reform in the 1990s

In 1993 Congress, recognizing the demands placed on courts by their expanded role in the provision of child welfare services, increased their funding. The "Family Preservation and Support Act"³⁸ authorized the allocation of federal Department of Health and Human Services (DHHS) funds to each state's highest court via grant projects.³⁹ This legislation represented a six-year financial commitment to improving the courts' handling of child abuse and neglect cases. Under this structure, each state's judiciary could decide internally whether improvements were better made at the local (county or district) or statewide level.

Throughout the period of progress, AFDC remained the centerpiece of the federal aid scheme. Among AFDC's flaws, perhaps the most serious was that the only tool for enforcing compliance with its requirements was reduction of federal funding. AFDC was a highly regulated program that left little room for local variety or flexibility in its implementation. Federal funds were reimbursed to the states only if they followed federal regulations. If a state failed to comply, the federal government would simply cut off its entire share of funding. This remedy was such a harsh tool that it lacked effect. The loss of the federal share of the cost of social services programs would have substantially crippled the delivery of any services to the needy. The federal government was understandably reluctant to take this step. Therefore, no real tool was available to force a state to comply with federal regulations. Judge Leonard

Edwards of the Santa Clara County Superior Court has pointed out the implications of that policy:

If a judge finds that the state social service agency has not adequately delivered services to a family from whom a child has been removed, the finding may serve as the basis for removing federal funding from the agency. A negative judicial decision may thus reduce financial support for the agency and make it even more difficult to provide services to families whose children may be or have been removed.⁴⁰

To avoid creating legal orphans, courts have traditionally been hesitant to terminate parents' legal rights unless there was an adequate alternative permanent plan for the child. As a result, social service agencies were indirectly encouraged to continue to provide family services, and the child waited in foster care. As the child grew up, the likelihood of adoption decreased. In 1993, the average stay of a child in foster care in California was seven and a half years.

To remedy this problem, Congress changed the way it funded child welfare programs. In the Personal Responsibility and Work Opportunity Act of 1996,⁴¹ Congress provided block grants to states. Federal guidelines for the programs were established and financial incentives and compliance requirements were provided. However, direct provision was placed in the hand of local authorities, which could develop their own programs. This shift in federal legislation returned much of the control of services and eligibility to the local jurisdiction's department of social services and courts.

The 1996 act also addressed the growing problem of substance abuse and the failure of AFDC to return families to self-support by creating Temporary Assistance for Needy Families (TANF)⁴² to replace the AFDC model of funding child and family services programs. AFDC was still based upon the part of the original Social Security Act that was intended to provide short-term aid to widowed mothers. The expectation had been that mothers would remarry and no longer need assistance. There was no time limit on receipt of benefits.

By the 1990s, however, single-parent households were an established part of American society. The cultural premise of traditional relief programs, that single mothers would remarry, was no longer true. In addition, 80 percent of AFDC recipients were unemployed and depending on their benefits for long-term support.⁴³ TANF gave states more freedom to design and implement welfare programs to address these concerns. California responded by enacting the CalWORKs program, which required able parents to work. At the same time, it provided child-care accommodations and job training for impoverished single parents. Though the long-term effect of these programs is still uncertain, the generation of homeless children predicted by opponents of welfare reform has yet to emerge.

The Adoption and Safe Families Act (ASFA)⁴⁴ clarified the focus of federal spending on child welfare. The act amended Titles IV-B and IV-E of the SSA and built on the policies expressed in the AACWA, but addressed directly the needs of the child rather than focusing on the dysfunction of the family. Whereas the stated purpose of the AACWA had been to preserve families and provide them with support services, ASFA explicitly and deliberately shifted the focus of the child welfare worker to the

needs of the child rather than those of the family.⁴⁵ Under ASFA, each state must adopt and implement a plan that includes provisions for a child's "safe" return to his or her birth home⁴⁶ with assurances that cross-jurisdictional resources are available for timely adoptive or permanent placements. Both of these changes seem small; however, they signal a national legal commitment to promoting children's well-being and, if possible, returning them to their families, and a departure from earlier models of apprenticeship and foster care.

ASFA also responded further to the single-parent phenomenon by implementing quota requirements to move children left in foster care into permanent homes. The act placed limits on the length of time an individual adult could receive financial assistance and on the total amount of funding he or she could receive over his or her lifetime. If a state did not meet the requirements, not only would it need to reimburse the misused funds to the federal government, but it would also face sanctions or fines. The primary goal of the program was still to provide assistance to the needy, but it also attempted to hold both the state government and the individual recipient responsible for the use of the funds. ASFA thus reestablished federal control over locally implemented child welfare programs. Congress set minimum standards for the permanent placement of dependent children in adoptive homes, strongly asserting the federal government's role as *parens patriae*.

In an effort to strengthen ASFA and improve the efficiency and effectiveness of courts involved in the process of finding safe, permanent placement for dependent children, Congress passed the Strengthening Abuse and Neglect Courts Act of 2000 (SANCA).⁴⁷ Reaffirming ASFA's first-time recognition that "a child's health and safety must be the paramount consideration" when any decision concerning a child is made in the nation's child welfare system,⁴⁸ SANCA firmly establishes the framework for the federal government to serve as *parens patriae*. SANCA offers a wide range of support to abuse and neglect courts. It establishes grant programs to provide them with computerized case-tracking systems,⁴⁹ to reduce backlogs by hiring additional judges and other court personnel,⁵⁰ and to expand the Court-Appointed Special Advocate program.⁵¹ These federal grants, like those funded by previous statutes, give courts incentives to develop local approaches to solving problems of child welfare. SANCA, however, provides the courts with explicit federal direction with respect to the required goal of their programs: permanent placement of children in safe and caring homes.

CONCLUSION

The care of America's needy children began in the colonies. Orphaned or destitute children were placed in apprenticeships where they could provide additional labor and contribute to the welfare of society. The nation's child-care practice evolved slowly into today's system of far-reaching federal policies derived from the Social Security Act of 1935. In an effort to respond more effectively to the increasing numbers of children growing up in a home not their own, a combination of federal funding with loose mandates intertwined with local control of implementation has developed.

The fluctuation in funding formats mirrors the political fluctuations between centralized and decentralized government that characterize our nation's development.

The trend in social welfare policy toward taking children from institutions and moving them into locally administered individual family care seems to oppose congressional initiatives to impose federal requirements on local provision of assistance. Most of the heavy lifting, however, is still done by local agencies. Just as social service providers and the courts are taking steps to learn each other's disciplines, state and local systems are learning to work within the federal guidelines to balance the goal of family reunification with expedient permanent placement for dependent children.

The social issues of poverty, physical abuse, mental illness, and substance abuse are perennial problems in this field. Both the Elizabethan Poor Law in 1601 and the Adoption and Safe Families Act in 1997 attempted in their distinct ways to address these issues. As individual judges struggle with each dependent child's case and social service agencies struggle to make determinations of removal and family reunification, these issues will continue to arise. Governmental structures will inevitably need to revisit and revise their policies in response.

Our commitment to our children in need has not changed. As our child welfare agencies and juvenile courts struggle to provide the best possible services for our dependent children, their alliance melds ever-developing expertise with judicial authority and compassion into solutions that provide a safe starting point for our children. Our courts and social service providers have never been in a better position to place children who are victims of abuse and neglect permanently in safe and caring homes. As agents of the state, they can work to fulfill its duty as *parens patriae* by finding more suitable parents for each dependent child. In the current climate of child welfare policy, Libby and other dependent children stand a better chance than ever of finding a home to love them and let them stay.

NOTES

1. NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE, COLUMBIA UNIVERSITY, NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS 9 (1999).
2. *Id.* at 11.
3. KAY BROWN & DIANA PIETROWIAK, CHILD PROTECTIVE SERVICES: COMPLEX CHALLENGES REQUIRE NEW STRATEGIES 10 (U.S. Gen. Accounting Office 1997).
4. Those with legal disabilities included "infants, idiots, lunatics," and the physically disabled. BLACK'S LAW DICTIONARY 579 (5th abr. ed. 1988).
5. Queen Elizabeth I ruled England from 1558 until 1603.
6. ENCYCLOPEDIA OF SOCIAL WORK 1503 (National Ass'n of Soc. Workers Press 17th ed. 1977).
7. *Id.* at 1505.
8. The Children's Aid Society continues to provide social services to children. Over the years, many CAS programs have served as national models. By the end of the 19th

century, it had established the first industrial schools, PTA, visiting nurse service, nutrition programs, free dental clinics, day schools for disabled children, and the forerunners of foster care, kindergarten, and fresh-air vacations.

9. *Id.* at 1507.

10. *Id.* at 148.

11. *Id.* at 1508.

12. *Id.*

13. The most common causes of dependence were ill health or accident, single motherhood, old age, and unemployment.

14. ENCYCLOPEDIA OF SOCIAL WORK, *supra* note 6, at 1503.

15. U.S. CONST. preamble.

16. U.S. CONST. art. I, § 8, cl. 1.

17. ENCYCLOPEDIA OF SOCIAL WORK, *supra* note 6, at 1506; see U.S. CONST. amend. X.

18. See *Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, in NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (1861–1879) (Record Group 105)*, at www.nara.gov/guide/rg105.html. See generally W.E. Burghardt DuBois, *The Freedmen's Bureau*, 87 ATLANTIC MONTHLY 354 (1901), at www.theatlantic.com/issues/01mar/dubois.htm and www.theatlantic.com/issues/01mar/dubois2.htm.

19. Social Security Act, ch. 531, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C.A. §§ 301–1397jj (West 1991 & Supp. 2000)).

20. Programs authorized by the SSA included Aid to Dependent Children (later Aid to Families with Dependent Children [AFDC]), Maternal and Child Health Services, Services for Crippled Children, and Child Welfare Services. *Id.*

21. ENCYCLOPEDIA OF SOCIAL WORK, *supra* note 6, at 1510.

22. PERMANENCY PLANNING FOR CHILDREN DEP'T, NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, ADOPTION ROUNDTABLE: A SUMMARY OF JUDICIAL CONCERNS ABOUT PERMANENT PLACEMENT OF CHILDREN IN THE UNITED STATES & THE UNITED KINGDOM 13 (1998).

23. Public Welfare Amendments, Pub. L. No. 87-543, § 104(a)(3), 76 Stat. 172, 185 (1962).

24. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974).

25. BROWN & PIETROWIAK, *supra* note 3, at 7.

26. Leonard P. Edwards, *The Future of the Juvenile Court: Promising New Directions*, 6 FUTURE OF CHILDREN 131–39 (Winter 1996).

27. BROWN & PIETROWIAK, *supra* note 3, at 7.

28. FRED H. WULCZYN ET AL., AN UPDATE FROM THE MULTISTATE FOSTER CARE DATA ARCHIVE: FOSTER CARE DYNAMICS 1983–1997, at 54 (Chapin Hall 1999).

29. BROWN & PIETROWIAK, *supra* note 3, at 9.

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30. ELLEN SITTENFELD BATTISTELLI, MAKING MANAGED HEALTH CARE WORK FOR KIDS IN FOSTER CARE 10 (Child Welfare League of Am. 1996).

31. *Id.*

32. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

33. *Id.* § 101(a)(1), 94 Stat. at 501.

34. *Id.* § 101(a)(1), 94 Stat. at 503.

35. *Id.* § 102(a), 94 Stat. at 513-14.

36. *Id.* § 101(a)(1), 94 Stat. at 511.

37. PERMANENCY PLANNING FOR CHILDREN DEP'T, NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (National Council of Juvenile & Family Court Judges 1995). The American Bar Association adopted these guidelines on August 9, 1995.

38. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §§ 13711-13716, 107 Stat. 312, 649-658 (1993). The purpose of these sections was to promote family strength and stability, enhance parental functioning, and protect children.

39. *Id.* § 13712, 107 Stat. at 649.

40. Edwards, *supra* note 26, at 139.

41. Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

42. *Id.*

43. NATIONAL CENTER ON ADDICTION & SUBSTANCE ABUSE, *supra* note 1, at 17.

44. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997). "The safety of the children to be served shall be of paramount concern." *Id.* § 101(a), 111 Stat. at 2116.

45. *Id.* § 101(a), 111 Stat. at 2116.

46. *Id.* § 102, 111 Stat. at 2117-18.

47. Strengthening Abuse and Neglect Courts Act of 2000 (SANCA), Pub. L. No. 106-314, 114 Stat. 1266 (2000).

48. *Id.* § 2, 114 Stat. at 1266.

49. *Id.* § 4(a)(1), 114 Stat. at 1268.

50. *Id.* § 5(c), 114 Stat. at 1273.

51. *Id.* § 6(a), 114 Stat. at 1274.

Essay

Remarkable Experiences

Every so often, we quietly think to ourselves about the world we are living in. We see images on the news that we can't get out of our head.

We hear harsh phrases in the city and on the streets, phrases that we can't seem to forget. We remember these things because they hurt us in a way. And we are hurt because we simply care too much.

But what we see on the news, and how we react to each event, tells us a lot about how we live. Some may think, "They caught him; he must be punished," while others may think, "That person didn't make the right choices in life." Some think, "If that person were loved, would he have done such a thing?"

I talk of these things as if I had the answers, but I don't. I am not one without skeletons in the closet. I did bad things when I was a kid, such as stealing. When I stole, I didn't even think twice. But in my mind, I tried to justify my action. I did it because I thought I deserved something. I did it because I felt that I wasn't being appreciated enough as a kid. I felt that everything I did was taken for granted and that, in some way, I needed an award. I didn't think anyone was paying attention, so I took the chance.

That is the absolute truth.

I look back at the way I reasoned, and I laugh. I don't want my story to sound like some stupid kid out for attention, or a mere child who thought he could cheat the store out of some money. My story reflects the severe delusions of a good kid. I thought that I was a good boy my whole life. And since I never got anything material for being good, why not take it?

But whom was I kidding? What I did wasn't poetic. It's not like I was stealing a loaf of bread. I was not the center of the universe that I thought I was. And the truth is, I didn't earn what I stole—and the police made that clear. When the police talked to my parents and me, all I wanted was to disappear from the face of the earth.

Joshua M.

Joshua M. is an alumnus of the Sacramento Neighborhood Accountability Board (NAB), a diversion program for first-time juvenile offenders. The program operates under the leadership of the Sacramento County Probation Department in partnership with agencies and citizens of the city and county of Sacramento. The program offers concerned citizens an opportunity to deal with juvenile crime in their own neighborhoods. Volunteers sit on hearing panels and draft contracts to hold young offenders accountable for their offenses. The contracts may require community service, curfew compliance, restitution, school attendance, and other sanctions. ■

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Then, the Neighborhood Accountability Board accepted me into their program. NAB taught me a lot of things—a lot of important things that I will never forget. I wrote apology letters to my parents and to the store, which were very difficult to write at the time. But I learned how to apologize. And I received the care of about six volunteer members from NAB.

They also let me tutor these elementary school kids at a local church. These children were fantastic. They looked up to me because ... well ... I'm a tall guy. They also looked up to me because they thought I was an excellent math teacher. I helped them with their times tables and their reading. When I saw these kids, it brightened up my day. These children gave me such joy because they needed me. I had the maturity to understand that rewards come in different forms.

When NAB said I was finished, I continued on with my life. At first I tried to block it all out of my mind, like a dream. I tried not to think about everything that had happened because I wanted to forget that person that I was. I tried to deny having ever stolen anything. I wanted to have nothing to do with any of that. I wanted the past to leave me alone. I wanted to leave. I wanted to change. I wanted everyone to forget about me. I wanted to take my past and bury it. Despite all the joy and pain it brought me, I wanted to lock it up and never see it again.

I wish I hadn't stolen anything. But I'm glad the Neighborhood Accountability Board saw that I was a good person inside. For a time in my life, I wanted to keep it hidden because stealing is not something to be proud of. When I went to school, I was just a regular guy. My friends talked to me like I was still the same Joshua, and I enjoyed being a normal kid again. But there was a fear inside of me that I had to live with: What if someone found out what I had done? What would they think of me then?

And soon normal life began to bore me. I thought to myself that playing by the rules and being a good boy wasn't enough. Suddenly I found a strange emptiness in my heart. And there was something from my previous life that I could not forget: those little kids! NAB introduced me to those kids. NAB supported me by giving me a purpose. They made me useful. They supported me more than they think. A feeling of humility came over me as I began to remember.

Today, I do community service through a club at my school called KEY Club. I am the president of this club because of my positive experiences toward the community. KEY Club is just a means to an end. Volunteer work is a lesson in life. I believe that it teaches patience, listening, and compassion. To adopt

such qualities is to become an effective leader, teacher, and worker. Through my experiences, I learned that being good is not enough if we have the capacity to help others and make a difference in the lives of others.

The Neighborhood Accountability Board stood there in my mind while I was doing community service with my club. And, coincidentally, NAB contacted me; they were inviting me to a volunteers' dinner and they wanted me to give a speech about my experiences. "Of course I would," I responded. "Nothing in the world would make me happier!" With everything that's happened to me, I had found a voice inside. I had faced all kinds of things; I had been tested in so many ways. I collected all of this courage, and now people were going to listen to what I had to say.

Now, when Colleen told me it was a volunteers' dinner, I was expecting maybe 10 or 20 people. When the night arrived, I found myself in a large banquet hall with over 200 volunteers and family members. It touched my heart to have the opportunity to tell my story to so many people. And I am grateful that so many people care.

I walked on stage and talked about my experiences with NAB.

I know that I am no longer capable of doing wrong ever again in my life. If you saw what I did, you would know what I feel. I have a responsibility to every one of those volunteers. I know how disappointed each one of them would be if I did something bad. So I simply don't, because I know that there are people out there who care about the way I live my life. I know that there are people who care about the way I turn out, the way I grow up. I just want them to know that, in return, I am forever thankful.

