FAMILIES IN COURT:

A NATIONAL SYMPOSIUM

• May 14-17, 1989 • Reno Nev.

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Special thanks to the State Justice Institute for their support, financial and otherwise.

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BACKGROUND PAPERS

These papers result from research conducted by the American Bar Association, The National Council of Juvenile and Family Court Judges and the National Center for State Courts under Grant no. 88-02B-C-034 from the State Justice Institute. The opinions and recommendations expressed are those of the authors and do not necessarily reflect the views or policies of the grantor or grantee.

The Family Violence Project of the National Council of Juvenile and Family Court Judges is supported by cooperative agreement number 87-SD-CX-K059 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs coordinates the activities of the following program offices and bureaus: The Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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IMPROVING THE JUDICIAL HANDLING OF CIVIL CHILD MALTREATMENT CASES

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IMPROVING THE JUDICIAL HANDLING OF CIVIL CHILD MALTREATMENT CASES

I. Introduction and Background

> "Very little information regarding the problems of the dependent child is available..."
> -From The Chicago Juvenile Court, a report published by the U.S. Children's Bureau (1922)

In recent years, considerable public and professional attention has been directed at the involvement of criminal courts in cases where adults are charged with the severe physical or sexual abuse of children.[1] However, both recent and historical data suggest that far more child maltreatment victims, and their families, come before the courts in civil protective matters.[2] The courts most commonly label these children as dependent, neglected, deprived, or abused children, or as children in need of care, services, aid, or assistance.

In the material that follows, I will provide some brief historical observations of the civil child protective court system, summarize several sets of proposed national standards for these proceedings, and provide both my own and others' suggestions for reforming this process. The focus here will be exclusively on how judicial leadership could advocate to improve the court system. Unfortunately, I will not have the opportunity to cover the equally important reforms needed in public child protective and child welfare agencies.

Although the topics addressed herein involve the civil rather than criminal process, I believe that most of the following recommendations that pertain to case scheduling, court environment and support personnel, and protection of the child victim are adaptable to the criminal court setting. Another important subject not explored here -- that of inter-court coordination when the same maltreated child is involved in simultaneous multiple court actions (e.g., civil protective, criminal abuse prosecution, and

divorce-related custody disputes) -- has recently been written about elsewhere.[3] Also, specific proposals for a unified family court, or other methods to consolidate multiple actions affecting the maltreated child and family, have been recently analyzed elsewhere and will not be addressed here.[4]

The juvenile court reform movement began with the establishment of the Juvenile Court of Cook County in 1899 and was primarily concerned with the need to change the way that the criminal justice system dealt with young offenders. Only incidentally did these new juvenile courts focus on the need to improve how private charitable agencies handled cases of dependent and neglected children, or on the need to reform the state's provision of care for such children. However, the first juvenile court law (Illinois), officially styled "an act to regulate the treatment and control of dependent, neglected, and delinquent children," appears to have re-ordered (at least on paper) these priorities.

This 1899 law was the product of nearly a decade of effort by reformers, primarily interested in the problem of juvenile delinquency, who saw a need to eliminate the concept that a child who broke the law was a criminal. They wanted such a child to be declared a "ward of the state" and subject to the care, guardianship, and control of the juvenile courts. In broad and vague language that was followed in many subsequent juvenile court acts, the term "dependent and neglected child," as used in the law, was defined to include "any child who for any reason is destitute, homeless or abandoned; or dependent upon the public for support; or has not proper care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame (i.e., a brothel) or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child...."

From the outset, the progressives who were involved in the new juvenile courts

believed that through court intervention the values and behavior of poor parents could generally be altered without having to break up the family. There was early general agreement that children should not be taken from their parents due to poverty alone. However, in practice, due to the lack of adequate social intervention resources (what we today might call "family preservation services"), removal of children from their parents for neglect was extremely common. For example, at the Boston Juvenile Court between 1906 and 1916, 65 percent of child neglect cases led to the commitment of the child to an institution (compared with only 16 percent of delinquents).[5]

An early statistical study showed that, not unlike recent history, the courts were handling many more cases of child neglect than abuse. The U.S. Children's Bureau, compiling yearly figures on the work of some sixty to eighty juvenile courts across the country between 1929 and 1935, determined that only two percent of cases of dependency and neglect involved charges of child cruelty.[6] Another piece of statistical information says much about the handling of abuse and neglect cases by the early juvenile courts: During the year 1918 only 660 families were brought into the Juvenile Court of Cook County on dependency and neglect petitions, but 2,350 cases of informal "family adjustments" were made in dependency and neglect situations by the court's probation department.[7] These "adjustments" avoided the need for formal court action. Clearly, this court (which at the time was one of the few in the country with a probation staff of significant size) was able to provide a form of early "alternative dispute resolution" (called the "supervised complaint") that avoided a substantial amount of judicial involvement in these cases.

Two other issues impacting on the early juvenile courts raised questions which are still critical for our courts today:

1) How is the abused or neglected child to be treated by the court during the proceeding, and

2) What should be the guiding standards for the court concerning removal, as well as return home of a child who had earlier been removed?

In the early 20th century in Massachusetts, for example, a neglect case was brought as if it implied a charge against the child. (Today, of course, many juvenile status offender proceedings are handled the same way.) As one public official of the time in that state noted: "The little fellow, innocent as your child or mine, stands wide-eyed before the court wondering why he is so accused."[8] By contrast, from the outset in Cook County, it was clear that in dependency and neglect cases the parents were on trial, and they were the major focus of the court's questioning, even though that court had no legal jurisdiction over them.

Surprisingly, the early juvenile courts faced a dilemma that is still an important issue today, i.e., disagreements on the criteria for removal of children and for returning children to formerly abusive or neglecting parents. Although judges and child welfare authorities at several 1919 conferences sponsored by the U.S. Children's Bureau appeared to agree that only "as a last resort" should families be separated, there were a number of problems raised that still plague the child maltreatment judicial process today. The first had to do with the lack of community support services that the court could rely upon to help keep families together. Second, there was concern that judges needed more education on the psychosocial family characteristics that warranted removal, and that social workers needed better training on the legal/evidentiary criteria that would justify removal. Finally, a view was expressed (by an executive of the Massachusetts Society for the Prevention of Cruelty to Children) that after removal, the courts were inappropriately resolving questions about the wisdom of returning children home in favor of the family "unit," not the child.[9]

In the decades following the initial creation of juvenile courts, judicial reform issues related to dependent and neglected children continued to receive far less

professional attention than the response to juvenile delinquency. The post-World War II concern about the control of delinquency culminated in the first federal legislation on this topic and a good deal of reform-oriented literature.[10] By the mid-1960's the rising volume of delinquency cases had generated several constitutional controversies culminating in a series of U.S. Supreme Court decisions, most notably the 1967 In re Gault case. Over the last twenty years, with the primary exception of the standards and other documents analyzed below, policy reform materials have focused almost entirely on the judicial handling of delinquency cases.[11]

II. National Standards for Judicial Process Reform

> "(T)here is little excuse today for any state to be without an effective court system...to protect the battered and abused child."
> -From Judge James J. Delaney, "The Battered Child and the Law," in Helping the Battered Child and His Family (1972)

A. IJA/ABA Juvenile Justice Standards

During the 1970's the American Bar Association, in collaboration with the Institute of Judicial Administration in New York City, sponsored a Juvenile Justice Standards Commission that undertook a comprehensive re-assessment of the nation's juvenile court procedures and structures. Two volumes were developed that have direct applicability to the issues addressed herein. The first, entitled Standards Related to Court Organization and Administration (COA), was formally approved by the ABA. The second, entitled Standards Related to Abuse and Neglect (CAN), was considered controversial, provoked vigorous dissent both within and outside the Commission, and was never formally presented to the ABA's House of Delegates for approval as ABA policy. Despite this, the CAN volume has had a significant impact on state legislative reform in the 1980's.

The COA volume of the Standards calls upon every state (that does not have one) to create a "family court division of the highest court of general trial jurisdiction" that, among other actions, encompasses authority to hear cases of abuse/neglect, custody, guardianship, child support, termination of parental rights, adoption, and intrafamilial criminal offenses. These standards further state the principle that the same judge should hear all legal matters related to the same family, and that this same judge should preside at such cases from the initial stage through final dispositional action. There is also a recommendation that, at the court's intake stage, alternatives (e.g., diversion and mediation) to formal judicial consideration be available. There is a further recommendation that the efforts of court probation officers and child

protective service agency caseworkers be coordinated so as to "maximize single staff member responsibility" for one entire family.

The COA Standards make a strong statement about the need to assure that judges who are assigned to family cases are appointed based on "aptitude, demonstrated interest, and experience." There is a clear call for all judges to hear family cases only on a full-time basis, and that all cases should be heard and decided by a judge, rather than (as now exists with abuse/neglect cases in many states) non-judge referees, commissioners, or special masters. These Standards also indicate how essential it is for courts to have adequate support personnel (e.g., probation staff, clinical evaluation personnel, and mediators) and physical facilities. The latter is a special problem in most juvenile courts, where maltreated children and their families have to share the same waiting areas with delinquent children, and where child victims have to wait in the same room occupied by the alleged perpetrators of crimes against them.

Some of the most important, and rarely followed, guidelines in these Standards are a set of timelines for case processing by the court. The guidelines advocate that a shelter care hearing (i.e., a hearing to determine the need to keep a child in out-of-home care pending adjudication of the accusations) take place no later than 24 hours after the child was removed from home. The formal adjudicatory hearing would have to be held no later than 30 days after the abuse/neglect petition was filed (half that if the child was placed out of the home against the wishes of the parents). The disposition hearing would have to be held no later than 15 days after the adjudication, although in "exceptional cases" additional time could be authorized where more complex evaluations were required.

The Standards Relating to Abuse and Neglect also contain suggested timeframes for the holding of hearings, and these are generally a bit less restrictive than the COA guidelines; but I doubt that many courts are now abiding by these timeframes. For

example, the CAN Standards would require that the adjudicatory hearing take place within 25 days of the filing of the petition if the child was in temporary custody, and within 60 days in all other cases. However, unlike the COA Standards, the CAN Standards state that there should be a penalty for not following the timeframes: dismissal of the petition with prejudice.

The CAN Standards contain a number of important, and unique, suggestions for improving the courts' handling of these cases. One relates to the timing of the appointment of independent counsel for the maltreated child (Sec. 4.3). The Standards would have the court immediately appoint counsel for the child, in every case, upon the receipt of the petition which alleges abuse or neglect by a parent. Second, unlike some states that limit the permissible parties who may file an abuse or neglect petition, the Standards (Sec. 5.1) would allow any person to file (for example, a judge, probation officer, or attorney involved in a delinquency or status offense proceeding involving a child who is believed to be maltreated). There would be civil and criminal immunity for any actions taken in good faith in relation to the petition or subsequent court actions.

The Standards would give the court's Intake Officer substantial authority over how initial requests for an abuse or neglect petition are handled, including the right to refer the case back to a community agency -- especially cases where the child is not presently, and is not likely to be in the future, "endangered" as a result of abuse or neglect. Clearly, Intake Officers would need a lot of training on child maltreatment "risk assessment" before such a procedure would be appropriate. Commendably, this section of the Standards would also make the child a formal party to the court proceeding, as well as any adults "having substantial ties to the child who have been performing the caretaking role...."

Section 5.2 of these Standards contains several additional noteworthy provisions. The first is a requirement that judges explain the full consequences of the proceedings

to each of the parents, and assure that if they are indigent they receive separate appointed counsel if (as is not uncommon) a conflict between the parents appears likely. Secondly, there is a recognition that the child victim's participation in the proceedings may be traumatic, and that therefore the court should be able to "impose appropriate conditions" for the taking of testimony from children to safeguard them from any detriment.

There are, in Section 5.3, a number of controversial positions taken with which I would take issue. The first would require that, if requested, a jury make the civil determination that a child was abused or neglected (and do so unanimously, and by a clear and convincing standard). Some states (e.g., Colorado) do permit the parents to request a jury in a civil child protective proceeding, but in my view this is a critical abrogation of the judicial function in such a complex matter affecting the welfare and safety of children. Although the "clear and convincing" standard is required at the termination of parental rights stage, and may also be appropriate for pre-adjudication removal decisions, it is in my view too stringent for the adjudicatory determination.

I also disagree with the parental "right to remain silent" requirement of the Standards. As discussed below, I believe that it is essential for the petitioner's attorney, the child's attorney or guardian ad litem, or the judge to be able to compel the parents to give sworn testimony in these civil proceedings, and that a "use immunity" statute should be in existence that would protect the parent from having their testimony used against them in a subsequent criminal proceeding. One important provision of this Section 5.3 that I agree with is the requirement for the keeping of a verbatim record of all child abuse and neglect related proceedings. These cases are too important to all concerned parties, and to society, to permit the lack of a full and complete record of what transpired in court.

In Sections 5.4 and 6.1, the Standards rightfully call for separate written findings

of fact and law in each case, and for a written predispositional report following adjudication that, among other things, if the child needs to be placed describes why the child must be placed out of the home, what likely harms the child will suffer as a result of the placement, and what steps will be taken to minimize such harm. In Section 6.3 the Standards make it clear that the court must have a wide range (wider than presently exists in many states) of dispositional options, including the authority to order parents and public child welfare agencies to take certain actions, as well as to order specific placements (such as with relatives, specific foster families, or in residential treatment centers). Section 6.4 rightfully sets a "least restrictive available alternative" standard for dispositional options, so long as the child is protected from endangerment.

Sections 6.6-8.7 address the court's role after a child is ordered into placement, including a suggested framework for judicial review of placements and the termination of parental rights. In 1984, the ABA's National Legal Resource Center for Child Advocacy and Protection developed a set of Sample Court Rules (discussed below) that more comprehensively address these issues. One final naive, but well-intentioned, element of the CAN Standards should be mentioned. In Section 9.1 it is suggested that after a civil abuse/neglect petition has been filed, a criminal prosecution for this maltreatment be permitted only where the juvenile court judge "certifies that such prosecution will not unduly harm the interests of the child...." In its 1986 Deprived Children: A Judicial Response (73 Recommendations) publication, which is more fully discussed below, the National Council of Juvenile and Family Court Judges (in Rec. 11) urged the more sensible approach of having any adult prosecution for intrafamilial abuse coordinated by the juvenile or family court, which would act as the "hub of the wheel, coordinating the procedures of law enforcement officers, caseworkers, prosecuting attorneys, and sentencing judges."

B. OJJDP Standards

In the early 1980's, another set of abuse and neglect related guidelines for court systems was issued, this one from a federal agency (the U.S. Office of Juvenile Justice and Delinquency Prevention, or OJJDP). In this publication, entitled Standards for the Administration of Juvenile Justice, there are a number of useful suggestions not contained elsewhere.

Section 3.145 suggests the development and publication of written guidelines and rules regarding intake criteria for judicial system involvement in abuse and neglect cases. Section 3.175 calls for an end to all forms of plea negotiations in such proceedings. I have been particularly critical, over the years, of a practice where parents (upon the advice of their attorneys) agree to "admit" to a charge of child neglect in exchange for the dropping of child abuse allegations. If such an offer is accepted, years later when action is being taken to consider return of a child home or termination of parental rights, the court may have nothing "on the record" that indicates precisely what maltreatment was actually inflicted upon the child. Also, I see an important need for implementing the provision of Section 3.176 that would require the judge, before accepting any admission by a parent in an abuse or neglect case, to ask the parents, their attorneys, and the attorney for the petitioner, whether any agreements have been made in exchange for such an admission, and that if so the admission would be rejected. Another unique provision is found in Section 3.184, which advocates that if siblings are removed from home as a result of parental abuse or neglect, they should ordinarily be placed together.

There is a sharp contrast in the IJA/ABA Child Abuse and Neglect Standards and the OJJDP Standards on the critical issue of the return home by the court of a child previously removed. In the former (Sec. 7.5), there would be a presumption at the

review hearing that the child should be returned *unless* the court found by a preponderance of the evidence that the child would be endangered if returned. In the latter (Sec. 3.1812), a child could *not* be returned home by court order at the review hearing unless a preponderance of the evidence indicated that return home would not present a danger to the child. I prefer the latter approach. Once a child has had to be separated from his or her family due to serious abuse or neglect, the rights of the child to protection should become paramount, and the burden should switch to the parents to prove that the child would be safe if returned to them.

Finally, Section 3.1813 of the OJJDP Standards would set up a Post-Disposition Enforcement Hearing procedure which could be requested by any of the parties if it was believed that a court order was not being complied with. If so, the court could then exercise its contempt powers over any of the parties, or make other appropriate orders.

C. HHS/NCCAN Guidelines

In 1982 the National Center on Child Abuse and Neglect, part of the U.S. Department of Health and Human Services, issued a publication entitled Child Protection: Guidelines for Policy and Program. Section F of this document contains "Guidelines for Courts and the Judicial System." In Guideline F-1 it addressed a subject not covered by other standards: the need for a formal referral and diversion mechanism for abuse and neglect reports made directly to the court. Guideline F-2 contains another important idea: courts should assure that an attorney for the state or county reviews *every* petition seeking court action. (Too often, I have heard of petitions being legally insufficient simply because an attorney neither drafted nor reviewed them before filing.)

Guideline F-5 addresses a number of important, and certainly not universally accepted, evidentiary reforms to help assure that justice is done in civil child abuse and neglect proceedings. First, a child's injuries that would not ordinarily exist except for acts or omissions of a parent or caretaker could constitute *prima facie* evidence of

abuse or neglect. Second, prior maltreatment of the child could be admissible to help prove current abuse or neglect of that child. Third, proof of previous abuse or neglect of a sibling could be admissible to help prove another child's maltreatment. Fourth, any prior statements made by a child out of court concerning his/her abuse or neglect could be admitted as evidence. Fifth, to protect the child from undue trauma the judge could limit the nature or duration of the child's cross-examination at the adjudicatory hearing.

Guidelines F-8 through F-12, similar to Recommendations 1-7 of the judges' 73 Recommendations publication, address the role of judges and the court system in the overall improvement of the state's child protection program. The Guidelines call upon judicial system personnel to serve on state and county child protection coordinating councils (F-8), to advocate for social and environmental change that would help reduce the incidence and severity of child abuse and neglect (F-9), to better identify and refer for services children "at risk" for abuse or neglect who are before the court for other reasons (F-10), to assure that all court system personnel receive appropriate training on abuse and neglect issues (F-11), and to periodically evaluate the court's own child protection efforts (F-12).

D. Juvenile Court Judges' 73 Recommendations

In its Deprived Children: A Judicial Response (73 Recommendations) publication, the National Council of Juvenile and Family Court Judges made a wide range of major reform suggestions. Overall, I would cite as its most important theme the need for judicial leadership in the improvement and delivery of services to abused and neglected children and their families. The report's focus is much broader than merely what the courts need to do to improve the handling of child maltreatment cases. Yet, several specific court-related recommendations are quite striking.

Recommendation 2, for example, states that courts "must have the clear authority"

to review, order and enforce the delivery of specific services and treatment for abused and neglected children. I would agree with this suggestion, but only when evidence has been presented that a child needs a particular service or placement. Even then, the judge should be required to state on the record his or her reasons for making such an order. Recommendation 3 speaks to the need for the court to play a role in the coordinated management of services and treatment to child maltreatment victims. Recommendation 6 states that the court should take the lead in analyzing gaps in services and programs for such children, and then advocate for legislative, executive, and taxpayer support for more adequate resources.

One recommendation that I would consider controversial (Rec. 10) suggests (although its somewhat unclear) that the court have "immediate" jurisdiction over all agency- substantiated child abuse cases. In the publication's introduction, statistics are cited suggesting that, on a national average, juvenile and family courts see only about 18 percent of the total abuse and neglect caseloads of child protective service agencies. Should they see 100 percent of the children who are the subjects of substantiated abuse or neglect reports? Recommendation 10 seems to suggest that the answer should be "yes," so that the court would in all cases be able to issue immediate protective orders, to assure that services and treatment are promptly provided, and to limit repetitive interviews with the child victim. Recommendation 12, following the lead of several recent laws, states that any matter related to child abuse and neglect should be given top priority (even ahead of delinquency cases) on trial and appellate dockets, with cases completed as rapidly as possible consistent with responsible decision-making and the child's sense of time.

Recommendation 13 "ducks" a major issue: it states that judges must have "manageable caseloads" (i.e., not "unreasonably large") and "adequate" support staff, without offering a specific judge-to-case workload standard or any suggestion as to

what the proper ratio of support staff to dependency caseload size might be. It is essential that the National Council, together with other groups, develop such specific standards (as has the Child Welfare League of America regarding the maximum appropriate caseload-per-worker in child protective service agencies). Court administrators and legislators must recognize that not only are the number of abuse and neglect cases heard by the courts increasing, but that the number of separate hearings in each case that the courts are required to conduct (since P.L. 96-272 took full effect about five years ago) has increased much more dramatically. To my knowledge, the number of judges and judicial system support staff involved with these cases has not increased commensurate with their vastly expanded responsibilities.

The Recommendations properly call for an adequate period of thorough training for both judges and attorneys before they are permitted to be involved in abuse or neglect cases (Rec. 14). Recommendation 20 makes it clear that courts in a civil child protection case must have broad authority to issue and enforce protective or restraining orders against any adult for the purpose of protecting a child from further abuse. Such orders or prohibitions can often avoid unnecessary foster care placement of the child. These would include orders to vacate the child's home, refrain from any contact with the child, submit to a mental health or substance abuse evaluation, participate in a treatment program, pay for the child's treatment costs, abstain from the use of alcohol or drugs, or only visit with the child under court-supervised conditions.

Other recommendations would further increase the juvenile court's abuse and neglect related caseload. For example, Recommendation 38 states that no "voluntary" foster care placement of a child should ever be permitted to continue beyond 30 days without judicial approval. In Recommendation 58, it is advised that the immediate availability of adoptive parents for a child in foster care should not be considered as a prior condition to initiating a termination of parental rights action. The unlikelihood of

parental reunification, and whether there is a realistic likelihood that the child could be placed for adoption, given diligent agency action, should be the central factors in the decision to file for termination.

E. ABA Sample Court Rules

In 1984 my colleague Mark Hardin, together with Professor Ann Shalleck, published a document entitled Court Rules to Achieve Permanency for Foster Children: Sample Rules and Commentary. Developed with the assistance of an advisory committee of trial and appellate court judges, the Sample Rules address all stages of civil court involvement in child abuse and neglect proceedings -- from the taking of a child into emergency protective care through the appeal process. In producing this document, the authors reviewed dozens of state court rules affecting juvenile court procedures. The overall purpose of the Sample Rules, as stated in the full title, was to promote permanency for abused and neglected children. That is, the Sample Rules are intended to help expedite the process of completing judicial actions and to help the court play a more active role in achieving a permanent home for the child whose case is before it.

Some apparently simple, yet profoundly important, recommendations are made here. For example, in Rule 4 there is the suggestion, too often overlooked, that child abuse and neglect related cases be diligently maintained on court calendars. This means that at or before the conclusion of each hearing or case conference, a subsequent hearing or conference date should be set. Rule 5 indicates that cases should proceed according to established timeframes, with continuances granted only for good cause and the reasons for these placed on the official record of the case.

Rules 6-8 address the discovery process in abuse or neglect related cases, a process frequently ignored by specific juvenile court rules. Provision is made here for prompt informal discovery upon request of a party, the filing of motions to compel, limit, or deny discovery, and the court's use of its discretionary power in this arena.

Rules 9-13 relate to appointment of counsel and guardians ad litem. They encourage that:

a) notice of the parents' right to counsel be provided as early as possible;

b) the court carefully inquire about the parents' understanding of this right;

c) an administrative mechanism be set up within the court to help assure expeditious appointment of representation for both indigent parents and the child;

d) no attorney receive such an appointment without both specific experience and training; and

e) legal representation for the parents and child continue through all stages of the proceeding, until all court involvement ends.

In Rule 15 there is again a call for the keeping of verbatim records in all child abuse and neglect related proceedings. However, the rule goes further than the other standards in that it would generally require courts to retain all exhibits admitted into evidence for at least two years, or until final dismissal of all proceedings. Rule 16 is designed to speed case resolution by specifically permitting the court to hear motions by telephone and to conduct telephone conferences with the attorneys related to discovery, service of process, or case scheduling. Another provision applicable at all stages of a case (Rule 17) sets forth a required procedure for consolidation or transfer of abuse or neglect cases between different courts when the need for this arises.

Rules 8-23 cover proposed procedures for the court's involvement when abused or neglected children have to be taken into emergency protective care. These rules propose that by the time of the court's initial emergency protective care hearing, or within 48 hours of the child's removal (whichever occurs first), the child protective service agency has to file with the court a written "emergency protective care report" that focuses on:

a) the specific dangers requiring placement;

b) the alternatives to placement that were considered and that might now make return home possible;

c) what the agency has done to give proper notice to the child's parents of the imminent legal actions and their consequences; and

d) a description of the present placement, its distance from the parents' home, and what the agency's plans are to facilitate visitation pending adjudication of the case.

Rule 22 would specifically compel the judge, at the emergency protective care hearing, to make the "reasonable efforts" determination required by P.L. 96-272.[12] Rule 23 would permit a parent or other party to have a rehearing on any emergency protective care order within five days of such a request.

Rules 24-40 relate to the adjudicatory stage of the court's involvement with abuse or neglect cases. To properly establish why the case is in court, Rule 25 would require all petitions to specifically describe the relevant misconduct or incapacity of the parents as well as the resulting harm to the child. Rules 31-34 propose a structure for a pre-trial conference procedure to be used in abuse and neglect cases. The rules call upon each state to resolve the question of whether such case conferences should be mandatory whenever a case is contested (it is my opinion that they should). If such conferences are to occur, the rules suggest that they be held within 15 days of the child's emergency removal and at least seven days prior to the adjudicatory hearing. Such a case conference could serve to help save the court's time by helping to resolve the question of whether it is necessary for the child to testify, clear up any lingering discovery problems, project how long the adjudicatory hearing might take, and of greatest importance, help to narrow the issues which must be disputed at trial.

In Rules 35-40 a procedure is suggested for negotiated adjudications that would both avoid protracted trials as well as the problems with "plea bargaining" that I

mentioned earlier. In accepting any legal stipulation or uncontested adjudication the court would have to receive a statement for the record of:

a) the parental problems, conduct, or condition that support court involvement;

b) any allegations of the petitioner related to (a) that are not admitted by the parents; and

c) those parental problems or deficiencies that must be addressed at the disposition hearing.

Finally, Rule 40 provides a structure for the use of pre-adjudication diversion that addresses the parents' essential problems and preserves evidence of this if the diversion plan is not successfully executed. Before diversion can be permitted by the court, the parties must present to the judge a written list of both agreed to and disputed facts, as well as a written "six-month plan" specifying the goals of diversion, the changes in parental behaviors or home conditions needed, and the tasks to be performed by the parties. The court must set a hearing date on the implementation of the diversion plan no later than six months after the date on which the original court petition was filed.

Disposition proceedings in abuse and neglect cases are covered in Rules 41-52. Rule 41 sets forth eight required elements of a written "disposition report" that would have to be prepared by the child welfare agency following the entry of an adjudication. This report would, for example, have to include consideration of the parents' problems and what the agency intends to offer in the way of assistance. Where initial or continued placement was deemed necessary a discussion would be required about what could be done to have the child live:

a) with relatives or friends;

b) in close proximity to home;

c) in a "least restrictive setting";

d) with continued sibling contact; and

e) with facilitated parental visitation.

As in the adjudicatory stage, there could be a "stipulated disposition," but only if there was a written stipulation document. Such a document would have to address what would be needed if all court involvement was to end, what services the child welfare agency was going to provide, the type of placement for the child, and what would be done to facilitate parental visitation and other forms of continued parental involvement. As in earlier stages of the case, the judge would be required by court rule to make a "reasonable efforts" determination during the disposition process and to incorporate his or her conclusions in the court's formal findings after the completion of the disposition process. Finally, after entry of disposition, the child welfare agency would have to promptly submit to the court a formal written "case plan," and the court would be compelled to hold a hearing on the implementation of the plan no later than 15 days after a request for such by any party.

Rules 54-73 deal with the topic of foster care case review by the court. Much has been written on the need for courts to review the status of cases for all children in foster care at least every six months, and to hold a separate "permanency planning hearing" to determine a child's permanent status at least at annual intervals following initial out-of-home placement.[13] There is no need here to review these fundamental permanency planning devices that have been incorporated into juvenile court procedures over the last decade. Where these sample rules make a particularly important contribution is in the elaboration of what should be included in a pre-review hearing or pre-permanency planning hearing report by the child welfare agency. The rules also specify the contents of any written stipulation that would be entered in court in lieu of holding formal review hearings. Finally, they provide specific requirements for what must be included in the court's findings and orders at these post-disposition proceedings

(including, of course, renewed consideration of the agency's "reasonable efforts" to facilitate return of the child home).

The topic of termination of parental rights reforms is too complex to be adequately addressed here. In Rules 74-86 a structure for the court's proper handling of such cases is set forth, beginning with the requisite contents of the petition through the final hearing. As with rules regarding the adjudication of abuse and neglect petitions, Rules 74-86 are designed to help expedite the process by the holding of pretrial conferences and the setting of timeframes for the termination hearing (no later than 20 days after the pretrial conference or 70 days after completion of service of process, whichever comes first). Rules 87-88 suggest that even after termination is granted the court continue to hold jurisdiction for the purpose of expediting the child's permanent placement. Finally, in Rules 91-92, guidelines are provided for accelerated appeal and consideration of the issuance of "stays" pending appeal to protect the child, in both abuse/neglect and termination of parental rights cases.

III. Additional Proposed Judicial Process Reforms

> "In general, judges need to use all their power and influence to accomplish the best possible resolution for children in the shortest time possible."
> -From Precious Time: Working with Courts to Get Children Safely Home, a report on the Dade County, Florida Juvenile Court (1988)

A. Grounds for Civil Child Protective Court Intervention, Emergency Removal Procedures, and the Court's Intake Process

Although most state legislatures have over the past two decades considerably revised their child abuse and neglect reporting laws, fewer states have undertaken a comprehensive analysis and revision of their juvenile court act statutes that provide the basis for involuntary court intervention based on a petition filed by a child protective service agency. For example, the broad and vague criteria of the Massachusetts laws on judicial "care and protection" jurisdiction are not substantially different from that of the original 1899 Illinois Juvenile Court Act, and they have evolved only slightly from the state's "Act Concerning the Care and Education of Neglected Children" promulgated more than 120 years ago.

The issue of court jurisdiction over abused and neglected children is not simply a question of determining what is in the "best interests of the child" or whether the parents are "unfit." As Freud, Goldstein, and Solnit made clear in their book, Before the Best Interests of the Child, it is essential to have a clear statutory framework that sets forth the grounds for involuntary civil intervention in the family. These authors, Professor Michael Wald, and others, have suggested a more limited basis for intervention than exists in most states. It is beyond my scope here to make specific recommendations as to statutory language, but I do suggest that any comprehensive assessment of the judicial system's handling of abuse and neglect cases must include a statutory evaluation of the clarity of legal grounds for intervention. Outdated statutory

criteria can become the source of significant due process of law problems.

Recently, a Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children struggled with these issues. T'is Commission was unable to reach consensus on specific statutory criteria for judicial intervention, basically due to the fear of some members that overly specific grounds eight deny protection to some children in unforeseen cases where their circumstances eluded classification under the proposed definitions. The Commission, however, recommended the appointment of a statewide interdisciplinary body to create "non-binding guidelines" for judges to use in child abuse and neglect cases. Despite disagreement on the precise language to be used in such guidelines, the Commission was united in its conviction that greater specificity is required at the outset in order to add clarity and even-handedness to court proceedings.

The Mass. Commission Report further recommended t'e adoption of some specific uniform rules and procedures governing the contents of child protective petitions and the basis for ordering emergency protective custody of children. Among other things, these rules would require that all petitions disclose the relief or remedy being sought from the court, and they would further require an accompanying affidavit setting forth the details of the case. Where emergency protective custody is being sought, the court would not be permitted to enter such an order unless it made specific written findings which supported the conclusion that the child was endangered.

I would suggest that courts provide a written explanation of the emergency protective order process that would be distributed to child protective service agencies, the police department, and all hospitals that may be seeking to have a child held in temporary protective care. There may be a great deal of misunderstanding within these agencies as to the type and amount of evidence needed by the court to legally support emergency removal. For example, law enforcement and medical professionals may not be

aware of the "reasonable efforts" determination requirement that has been imposed through federal law. As new categories of child protection concerns emerge (such as drug-addicted newborns and children residing with parents in "crack houses"), there is a need for the courts to give guidance to community agencies on what its policies are relative to the approval of requests for emergency custody of children.

I would also recommend that cgurts examine their intake process to see whether they have an effective case screening system. Through such a system court personnel, or legal personnel from the child protective service agency who have been specially assigned to the court, should provide:

a) a careful review of all incoming child abuse and neglect related matters;

b) an assurance that all petitions are properly drafted;

c) a process for providing prompt and proper notice of the proceeding to all parties; and

d) a means for the immediate appointment of well-trained legal counsel and a guardian ad litem as soon as the formal petition is accepted.

The juvenile court's intake operations have received far too little attention, especially in regards to incoming child abuse and neglect cases.

I would further suggest that the intake of these cases requires very different skills than the initial processing of delinquency cases. Specially trained "child protective intake personnel" could help assure that these cases are more speedily processed, that cases where formal court involvement is unnecessary are more quickly diverted to other systems, and that needed referrals for ancillary services to the child and family are promptly obtained without the requirement of judicial intervention.

B. Court Use of Diagnostic Evaluation and Consultation Services In Child Protective Cases

All courts should have, readily available and without having to be concerned in

each case with who will bear the cost of these services, a group of neutral experts to assist the judge. These experts should be able to quickly provide the court with social work, child development, psychological, and psychiatric assessments on an as-needed basis in child maltreatment cases. Ideally, courts with large abuse and neglect caseloads should have their own "court clinics," located at or near the courthouse, where clinical specialists can accept referrals to promptly see parents and children, make written reports to the court, and provide expert testimony as required.

Court administrators should negotiate agreements or contracts with state mental health agencies or graduate schools that train social workers and psychologists for the provision of court-based professional consultation assistance. Where this is not possible, arrangements could be made with public or private organizations to try to secure foundation funding to help pay for the services of one or more social work and mental health consultants.

Another use of social service and mental health professionals that should be considered by the juvenile courts is the formation and utilization of a special "multidisciplinary team" that would work with the court and be available to:

a) make recommendations on whether a dependency and/or criminal action should be filed, and on what services and special protections the child victim might need during this process (use of such a team was suggested in a recent report issued by the California Attorney General's Office);[14]

b) serve as an alternative dispute resolution mechanism in cases where children are not in imminent danger and where parent-agency conflicts might be more appropriately addressed in a non-formal setting, using therapeutically oriented professionals (see below); and

c) provide assistance to the judge in making dispositional decisions that fully protect the interests of the maltreated child.

The recent California report also recommended using court-appointed "child development experts" to advise the judge in developing guidelines for the courtroom examination of young children.

C. Pre-Trial Case Resolution and the Use of Mediation

There are no nationwide statistics on the percentage of child abuse and neglect petitions that are "settled" prior to trial. (Indeed, the lack of any national data on juvenile court handling of child maltreatment cases is one of my major concerns. This lack inhibits our full understanding of the courts' workload in this arena and our ability to formulate and adopt specific solutions to these problems.) One bit of research data, however, obtained from three major juvenile and family courts in New England, found that an estimated 70 to 90 percent of abuse or neglect petitions were resolved short of a contested hearing through some form of pre-trial negotiation process.[15] As that researcher reported, despite these estimates almost all cases are initially handled as if they will be fully tried, and this can have a destructive impact on the parents and child. As she expressed it, the initial assumption that adversarial litigation will occur tears "at the thin fabric that holds these families together" and sometimes makes the long term resolution of the family situation more difficult. The presumption that child protective judicial proceedings will be fully litigated jeopardizes the successful resolution of these cases in a number of ways:

a) there are entrenched "postures" developed that pit parents and children against each other and appear, at the outset, to place the "family's helpers" in a situation where it seems like they will have to testify against the parents;

b) there is decreased motivation by parents to correct the problems that led to intervention, since the focus of attention becomes the adversarial process itself;

c) there is lost time, pending the judicial resolution of the case, when the parents and child could be receiving services;

d) there is increased trauma to the child, as she or he prepares to participate in the trial process; and

e) there is significant trauma to the parents and family system.

One means of successfully resolving child protective disputes without harmful litigation is the use of mediation. Although models for this exist in several communities, court-sponsored mediation to resolve conflicts that might avoid unnecessary child protective litigation is a reform that has received inadequate consideration.16 Mediation might be useful where there are conflicts or disagreements:

a) between the caseworker and parents concerning a suggested treatment plan;

b) between parents and relatives that make cooperation with the child protective service agency difficult;

c) between foster families, the child welfare agency, and natural parents; and

d) among the various attorneys, caseworkers, therapists, and other professionals involved with t'e case.

A neutral mediator can be assigned to work with parents, caseworkers, guardians ad litem, agency and parents' attorneys, and whoever else might be involved with a case of child abuse and neglect. Limited experience with the use of mediation in child protection programs has shown that the mediators can be extremely helpful in clarifying the child protective agency's expectations, the needs and desires of the parents, and exploring the best way for them to work together so that protracted, costly, and painful litigation can be avoided.

This author, it should be stressed, does not suggest the use of mediation where a child has been seriously abused or neglected, or is perceived to be in imminent risk of serious harm due to abuse or neglect. The fact is, however, that in many jurisdictions a significant number of non-serious child maltreatment allegations result in court petitions and a significant expenditure of money, time, and energy of attorneys and

judges. Such cases often involve claims of inadequate parental care or supervision. Mediation of these cases would have many benefits similar to those found in the non-judicial resolution of divorce-related custody and visitation disputes.

The growing involvement of attorneys, and more formal court procedures, in child abuse and neglect cases has resulted in parents often being encouraged to view the child protective agency as "an enemy that must be beaten." Too often parents are instructed by counsel not to communicate with caseworkers The unfortunate result is a poor relationship between the worker and the parents that judges often attempt to resolve. Often the child is the one who most suffers from such a breakdown in cooperation.

An appropriate use of effectively trained mediators, in the child protection context, could serve several different functions:

1) a method of formal court diversion;
2) a means to help the parties reach agreement before a scheduled hearing (this would be a type of pre-trial case resolution, which is covered in more detail below); and
3) a way of working out (or at least reducing) post-adjudication conflicts over the child's placement, visitation rights of the parents, and the agency's reunification plans.

In some courts the extensive time spent, in and out of court, on judicial resolution of non-serious cases may be draining significant energy and manpower that could be directed to physical or sexual abuse or severe neglect cases. Most child welfare caseworkers would probably admit intense discomfort with the judicial process and the adversarial system of conflict resolution. The availability of mediation in appropriate cases could help reduce the amount of time they spend in court and away from their casework, and I believe it would offer substantial advantages to parents, children, and

child welfare agencies alike.

A more common case resolution procedure that has been effective in avoiding unnecessary and protracted litigation is the formal (and more often, informal) pre-trial conference. The ABA Sample Court Rules, discussed above, set forth some ground rules for such a conference. Most pre-trial conferences will involve the attorneys and child protective caseworker, but not the judge. In some jurisdictions, however, cases will routinely be set on a "pre-trial conference calendar" before a judge. Even in the absence of a formal rule on conferencing, judges should clearly establish their expectations that the parties will hold a formal case conference. The court should remind t'e parties that fo negotiated settlement of the case will be accepted that fails to address the needs of the child for protection and treatment.

One other approach to non-judicial resolution of child protective cases would be to use a court-appointed interdisciplinary team consisting of an independent hearing officer, social worker, mental health professional, and attorney. They would try to resolve disputed factual issues and work with the parties to help them reach agreement of a case plan for the child and family. Participation in such a process should be voluntary, established by court rule to give it full legitimacy, and any party should still have the right to bring the case to trial.

D. Improving Court-Appointed Legal Representation

In most courts there is a critical need for enhancing the quality of performance of all attorneys, and guardians ad litem, in civil child protective cases. Our ABA Resource Center has been involved with these issues for over a decade, has produced a number of publications designed to improve legal practice in these cases, has conducted legal training through- out the country, and has supported state and local bar associations in their efforts to improve representation.[17] Yet, due to the generally low rate of compensation for these lawyers and their rapid turnover (indeed, as with child

protective workers, "burnout"), there is a constant need to educate new attorneys on their unique role in these matters. The majority of judges use an "ad hoc" system of appointing lawyers from lists provided to them. Relatively few have specialized programs that they can rely upon to assure a constant level of attorney expertise and prior training.

Court administrators and local bar associations should support, and collaborate on, the development of "Child Protective Counsel Services Programs" in which selected lawyers could specialize, up to full-time, in child abuse and neglect cases. They would need to have adequate support staff (e.g., secretarial and social worker assistance! and a secure base of funding. In turn, this program could develop standards and training for the private bar. Judges should then require participation in such a training program, and an agreement to comply with the standards, as a prerequisite for appointing any attorney off of a "list." There should also be a court-imposed continuing education requirement for such attorneys.

The rate of court-appointed attorney compensation in these cases must, in most jurisdictions, be raised. The Mass. Commission report recently suggested an increase to $60 per hour plus out-of-pocket expenses, regardless of whether work is performed in or out of court. This would still be far less than the prevailing rate of compensation for private legal representation.

In addition to the need for upgrading legal representation, every juvenile and family court should have a Court Appointed Special Advocate (CASA) program.[18] Ideally, the CASA would work with the child's court-appointed attorney through a team approach. The child's lawyer would concentrate on protecting the child's legal rights in the judicial action and helping assure that the child receives all benefits or services to which he/she is entitled by law. The CASA would maintain regular contact with the child, parents, foster family, child welfare agency, and other professionals involved in

the case. The CASA and attorney would together attend all court hearings, pre-trial conferences, and other important meetings affecting the child's future care and treatment.

E. Further Reforms in the Child Protective Hearing and Appeal Process, as well as Improvements in the Court Environment

Although civil child protective proceedings have become more formal in their structure and the application of the rules of evidence, there remain courts where:

a) critical written reports are admitted without either a stipulation or t'e presence in court of their author and the opportunity for his or her cross-examination;

b) adjudication and disposition hearings get inappropriately blended; and

c) judges too easily grant continuances that unreasonably delay the completion of the hearings and the issuance of formal findings of fact and law.

A major problem is that many judges have such huge caseloads that they have difficulty setting aside adequate, uninterrupted time to hold contested adjudicatory or disposition hearings. Hearings an abuse and neglect matters should not be broken up piecemeal over a period of weeks, months, and even longer.

It is essential for state and county court administrators to conduct periodic and ongoing juvenile court workload assessments and to monitor how new state legislation might be adding to the judges' already burdensome dockets. Greater administrative leadership is also needed in the development of new case scheduling practices that will help assure that abuse and neglect related trials are completed expeditiously.

One significant problem in completing contested child protective litigation is that decisions adverse to the parents may frequently be appealed, leaving the child in continued limbo for a considerable period of time. The ability of the custodial foster care agency to plan for the child's permanent placement in a prospective adoptive home can be adversely affected, and the child may be labelled as a "legal risk" for any

permanent care arrangement. As mentioned above, it is essential for child protection related case appeals to receive docket priority and expedited appellate briefing schedules.

There is one more appeal issue that needs to be considered. In many states, the appellate courts in child abuse and neglect related cases review the entire trial record rather than merely purported errors raised in the appellate pleadings. In these states the appellate court conducts a form of full *de novo* "record review" where it can re-interpret the facts presented into evidence and reverse the trial court's decision, without finding that any significant errors of law were made. I would suggest that legislation be considered that would limit the scope of appeal in any child protection related matter to errors of law, clear judicial abuses of discretion, and situations where, as specifically asserted by the appellant, the evidence clearly failed to support the findings made by the trial court.

Special attention also needs to be paid to improving the court environment. I have heard many juvenile court physical settings referred to as "a circus." Every juvenile court lobby and waiting area should provide a measure of dignity, privacy, quiet, and decorum, rather than the tumultuous, overwhelming atmosphere that is all too common.

Particularly in child maltreatment cases, the means of entrance and exit to the courtroom should be organized so that emotionally distraught parents and children are not subjected to undue noise and chaos that is related to other matters waiting to go into court. Trial calendars need to be set so that parties, social workers, attorneys, and witnesses do not waste hours at the court while adult criminal and civil proceedings, delinquency cases, and other non-dependency matters are heard. Indeed, all parties and witnesses should be given a reasonable expectation of how long they shall have to wait before their case is called.

To help avoid trial delays, contested child protective hearings should generally be set for particular days of the week and at specified hours when the judge knows that the docket will be clear. The parties and their attorneys should be required to notify the court by, at the latest, the day before the proceedings if they will be unable to appear. The court should then promptly notify the other parties of the delay and immediately reschedule the hearing. Also, there should be formal rules specifying when the court can hold hearings when properly-noticed parties have failed to appear, as well as when the court can issue sanctions against parties, witnesses, and attorneys who without just cause delay the trial process.

One of the more common reasons for the delay of adjudicatory hearings in civil child abuse proceedings has become the contemporaneous criminal trial for the same misconduct (often sexual abuse) that is the focus of the civil matter. This situation seems to be occurring with increased regularity. Juvenile court judges must now often decide whether to permit a "stay" of the civil proceedings while the criminal case evolves. The parent's counsel will frequently argue that a stay is necessary while the criminal court process is incomplete. I would suggest that such stays are usually inappropriate and harmful to the child. Holding up the resolution of the civil child protective case can interfere with child and family treatment plans, and it can aiso subject the child to unnecessary further pressures, and even greater danger.

One barrier to the effective resolution of the civil proceeding when a criminal trial is pending, or where future criminal charges for the parent's or other household member's misconduct is possible, is the parent's constitutional right against self-incrimination. It is important, by court rule or statute, to clarify that the juvenile court judge has the authority to grant "use immunity" to a parent or any other person so that they can then be compelled to answer questions or produce evidence. The provision of such immunity would mean that this testimony or information, or its

"fruits," could not be used in connection with any juvenile delinquency or criminal prosecution against the witness.

There are a number of civil child protective case evidentiary reforms that should be universally adopted. The first is the total abrogation of all remaining testimonial privileges in any child maltreatment related proceeding, with the exception of those pertaining to the attorney-client relationship. The second is the enactment of a special exception to the hearsay rule that would permit the introduction into evidence of a child's out-of-court statements describing any act related to abuse or neglect. Approximately half of the states have enacted "special hearsay laws" of this nature, but many are inappropriately limited to statements made by very young children concerning sexual abuse, or can only be applied in criminal proceedings. Another important exception to the hearsay rule that all states should enact would involve all statements made by a child to physicians or mental health professionals for the purpose of diagnosis or treatment, even though the child may be too young to understand why he or she is seeing these professionals. Since a particular goal of civil child protective proceedings is to avoid the testimony of the maltreated child whenever possible, these hearsay reforms are very important.

There are several reforms that would either reduce the trauma for children who must testify at civil abuse and neglect hearings, or avoid the need for the child to give repetitive testimony in different proceedings. Judges should be given explicit authority to excuse the child from having to attend court proceedings after hearing recommendations from the court-appointed counsel or guardian ad litem for the child. The court should exercise its discretion in protecting the child from harassment during cross-examination, setting sensible time limits on the length of time a child remains on the witness stand, and permitting the petitioner to ask leading questions if this is the only way to elicit the child's testimony. To aid in the eliciting of testimony concerning

child sexual abuse, the law should give judges authority to permit the child to use anatomical dolls or drawings while on the witness stand. Finally, if a child has already testified in some other proceeding about the same allegations of maltreatment, and been subject to cross-examination, legislation should permit this recorded testimony to be used in lieu of further testimony by the child.

F. Court Involvement in Service Delivery, Case Review and Post-Dispositional Proceedings

There is ample support for the proposition that juvenile and family courts must be much more active in assuring that children and parents in child maltreatment related cases receive appropriate services, and that upon removal from home that there is diligent movement towards a permanent placement for the child. Public Law 96-272 has provided substantial financial assistance to public child welfare agencies to:

1) help provide improved services designed to prevent placement;
2) help facilitate family reunification; and
3) help achieve permanency for the child.

As stated earlier, this law has also required much more involvement by the courts in these three areas. Yet, federal resources have not been provided to the court systems that are compelled to implement the federal law.

In August 1988 the American Bar Association's House of Delegates approved a policy resolution supporting amendments to P.L. 96-272 that would, among other things:

1) require state child welfare agencies to provide detailed reports to the courts concerning the preventive and reunification services available to families throughout the state;
2) require state and county agencies to provide the courts with written statements describing their efforts to preserve families in each individual case;
3) provide federal lump sum payments to state court systems to help them improve

their administration of juvenile court cases involving foster children; and

4) provide fiscal incentives for courts that reduce or limit delays in foster care litigation and improve their court rules governing foster care cases.

If courts are to do a better job, as they must, in foster care case monitoring, scheduling of judicial review hearings, and moving cases diligently towards permanency for the child, then the availability of such new federal financial assistance to the courts will be critical.

While abuse and neglect related foster care review case responsibilities have become far more elaborate and demanding, for many reasons judicial resources to handle the increased workloads have not kept pace. Just a decade or so ago, juvenile court abuse and neglect cases were much simpler to handle. The court generally presided over a single hearing in a given case at which the judge decided whether maltreatment had occurred, and if so what to do about it. Attorneys seldom appeared.

Now, there are in most cases a whole series of hearings as the child "moves through the system," and laws and procedures have become much more elaborate and individual cases far more demanding. Yet, a given family may still only be statistically counted by the judicial system as one case, despite the fact that they have four minor children and appear at over a dozen separate court hearings. In one urban court, to help assure that an adequate number of judges are assigned, administrators now designate a separate docket number and prepare a separate court file for every sibling in a family subject to the court's child protective jurisdiction.

The subject of termination of parental rights actions again will be briefly mentioned here. Reports from across the country suggest that courts are doing far too little to assure that termination petitions are brought in a timely manner. It is not uncommon for the foster care agency's attorneys to be so busy with pre-adjudicatory and trial issues that they simply have little time to diligently file for and pursue

termination. Judges need to develop a system that will help move a case towards termination when appropriate. The proposed "permanency planning hearing" in the ABA's Sample Court Rules is supposed to help accomplish this. Judges are also in an excellent position to observe any present gaps in involuntary termination statutes, and they should advocate for legislative reforms that will expedite termination when it is called for.

Of course, a significant number of termination cases are contested, and these can become the most bitter, costly, and protracted types of child abuse and neglect litigation. I would therefore recommend that the use of a mediator again be explored here. Many parents who contest termination might not do so if arrangements could be made for them to have occasional future contact with the child. If this would not be considered by child welfare experts to be harmful to the child, then it might properly become part of a negotiated settlement of a termination case.

IV. Some Final Thoughts About Juvenile Court Identification of Maltreated Children

> "Some researchers and clinicians believe that untreated abused children frequently grow up to be juvenile delinquents, murderers, and batterers of the next generation of children."
> -From Child Abuse and Neglect: Biosocial Dimensions (1987)

It has been said that whether called "neglected children," "status offenders," or "delinquents," it is often the same kids that the family court is dealing with, only at different stages of their childhood. This was best expressed in a book by the distinguished former New York City Children's Court Judge Justine Wise Polier, who in 1941 wrote:

> Sometimes it seems as though the relationship (between "neglected" and "delinquent") is primarily one of cause and effect, that the essential difference determining classification lies in whether the child was brought to court before or after the neglect of the child, in its broadest meaning, had finally provoked the child to anti-social retaliation.[19]

In the backgrounds of many juvenile lawbreakers, if not most chronic adult offenders, you'll find an early history of severe parental maltreatment. In addition, an estimated 30 percent of children who are physically or sexually abused or extremely neglected become abusive parents.[20]

Social justice would be served, taxpayers saved considerable later expense, and crime greatly reduced if our court system could better assure that a mistreated child, while still a child, received the proper treatment and caring home environment. Most important, children would get, simply, what they deserve: a good strong start in life.

It would therefore be helpful if courts that dealt with troubled families in whatever way -- through contact with parents in the criminal justice system, in connection with family breakup or domestic violence, or in any juvenile court matter -- could identify child abuse or neglect and take prompt and effective remedial action. I would therefore

like to see all judicial system intake, probation, and clinical evaluation components use a uniform social and family history assessment designed to help determine whether serious child maltreatment problems exist in the home. If maltreatment was identified, there should be uniform system procedures to assure appropriate further intervention and treatment for the child.

We all have so much to gain by having our courts do a better job in this area. Yes, we've come a long way since 1899, but we still have an awfully long way to go.

FOOTNOTES

[1]See, e.g., National Association of District Attorneys, The Investigation and Prosecution of Child Abuse (1987); Whitcomb, et al., When the Victim is a Child: Issues for Judges and Prosecutors (1985).

[2]In 1982, according to the National Center for Juvenile Justice, approximately 172,500 dependency cases nationally were heard by the courts. State data provided to the American Humane Association (AHA) in 1978 (the last year such specific data was compiled) indicated that substantiated child maltreatment cases were over three times more likely to result in dependency petitions than in criminal proceedings. Although during the 1980's there has been a significant increase in the number of child abuse cases prosecuted, most criminal actions are still limited to sexual abuse and physical abuse cases where severe injuries are inflicted. According to the AHA, in 1986 sex abuse still only accounted for 13.8% of the substantiated child abuse and neglected cases handled by child protective service (CPS) agencies, and cases of severe physical injury inflicted as a result of abuse accounted for an even smaller percentage of CPS caseloads. Few "deprivation of necessities" and "lack of proper parental supervision" (i.e., neglect) cases, which constitute the bulk of CPS cases that become the focus of dependency proceedings, ever result in criminal court actions.

[3]See, e.g., Edwards, "The Relationship of Family and Juvenile Courts in Child Abuse Cases," 27 Santa Clara Law Review 201 (1987).

[4]See, e.g., Rubin, "Integration of Child and Family Legal Proceedings: Court Structure, Statutes, Rules and Literature" (unpublished paper prepared for May 1989 Conference) (1989).

[5]Peck, Domestic Tyranny (1988), at 131.

[6]Id., at 130.

[7]U.S. Department of Labor, Children's Bureau, A Report of the Children's Bureau Conferences, May and June 1919, republished in Chenery and Merritt, eds., Standards of Child Welfare (1974), at 349.

[8]Id., at 309.

[9]Id., at 351.

[10]See, e.g., The Juvenile Delinquency Prevention and Control Act of 1969 (P.L. 90-445); The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967); Platt, The Child Savers: The Invention of Delinquency (1969); Rosenheim, ed., Justice for the Child (1962); James, Children in Trouble: A National Scandal (1969).

[11]See, e.g., Fox, Cases and Materials on Modern Juvenile Justice (1972); Schur, Radical Nonintervention: Rethinking the Delinquency Problem (1973); but see, American Bar Association, Child Abuse and Neglect Litigation: A Manual for Judges (1981).

[12]See, e.g., American Bar Association, Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation (1987); National Council of Juvenile and Family Court Judges, et al., Making Reasonable Efforts: Steps in Keeping Families Together (1987).

[13]See, e.g., American Bar Association, The Legal Framework for Ending Foster Care Drift: A Guide to Evaluating and Improving State Laws, Regulations, and Court Rules (1983); National Council of Juvenile and Family Court Judges, Judicial Review of Children in Placement Deskbook (1981).

[14]Final Report, California Child Victim Witness Judicial Advisory Committee (1988).

[15]Wiig, "Pre-Trial Resolution of Child Protective Proceedings" (unpublished paper) (1984).

[16]See, e.g., Palmer, "Mediation in Child Protective Cases: An Alternative to the Adversarial System," 68 Child Welfare 1(21) (Jan.-Feb. 1989); Mayer, "Conflict Resolution in Child Protection and Adoption," 7 Mediation Quarterly 69 (1985). One federally-funded demonstration project in this area was the Child Protection Mediation Project of the Center for Dispute Resolution in Denver.

[17]See, e.g., American Bar Association, The Child Abuse Legal Representation Project - Suggestions for Effective Implementation (1980), Representing Children and Parents in Child Abuse and Neglect Cases (1981), and National Guardian Ad Litem Policy Conference Manual (1982).

[18]There is a Seattle-based National Court Appointed Special Advocate (CASA) Association that supports the work of over 300 CASA programs in 45 states, where more than 12,000 volunteers are involved in juvenile court child protective proceedings.

[19]Poller, Everyone's Children, Nobody's Child (1941), at 85.

[20]Children's Defense Fund, A Vision for America's Children (1989), at 47.

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SIGNIFICANT INTERVENTIONS:

Coordinated Strategies to

Deter Family Violence

Meredith Hofford, Project Director
Family Violence Project
National Council of Juvenile and Family Court Judges

Richard Gable, Director of Applied Research
National Center for Juvenile Justice

"Violence in the home strikes at the heart of our society. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood.... To tolerate family violence is to allow the seeds of violence to be sown into the next generation.

"We as a nation can no longer allow these victims to suffer alone. We must understand the breadth and scope of the problem. We must admit that family violence is found at every level of our social structure. We must let victims know that they need not hesitate to seek help. We must listen with an understanding heart and we must act in ways which prevent, protect and support. This action requires a flexible response."

(Attorney General's Task Force on Family Violence, 1984)

SIGNIFICANT INTERVENTIONS: Coordinated Strategies to Deter Family Violence

Introduction

Child abuse, wife beating, incest, neglect, spouse abuse, domestic violence, sexual abuse - all are what we view as forms of family violence. They do not occur in isolated incidents in families. The probability is very high that if one member of a family experiences abuse - or one incident or type of abuse is before the court - there is, was or will be additional forms of violence occurring in that home (Bowker, Arbitell and McFerron, 1988; Fagan, Friedman, Wexler and Lewis, 1984; Finklehor, Gelles, Hotaling and Straus, 1983; Gelles & Straus, 1988). Clinical experience tells us this is so (Bolton and Bolton, 1987; Roy, 1988). Our own observations, as judges, court workers, social workers and probation officers, bear this out.

Our discussion in this paper will at times focus on one form of violence or another. We believe that that form of violence is just the presenting incident. In any given case, we are really dealing with *FAMILY* violence. This paper presents a compelling argument, based upon research, past policy recommendations and our own experience, in favor of court-system interventions which are indeed significant. It goes beyond conventional wisdom and recent reforms which focus on one type of case or another, to suggest that a broader view of the violence occurring in families is necessary, even critical, for a coordinated, significant response.

Lisa Steinberg - the tragic New York City case of the child who was abused to death and her mother Hedda Nussbaum also a victim of chronic beatings and abuse- captured the attention of the nation more than any other such case in recent history. Our attention was bathed in horror and disbelief. But Lisa Steinberg is not a unique

type of case. She really exemplifies the ways in which the system fails to protect hundreds of thousands of victims of family violence each year. The police had been called to the home; Hedda Nussbaum had been hospitalized numerous times for her injuries from beatings; friends, co-workers and neighbors all saw the scars and injuries on Hedda and Lisa; reports had been made to the child protective services agency. However, no legal action was ever taken. This was a case that was not even "officially" known to the system.

There is a high coincidence of spouse abuse and child abuse occurring in the same family. Of the 1.5 million countable cases of child abuse and neglect each year (U.S. Department of Health and Human Services, 1988), and the estimated 1.8 million women beaten in their homes each year (Straus, Gelles & Steinmetz, 1980), researchers have determined a co-incidence of *at least* 810,000 families with both spouse abuse and child abuse (Roy, 1988). Many writers and researchers in the field believe the tallies or reports and estimates of family violence reveal only the tip of a huge iceberg.

The histories of the abuse of women and the abuse against children are as intertwined as the threads of a tapestry. Indeed, they represent the socio-political fabric of cultures and societies since the times of the ancient philosophers of Greece and Rome and of the Old Testament. Women and children were generally considered the property of the husband/father to do with as he wished. These notions changed little over the course of thousands of years. English Common Law gave the father absolute authority over his children. The "Rule of Thumb" which permitted a husband to beat his wife with a rod no thicker than his thumb was a liberal reform enacted in the 19th Century to provide a small measure of protection to women. Generally, wives and children possessed no legal status or rights under the law, and lacked any legal remedy against physical abuse and neglect. It was not until the 1870's in the United States that the acceptance of wifebeating began to be questioned. Gradually divorce laws were

liberalized, allowing women to divorce on the grounds of "extreme" cruelty. Similarly, in 1870 the first court order in a child abuse case was issued in New York - not on the grounds of child abuse, however, since there were no laws against child abuse at that time. The case was argued and won on the basis that it was cruelty to an animal.

It took a hundred years to raise public consciousness and social concern about child abuse and spouse abuse. In the 1960's welfare programs emerged to provide public assistance; they began to research and investigate child abuse and neglect. In the 1970's states passed laws mandating reporting of child abuse and neglect. In 1974 Congress passed the Child Abuse Prevention and Treatment Act which authorizes research, public information activities and assistance to professionals. From the mid-seventies to mid-eighties a similar process of public awareness, legal reform and federal leadership and assistance occurred around the issues of wife abuse. By 1988 all 50 states had enacted laws to provide civil and criminal remedies for victims of family violence.

Despite the interwoven histories of these two social problems and the almost identical process our society has gone through to acknowledge and respond to them, they are still today most often viewed and treated as two separate problems. This is true of both the legal system and the social services system. We have different courts, legal remedies and procedures for handling wife abuse and child abuse. We have totally different service bureaucracies set up for dealing with these matters and their mission and purposes are often at odds. Reporting, databases and information systems are separate as well, which is why we can only make estimates about the co-incidence of violence in families. Yet, the root causes of these two social problems are startlingly similar if not identical. The changes in our society which have altered our perceptions of the issues and prompted us to take action are the same. So, it seems we would be vastly more efficient and effective if our responses in the justice system were at the

very least aligned and coordinated.

A Decade of Recommendations

The pace of attention shown to matters of family violence has increased over the past decade. Beginning with a "status quo" position, numerous commissions, study groups, demonstration projects and individual authors have issued a cascade of recommendations relating the system's response to one or another aspect of family violence. This section details that subset of recommendations of particular relevance to the development of significant family interventions. It is presented both as historical precedent and as the departure point from which our own family violence project emanated. What is apparent is that our consensual beliefs are converging towards a response which acknowledges the criminal nature of family violence *and* the special circumstances within which it occurs. It is our conviction that the experience of the family violence project and the recommendations emanating from that experience further our collective understanding of the nature of family violence and the development of significant interventions to check its course.

In January of 1978 the United States Commission on Civil Rights sponsored a consultation on Battered Women: Issues of Public Policy and subsequently published the proceedings. It was a groundbreaking event, designed for the first time at the national level to acknowledge the critical problems faced by battered women and to outline public policy issues, develop a research agenda, identify service and funding needs and examine state legal and law enforcement reform. The conference had been preceded by grassroots identification of the problems across the nation, establishment of a few local battered women's shelters on shoestring budgets, and isolated attempts at changing the legal system's response to victims of family violence. As recently as 1974 there were very few shelters, no effective legal remedies and barely an acknowledgement that family violence was indeed a significant social problem.

That first national policy meeting was a catalyst for many changes which have occurred since then including federal funding for shelters and victim advocacy, legal reforms in every state in the nation, and federal funding for research, training and innovative programs in the criminal justice system. It was indeed a major breakthrough when federal victim/witness funds and programs redirected their resources and explicitly recognized the plight of victims of family violence. Throughout this process there have been a number of state and national commissions established to carefully and critically examine the needs, the policies and the impact of reforms. The various groups have made a series of recommendations which reflect remarkable agreement in many areas, some degree of progress in parts of the justice system, and a need for significant continuing efforts.

Perhaps the most prestigious of the commissions was The Attorney General's Task Force on Family Violence which issued its report in 1984 after conducting six regional hearings across the country and receiving testimony from hundreds of witnesses. The Task Force made 62 recommendations, a number of which are relevant to the issues addressed in this paper. For the justice system, the Task Force stated

"1) Family violence should be recognized and responded to as a criminal activity.

2) Law enforcement officials, prosecutors and judges should develop a coordinated response to family violence.

3) Communities should develop a multi-disciplinary team to investigate, process and treat all incidents of family violence, especially cases of physical and sexual abuse of children (AG's Task Force, page 10)."

They went on to recommend that judges consider "a wide range of dispositional alternatives in cases of family violence...(and that) judges should establish guidelines for expeditious handling of family violence cases (AG's Task Force, page 33)." Additional

recommendations called for research into methods of coordinated intervention, evaluation of treatment programs for victims and offenders, and legislative action to provide better protection for victims.

In the same year, the National Evaluation of the LEAA Family Violence Demonstration Program published a similar set of recommendations calling for criminal prosecution *and* availability of civil protection orders for victims along with research to evaluate diversion counseling for batterers and determine the correlates and causes of family violence. Two years later the National Institute of Justice published Confronting Domestic Violence: A Guide for Criminal Justice Agencies (1986). It too stressed the need for coordination between criminal justice agencies and other community agencies- a need which "cannot be overemphasized (Goolkasian, 1986, page 25)." In a companion document for judges, Gail Goolkasian insisted that *local, community judges* determine the kind of attention domestic violence cases will receive and that they play a critical role in mobilizing a community's overall response. The following year, in testimony before the U.S. House Select Committee on Children, Youth and Families, District Attorney Elizabeth Holtzman called for an integrated criminal justice response, effective sentences and treatment programs for spouse abusers, and early intervention programs.

In 1988, yet three more volumes addressed the needs of violent families in the court system. Maria Roy focused her attention on the hidden victims in her book Children In the Crossfire. She discusses a number of misconceptions held about violent families including

"1) There is a misconception that child abuse occurs in isolation of other family problems.

2) There is a misconception that a battered woman can protect the child from physical abuse or .hat the child is in less danger because the woman is the primary target of abuse (Roy, page 11)."

The publication of The California Child Victim Witness Judicial Advisory Committee (1988) encouraged the various state courts to develop a more efficient means of sharing information regarding proceedings involving the same child or family. They suggested that criminal and juvenile dependency courts must cooperatively manage cases and share information on children and family members appearing in either court. Regarding domestic violence cases, the committee recommended

"1) Law Enforcement reports of domestic violence investigations should routinely indicate whether children are in the home and whether they have been exposed to domestic violence.

2) Courts should consider the effects of an abusive family setting on children in the disposition of domestic violence cases (California Advisory Committee, Pages 52-53)."

The summary final report of the Bureau of Justice Assistance Family Violence Intervention Demonstration Programs Evaluation (Vol. I, Draft, 1988) makes nine conclusions, one of which is that interagency coordination should be considered essential for an effective system response. The policies of each separate agency, they state, impact and are impacted by all of the others. This impact either supports the policies or hinders them. Weaknesses in any one part of the system reverberate to all others (Harrell, Roehl and Kapsak, 1988).

While all of the reports and commissions discussed in this paper had a variety of other recommendations relating to law enforcement practices, prosecution and dispositions, training and research, we have focused our attention on those which deal with the need for a coordinated and integrated response when the justice system is faced with the extremely complex dynamics of a violent family. The practical applications of these recommendations appear to us to have been the most elusive. Yet they are the hub of the wheel of progress in this area. While improvements have been made in

certain components of many state court systems, we have learned in practice that without *coordinated* system change, the impact of the reforms is far less. Perhaps even more important, without responding to the individual families in a coordinated fashion- i.e. *all* the people and problems in the family needing attention - then we may indeed dispose of the case and dispense some measure of justice, but we have not begun to deal with the issue of family violence.

Court Processing Concepts

The appropriate locus for family violence intervention, as noted in the previous section, has been debated and studied over the past century. In fact, there is probably no other arena of human affairs which has so challenged the authority and effectiveness of state intervention. In part, the shifting of opinion regarding court intervention in families is the result of significantly different concepts in the processing of cases through different types of courts. As our view of the family, its members and the circumstances in which they find themselves changes, we must look conceptually at the court system(s) to attempt a match.

Beginning with a concept of official state intervention which is least intrusive in the workings of a family, the compelling tragedy of family violence has required the state to become more actively and intrusively involved in family affairs. Rather than simply provide protection to the victim and guidance to the perpetrator, when dealing with family violence the courts have found the need to hold the abuser more accountable and thereby attempt to insure that the violence will cease. The effect of the changes which occurred in the 60's and 70's was to shift the emphasis from *family* matter to *criminal* matter.

This evolving belief about the role of the state in family violence matters has led to a search for the court structure best suited to accomplish the purpose. In the recommendations presented previously, it is clear that the candidate of choice is the

criminal court, which can more fully hold the guilty accountable. The need for criminal prosecution followed directly on our changing attitudes about the relative value of accountability and family non-intervention. This shift has not occurred without a price, however, as we find that the criminal court, while better suited to dispense punishment, is not as well suited to provide the guiding and supportive intervention of its civil, family and juvenile court counterparts. It is also more burdened with necessary due process concerns in order to safeguard the rights of the accused. While adding accountability to the arsenal of the state, we have also increased the requirement on the victim to initiate the criminal process. Where before, the victim could deal independently with a civil process seeking an order restraining the abuser, the requirement for proof of a criminal act beyond a reasonable doubt increases the initial stake and involvement of the parties.

Where this has left the system is in a state of procedural ambivalence, with hope that more easily accomplished civil procedures will suffice, while knowing that the history of their success provides little for that hope.

In real terms, the prosecution of violent family members has resulted in procedural anomalies ranging from high percentages of "no go" decisions in prosecutors' offices, to reactive criminal court judges imposing sanctions on victims who subsequently withdraw from criminal proceedings. It is frequently the non-legal aspects of these cases which mitigate against successful criminal prosecution. This occurs in the most obvious and appropriate cases of criminal assault between adult family members. When one adds to this the more difficult decisions concerning abuse or neglect of children (sometimes by the victim), the provision of financial support, and the need for alcohol or drug treatment, the comfort level of the system in proceeding with a purely criminal court response steadily decreases. The comfort level breaks down entirely in cases such as incest and sexual abuse when the criminal response alone is often destructive.

It is perhaps ironic that civil interventions, predicated on the notion of dispute resolution between opposing parties, has been found to be ineffective in dealing with family violence (Grau, Fagan and Wexler, 1984). Further, in many situations, criminal prosecution, predicated on the concept that the state will replace the victim in seeing that the perpetrator is held accountable, has increased the burden on the victim rather than diminished it. A more complete understanding of the dynamics of family violence forces us to appreciate the reciprocity between the legal and non-legal issues in these cases. The ability of the justice system to respond to the non-legal factors will enhance its ability to effectively deal with the legal matters. Neither the stern process of the criminal court nor the ameliorative process of civil intervention provides all that is necessary to deal with the complex issues surrounding family violence. While each of these courts has some of the necessary conceptual pieces, their shortfalls are more obvious than their adequacies.

Thesis

Courts in the United States are understandably and justifiably slow to respond to social currents and political or ideological shifts. Of all three branches of government, the justice system is by far the most stable - the protector of the founding ideals of our country. However, it has become critical and inevitable that the court system alter its response to family violence. The current structure does not dispense justice, perhaps due to its philosophical and sociological base. It is a rare spouse or child victim who is efficiently and adequately protected by the courts from violence in their own homes. The solution in large part is a more sensitive and responsive system.

Given the conceptual inadequacies of any of the existing single entity courts, the system of law and state intervention must examine its collective array of tools to develop a new approach to the problems of family violence. It is safe to assume that most of the pieces necessary to produce significant interventions already exist or have

recently been developed by experimenting court organizations. What does not now exist is a plan for integrating and coordinating those often disparate interventions to ensure that they have an impact. The fragmentation of information, procedure and rules diminishes the systems' overall impact, leading to a non-significant intervention.

A coordinated response to family violence cases can be orchestrated from either the criminal or civil system. Family courts can obtain criminal jurisdiction; criminal courts can handle civil matters relating to the same family. Case information, records and hearings involving the same family could all be coordinated or combined regardless of the court structure. The judges assigned to these matters must understand the dynamics and complex issues presented by dysfunctional families. They must be able to fashion dispositions which include a measure of punishment and accountability for the offender, but which also take into account the need for treatment service for all family members and protection for the victims. A broad jurisdiction is needed so that one court can address the variety of matters presented by violent families - either at once or over time. The mere establishment of a "family court" does not necessarily insure that the court will respond to *families* and not cases. It is necessary to go beyond the existing structure and procedures, whatever they may be, and examine the day-to-day processes of the court.

If successful, a coordinated system of intervention will extract those useful processes of each of the relevant components and integrate them in a manner which is consistent with an overall goal for family intervention. Without this unifying principle, it is impossible to assign resources and procedures in a rational way. If the goal is to eliminate family violence, each component of the system will need to examine its potential contribution to the mission. Victim support will enhance the ability of the victim to proceed; criminal prosecution will deter future violence; treatment resources will reduce the extrinsic factors contributing to family dysfunction; child assessment

processes will guard against unknown and systemic family violence; civil processes will provide for dispute resolution between parties; probation supervision will enforce the power of the court. In sum, the full arsenal of state intervention will become significant only when each component recognizes its potential and throws in with the others to produce system and individual change.

National Council of Juvenile and Family Court Judges Family Violence Project

Project Overview

The National Council of Juvenile and Family Court Judges began its Family Violence Project in 1987 with support from the U.S. Department of Justice, Bureau of Justice Assistance. Our purpose was to implement and evaluate new, coordinated court procedures for the handling of domestic violence and families with multiple forms of abuse. Three jurisdictions have been involved in developing and documenting the improved procedures. These are the Circuit Court of Oregon in Portland, the Family Court of Delaware in Wilmington, and the District Court Department, Trial Court of Massachusetts in Quincy. Project activities have included case screening and processing, victim assistance, training, case supervision and data collection. Both system and individual case advocacy by project staff have provided much of the impetus for the changes which have occurred. Local project advisory boards have also provided significant input for system changes. Guidelines, legal and procedural issues, and documented court system changes in the three sites are reviewed at regular meetings of the projects' National Advisory Board.

The evaluation component of the project is conducted by the National Center for Juvenile Justice. Project cases, at least sixty per year per site, are tracked throughout their involvement with the justice system. Data from these cases will be compared with data on 100 baseline cases per site. The evaluation will contrast program model processes with non-program processing and with former ways of handling domestic violence cases.

Description of Project Cases

As presented above, the project is operating in three sites: Quincy, Massachuse-

tts, Portland, Oregon and Wilmington, Delaware. Due to early start-up difficulties, data to describe project cases is available only from the Quincy and Wilmington sites.

To date, there have been 198 cases accepted for project intervention in the two sites (Quincy 67, Wilmington 131). Of these, 27% were already active with the court at the point of project intake (Quincy 60%, Wilmington 11%).

The cases are comprised of predominantly male defendants in families where there are children. Offenses include assault and battery, terroristic threatening, offensive touching, violation of existing restraining order, kidnapping and attempted murder. In 90% of the cases, project staff recommended that the defendant be prosecuted in criminal court. To date, 43% of the cases have actually been prosecuted (Quincy 60%, Wilmington 34%).

Project staff have been involved in early identification and treatment referrals for problems contributing to the violence. In 73% of the cases, there was sufficient reason for a referral for alcohol or drug abuse treatment for the defendant (Quincy 72%, Wilmington 74%). This is the most striking early finding of consistency between project sites. It is also consistent with past research.

After fifteen months of active case involvement, 17% of the cases originally accepted by the project have been involved in subsequent family violence resulting in a return to court (Quincy 22%, Wilmington 14%). In Quincy, the intensive probation scrutiny afforded the perpetrator uncovers subsequent violence at an early point in time.

Case advocacy procedures in the two sites have led to relatively low rates of refusal by the victim to proceed with the criminal complaint. In only 11% of the cases did the court process cease due to a refusal on the part of the victim (Quincy 6%, Wilmington 18%).

The average length of case involvement for the two sites is significantly different in that the Wilmington project is largely a "front end" intake, screening and advocacy

model and the Quincy project includes probation supervision as a part of the project model. In Wilmington the average case life is 1.7 months, in Quincy it is 8.2 months.

Further evaluation activities are ongoing, examining the differences in case attributes between successful and unsuccessful cases and comparing project case processing data with baseline information describing cases handled prior to project implementation. When completed the Family Violence Project should have a reasonable understanding of the types of cases it selected, their experience with the court system and the outcome of the intervention. This information is vital to understanding the effectiveness of the model and for subsequent program implementation in other sites.

The Family Violence Model Today

With efforts directed at overcoming a number of hurdles outlined in the next section, the Family Violence Project has evolved with a variety of features which make it a unique model for case coordination and significant intervention:

1. All sites are court-based, operating as an integral part of the court with the primary jurisdiction in the area of family violence.
2. All sites have established a local advisory group which includes representation from those significant community groups dealing with the victims and perpetrators of family violence.
3. All sites have worked to more actively involve the prosecutor in proceeding with criminal court prosecutors in proceeding with criminal court prosecution. It is apparent that the "gate keeping" function of the prosecutor is a vital component in the early stages of case processing.
4. All sites routinely assess the potential or actuality of systemic violence in families involving members not originally presenting themselves to the court. While still a delicate issue, the project is committed to exploring the potential for child abuse in domestic violence situations.

5. All sites have developed aggressive victim advocacy procedures which include immediate victim assistance and subsequent support, counseling and referral to assure safety and to manage the instant and ongoing family strife. Victim advocacy involves not only assistance to manage the instant event, but also ongoing support for the victim in the continuing stages of court involvement.
6. Project sites have experimented with and developed or supported treatment resources, mostly for offenders. Each project site has access to batterers groups which deal directly with the violent behavior and with related problems such as alcohol or drug abuse.
7. All project sites have made progress, although limited, in integrating information across agencies and governmental entities. This has been accomplished largely through negotiation with various system components and by education concerning the critical need for information coordination.
8. All project sites have established better working relations with women's shelter groups and have established protocols for interacting between the shelter and the court.
9. Training and professional information programs have been conducted in all sites. These have included law enforcement, prosecution, probation and judicial personnel.

There are two significant areas which have not yet evolved into solid components of the project model:

- The hurdles involving case consolidation have not yet been successfully overcome in any of the project sites due to the many logistic and legal problems outlined above. It remains, however, a project objective in each site.
- Working procedures for interaction with child protective agencies in each site are not yet in place. In part, agency confidentiality safeguards have hampered

active information sharing. Further, the difficult balance between assuring that children are not abused and the potential for such inquiries to deter victims from coming forward is not yet resolved.

In sum, the project has established a number of features which highlight its primary interest in family violence and has set for itself a series of not-yet-implemented tasks to further that process.

Learnings to Date

The National Council's Family Violence Project has been in operation for less than two years. In that period of time, national project staff and site staff have learned much about the issues invloved in producing change to more effectively deal with family violence cases in the court. While not comprehensive, this section will describe some of the "Learnings to date", those bits of information which may be useful in developing policy and in program implementation.

What has become clear over the past two years of implementation for the Family Violence Project is that there are some predictable and nearly universal hurdles which must be confronted when attempting system change in this area. In attempting to identify and describe these obstacles, we will restrict our discussion to those with direct implications for family violence affairs, and not recite a litany of generic factors common to any system change.

1. **The judicial branch of government is traditionally a conservative "slow changing" entity.**

As compared with other governmental sectors, the role of the court is, in part, to keep the heritage and procedure of law uniform, or at least consistent, over time. What is sometimes perceived as purposeful resistance to change is, in fact, central to the raison d'etre of the judicial system. As such, judges and the administrative structure within which they work, rely on precedent and history in making decisions about current day events. It should not be surprising, therefore, that the change process within the court itself would proceed slowly and cautiously, with significant opportunity to examine the consequences of the change.

Since the major thesis presented in this paper concerns the importance of changes in the judicial mechanism for handling family violence cases, it was an early learning

that this natural resistance to change was an impediment to overcome. It became equally obvious that, to deal with change, the court needs to rely on a strong judge advocate who can forge ahead, while reassuring his or her colleagues that the change will not completely upset the organization. Without a judge advocate, change in the judicial system will be slow to non-existent. Yet, most judges do not see themselves in the role of change agent. This may mean that change, such as will be proposed in this paper, is simply not possible in some settings where this condition does not exist.

2. **The court system, as is true of many other segments of society, has difficulty acknowledging and confronting sexism in its theory and practice.**

The male-dominated court of today is expected to deal with highly complex family matters with wisdom, jurisprudence and concern. This is a tall order under the best of circumstances. Adding to the difficulty is the inherent sexism which shapes policy and practice in ways which are often invisible to the system actors. There are the obvious examples of overtly sexist comments ("Why don't you just go home and give him another chance honey") and many less apparent practices like the historic decriminalization and minimalization of domestic violence cases or the disproportionate tendency to terminate parental rights of the victim and award custody of the children to the batterer. The court has not, on its own, examined the implications of its sexism. In part, this is due to the paternal nature of the court, especially, the juvenile court, in fulfilling its parens patriae mission. The role of king and father is an inviting position from which to dispense justice. Unfortunately, while a highly regarded role in some proceedings, it defeats the necessary scrutiny of sexism required to deal genuinely with family violence cases.

The project learnings in this regard are incomplete. It has been our experience that awareness of sexist attitudes and correlative practices arrives slowly and cannot easily be accelerated. In trying to raise participants' awareness, the project has, on

occasion, hardened pre-existing attitudes when confronting them with too much vigor. On the other hand, the realization that little things matter in the processing of family violence cases has led to examination of the minute details of some project site procedures.

3. **There are practical obstacles to coordinating cases including docketing, case assignment, records management and procedural differences.**

Even if it is agreed that consolidation of family matters will produce a more significant intervention, the court processes required to actualize that consolidation are burdensome. Courts, especially in large metropolitan areas, have developed procedures and policies which differ according to case type. A juvenile case, therefore, will proceed differently from a domestic violence case. Further, due process safeguards vary according to case type, as do the types and number of parties of standing in a particular matter before the court. These differences in processing have developed to facilitate that particular case (or may be mandated by statute, court rule or appellate decision) with little consideration of coordination between cases. When attempting to re-examine the court structure to accomplish case coordination, many procedures must be undone, leading to administrative confusion and resistance. As one court administrator noted early in the project, "We can't just change everything for these cases without knowing its effect on the court as a whole."

The key to case consolidation lies in the nature of the jurisdiction of the court(s) dealing with the multiple facets of family violence. A family court, with complete jurisdiction, may have a better chance of coordinating matters. This type of court, however, is exceedingly rare since most family courts are limited in some way. A general trial jurisdiction can also reasonably expect to be able to consolidate cases if the judge(s) and the court administrator are willing to review and merge the procedures established for each type of case. It may be, however, that there is a real limit to the

amount of case consolidation that can or should occur. While it is theoretically desirable to hear delinquency, dependency, and domestic violence matters concerning a single family at the same time, the number of parties necessary to such a hearing may be impractical. It is clear, however, that in most settings more consolidation can be accomplished than is initially thought possible. By examining procedures, changes in case handling can bring many facets of the multi-problem family before the court in a single hearing.

4. **Information sources concerning violent families are disjointed and spread among a variety of agencies and court departments.**

The information requirements of the multitude of agencies and court entities dealing with family violence cases varies significantly and is usually maintained for the individual agency's purposes. As such, there is rarely a central information repository. This leads to misinformation, or, more frequently, a lack of information concerning multiple problems within the family. A coordinated effort to address the problems in the family is confronted with this information void. The prosecutor may have a record of past complaints which have not gone forward; the civil court will have an indication of restraining order activity; the juvenile court may hold dependency records; the criminal court and probation may have information concerning the offender's past convictions for family or stranger violence.

There are significant limits on the system's ability to consolidate information across sources. Some of the constraints on information sharing are simple logistic matters, others involve the right to confidentiality. The balance between legitimate need for confidentiality and the need for knowing about related family dysfunction has been one of the most difficult issues for the project. It has been the experience of the project that information sharing is essential but must be accomplished through the diligent efforts of a case manager or coordinator. It is not adequate to assume that individual

agencies will routinely forward needed information to their system counterparts.

5. **The resources available to court systems for treatment or intervention programs is severely limited.**

In fact, there are many who would argue that court resources should not be expended on treatment programs for defendants, victims or their families. Even if the court is in the position to wisely order treatment interventions, there is little available funding to provide those services.

The project has experimented with a variety of treatment approaches, and has relied heavily on contractual arrangements with existing treatment programs in the community. In one project site, a majority of project funds is expended on treatment groups for batterers, with court staff afforded by the system. Until there is a greater degree of importance attached to these cases, the funding of effective intervention for the parties will continue to be a hurdle.

6. **Outside advocacy groups and the general public lack a complete understanding of the system and its underlying principles.**

This picture of misinformation often leads to mistrust in attempting to coordinate between court and non-court entities. In many communities a tension exists between the court and the women's shelter groups, each believing the other is not supportive of their efforts. The need for generalized public education concerning the purpose and procedure of the court was apparent in each of the project sites at the outset.

The development of a coordinating body encompassing all relevant community actors is an essential component of the family violence project in each of the three sites. System advocacy is conducted through steering group activities and individually by the site directors. We have learned that misconceptions can be overcome with discussion and education. It also appears that the public at large can better understand the system if purposeful attempts are made to provide them with meaningful education. In

the project sites, much time has gone into the development of educational materials for both system actors and the public. These efforts have produced a better understanding and a more trusting attitude towards the formal system of justice.

The process of change would not be called change if there were not hurdles to be overcome in the accomplishment. Those presented here are intended to provide guidance and the benefit of the project's experience in dealing with those naturally occurring obstacles to change in court systems dealing with family violence.

Practice Implications

Several themes have emerged from the Family Violence Project which are applicable across all three sites and perhaps to courts across the nation. Overriding all of the areas discussed below is the need for coordination. Many relatively small changes in the way these cases are handled can have significant impact. We believe it as important for all parts of the sqstem to be making changes if concert.

1. Take a fresh, objective and critical look at how your court system handles all different types of family violence.

The system has particularly overlooked its handling of spousal assault victims. Look beyond what the stated policies are and find out what is really happening. Ask lots of questions and insist on answers. If the data is "not available" then develop it immedlately - even just a few months of data will tell you a lot. This look at the system is best spearheaded by a person in a leadership position within the court such as a judge or court administrator. In order to achieve a coordinated investigation, one which will produce meaningful results for the entire court system, establish a Family Violence Task Force or Advisory Board.

This group can help frame the questions and issues, review the results and begin proposing solutions. Much coordination will be achieved through this process alone. An overarching benefit will be the development of consensus on a definition of family violence which reflects the criminal elements and acknowledges the needs of victims and other family members. If the group meets monthly, it may take a year or more to get a handle on the whole situation. During that year, though, many positive suggestions can be implemented immediately. The Task Force will become the knowledgeable working body in the court to implement the changes agreed upon.

Why is all this necessary? Because although many law enforcement agencies and

some district attorney's offices have changed their responses to domestic violence, the courts for the most part have behaved like ostriches with their heads in the sand. A recent report from the Bureau of Justice Assistance Family Violence Intervention Program (Draft, 1988) concurs with our own opinion that the next frontiers for improvement are the judiciary and probation departments. Civil and criminal court practices, dispositions and other court orders, the monitoring and enforcement of offefder treatment and accountability are all areas in need of substantial efforts.

2. Assign responsibility for oversight, follow-through and staffing of the Task Force to a specific individual – a system advocate.

At the very early stages of our project, the Director of the San Francisco Family Violence Project, which is recognized as one of the best court system programs in the country, advised us that the fastest, cheapest way to change the system is to create a system advocate position *within the court.* The findings of the National Family Violence Intervention Project, conducted in eight sites across the country, have been similar. In our own project each of the three sites created a position which had basically two major responsibilities - system advocacy and individual case advocacy. The system advocacy work has been very productive in each site. It is this person who is the catalyst for change.

3. Identify specific problems with court system procedures and processing, and implement changes to address those problems.

The three sites involved in the Council's Family Violence project have systematically tackled and solved a variety of serious problems in their courts. These changes have made a considerable difference and for the most part have required no new resources. For example, the initial experience for women seeking protection orders in all three sites was one of hostility, confusion, discouragement and a general lack of support or assistance. To remedy this, the courts have devised a variety of solutions:

- The Quincy District Court has a special clerk's office, with specially trained staff, for domestic violence petitions. The clerk immediately refers victims next door to the probation department's child support enforcement officer and to the victims support group. While waiting for the petitions to be heard, the district attorney's staff provides victims with a daily briefing on the legad system, the dynamics of family abuse, the services available and the advantages of filing criminal charges when appropriate. Criminal filings on domestic assaults have increased tenfold since the project began.

- The Delaware Family Court now refers family violence victims to a special case manager immediately after intake. At that point victims are briefed about services available and the legal process. Referrals are made. The case manager expedites the signing and serving of warrants, and alerts the bail hearing officer to request conditions of release which will provide protection to the victim. The project was instrumental in its support of a new Domestic Violence Bill in Delaware which, among other things, now allows the judge to order child support payments as an additional condition of release. Throughout the pre-trial stage, the case manager maintains supportive contact with the victim and makes recommendations to the deputy attorney general.

- The Circuit Court in Portland has completely revised its forms for petitions to make them more user-friendly. They have trained the clerks assigned to the protection order office on the dynamics of family violence and have recruited a volunteer to provide additional assistance to victims who need it. On the criminal side, the project is working to alter policies in the district attorney's office which are not conducive to bringing criminal cases forward, while providing individual case advocacy and treatment referrals for many victims.

Each of the three courts has also developed innovations in the areas of alcohol and drug screening, treatment resources, criminal case procedures, probation supervision,

collection of data, and liaisons with other service providers such as shelters, childrens services and law enforcement.

4. Provide case advocacy and family assessments at the earliest possible stage of court processing, and for civil cases as well as criminal ones.

Individual case or victim advocacy should become an ongoing, staffed court position to handle family violence cases no matter how they come to the attention of the court. The person in this position may also fill the role of system advocate mentioned earlier, but we suspect that if the system advocate is successful, there will no longer be a need for that position while there will likely be a need for the case advocate for as long as the court has family violence victims to respond to.

The case advocate serves as the liaison between the victim, the court and outside service agencies. Often women seeking protection orders are in need of emergency shelter or other services. A brief interview allows for an assessment of the needs of the children as well. After the initial assessment and referrals, the case advocate monitors the progress of the case through the legal process and remains in contact what the victim until the matter is resolved by the court. The advocate also accesses ongoing services for victims and other family members as needed.

One of the problems we have noticed in accessing services is that if the presenting offense is spouse abuse, the family is not eligible for services from childrens protective services unless they are also being investigated for child abuse. As stated earlier in this paper, the coincidence of spouse and child abuse is very high, and many of these families will need multiple services. But to open a child abuse investigation is often no easy task, creates additional trauma and stress for the victims and has a strong potential to re-victimize the victim by accusing her of being the neglectful or abusive parent (which is sometimes, but usually not, the case.) Our hope is that the system advocates and case advocates will devise a way to access treatment and service slots for

violent families on a voluntary basis - perhaps in the name of "abuse prevention" or "reasonable efforts" since it certainly would constitute both.

5. Insure that the policies and activities of the district attorney's office are aligned and sensitive to the issues of justice for offenders and victims in violent families.

Sometimes district attorneys have standards of self-assessment which are counter-productive when dealing with family violence cases. By their existing criteria, not many domestic violence cases can be counted as a "win." And the ones that can may take an inordinate amount of work. Understandably, district attorneys get very weary of reluctant victims, and often do not feel it is their role to represent victims in civil proceedings. We have found that the district attorney's office can make or break a project to improve the court system's handling of family violence. For example, in one site the policy of the district attorney is to not issue any case that does not have a very strong possibility of a conviction. The deputy district attorney in charge of domestic assaults has interpreted this to mean there must be a victim who is solidly committed to prosecution and is willing to testify. This policy alone knocks out many, many cases. But even worse, the district attorney's office has a local policy that the victim must show up at arraignment the day following the arrest to sign a complaint, or the case is dismissed. Most victims know nothing about the need to be at the arraignment, and probably are in no shape - emotionally or physically - to be there anyway. The result of these policies is that only 5% of arrests for domestic assault ever end up in court in that particular city.

It another city, prior to the implementation of this project the district attorney's policy was to not represent the victims in misdemeanor assault hearings. The attorneys felt there were limited staff resources and it was more important to prosecute delinquents. So the battered woman was left to prosecute her own case in court, often

pitted against the attorney her batterer had hired! That policy was changed along with others, and victims are now receiving much more sensitive treatment in that court. There are a number of models nationally of effective policies for prosecution of domestic violence: San Francisco, Baltimore, Seattle, Milwaukee, Indianapolis and West Palm Beach. We believe it is necessary for the district attorney's office to have a fairly aggressive policy of prosecution to support the other justice system components in this area.

6. Issue dispositions and court orders in family violence cases which are sensitive to all family members and offer a comprehensive response.

In a criminal case, judges should consider punishment and accountability for the offender, *and* substance abuse treatment and batterers counseling (addressing only one of these two problems will not solve the other one), *and* protection for the victim, *and* resolution of outstanding family matters such as where various family members will be living, and providing for custody, visitation and child support. Additionally, inquiries should be made as to the care and protection of children with recommendations that voluntary services be provided for family members as needed.

Whether family members are living together or apart, resolution of the critical issues for violent families only begins at the court hearing. The court should make every attempt to insure that the issues will be addressed in some way. For example, the children in violent families are seriously scarred by witnessing abuse (Davis and Carlson, 1987; Gelles & Straus, 1988). Without counseling or some form of intervention they are much more likely to reappear in court as a delinquent or a victim or perpetrator of domestic abuse. Similarly, the direct victim has been deeply scarred by her abuse. Under the circumstances, she may also suddenly become a single mother and provider for her children. She may need counseling, education and employment assistance, emergency economic aid, parenting support or a variety of other services.

Judges should insure at the time of sentencing that these victims are not forgotten and services are made available.

In civil cases, judges should address all of the issues discussed above to the extent allowable. Sensitivity to the needs of the victim and the children is extremely important. Ask about financial and service needs; provide for child support; inquire about the abuser's use and possession of weapons; insure that visitation is supervised and safe.

7. Coordinate civil and criminal matters involving the same family.

If this cannot be accomplished by combining various hearings, or holding all matters in one family before a single judge, then at *least* be sure that all of the agencies and personnel from various courts have *all* of the family information available. We believe that many actors in the system, including judges, district attorneys, childrens protective services workers, and probation officers, would be making vastly different decisions if they had the whole picture instead of just their own little piece of it. Technology exists to access all the necessary information for "the Smith Family" but unfortunately it is not yet available in very many systems. Until it is, someone either pre-trial or for the pre-sentencing investigation will have to dig it all up by hand. Judges should insist on this family profile prior to sentencing.

In the future, courts should look towards establishing coordinated information systems. Current information on case status and court orders should be available to law enforcement, district attorneys and court officials. Case tracking should be available under family names as well as whatever other means the court uses. It should be possible to check on both criminal and civil cases in this way. With this kind of information available, family violence patterns will be apparent much earlier. Significant interventions early on may well reduce felonies and other serious cases.

Lastly, under this topic of coordinating civil and criminal matters, we believe that

in family violence cases simultaneous filings in both civil court and criminal court are often more appropriate than choosing one or the other, as is commonly done. Clerks and district attorneys discourage domestic abuse victims from pursuing both, or don't even make the victim aware that the option exists. A change in this policy has resulted in a ten-fold increase in criminal filings in domestic violence cases in one of the project sites. In child abuse cases, the two systems don't trust each other and tend to prefer to keep the case to themselves. We must believe that each part of the court system has something important to offer violent families, and combine the best of what we can offer and process cases *that* way!

8. Enforce court orders diligently in family violence cases, and supervise offenders like the high risk cases they are.

The consequence of not doing so is almost inevitably more violence and sometimes homicide (DOJ, Uniform Crime Reports, 1986; DOJ Special Report, 1986). Yet probation departments traditionally consider "domestics" as cases needing little or no supervision. Even willing police and probation departments face numerous difficulties in trying to enforce dispositions and protection orders. According to standard criteria such as history of criminal behavior, violence, alcohol or drug involvement, denial, access to potential victims and presence of triggering stimuli, batterers actually fit the profile of high-risk offenders in need of maximum supervision (Klein, 1989). Along with all the other parts of the system, probation departments must change their policies and practices regarding family violence cases. In addition to providing a high level of offender supervision and monitoring participation in court-ordered treatment, probation officers need to provide support and protection to victims and other family members. While this is not traditionally a probation department function, the family dynamics and known potential for re-victimization make it incumbent upon the probation department to have supportive and ongoing contact with victims. Our experience is that the dual

functions of supervising the offender and supporting the victim are best assigned to different personnel to avoid difficult role conflicts.

In civil orders (and in some criminal case orders) there are many provisions for which enforcement is critical to the safety and well-being of the victim. Assuming that law enforcement officers can enforce the stay-away and refrain-from-abuse provisions, the court's main responsibilities are to enforce the parts of the order relative to custody, visitation, support and so forth. The probation department in one of our project sites has established a probation officer position to enforce these provisions in both protection orders and probation orders. In the process of monitoring child support payments, the probation officer maintains regular contact with victims and makes a variety of other treatment and service referrals. This seems to be working very well. In less than a year's time, that one probation officer has been responsible for collecting $47,000 in child support for victims of domestic violence!

Finally, we recommend that probation departments consider a "Family Team" approach, staffed by officers who handle domestic violence, child abuse and neglect and delinquency cases. This enhances coordination of family matters and allows for a more comprehensive approach to families with multiple problems. The team also serves as a liaison with relevant outside agencies such as childrens protective services, police, shelters and treatment providers.

9. Train court personnel, judges, district attorneys and probation officers in the area of family violence.

This is a critical need which cannot be overlooked when attempting to implement significant interventions. What is different about training in this area is that in addition to providing information and how-to's, the training must also address the "heart" issues. By this we mean overcoming feelings and deeply ingrained attitudes about women and men, the balance of power between the sexes, our natural distaste for

such cases, frustration with victims who don't change the way we think they should, our insensitivity to the dynamics of the family, and understanding the courage it takes for victims to come to court. There are many important issues for such training. The manner in which women and families are treated by justice system personnel will have a direct impact on our success in solving the family violence problem. For many years domestic violence victims have not been treated well by the system and so have attempted to deal with their problems elsewhere. With new availability of protection orders and changes in police arrest policies, the courts are seeing increasing numbers of family violence cases every year. It is time to examine ourselves, our practices and attitudes and see where we can make improvements. Training provides the forum to begin this process.

The practices described above will provide for a far more significant court intervention in cases of family violence than currently exists in the vast majority of courts across the nation. However, much remains to be done beyond our practice recommendations. There are major problems which have not been addressed in this paper. A very practical obstacle is the sheer number of cases presented in most courts. In larger cities, the number of restraining orders issued is fast approaching ten thousand annually. These numbers are steadily increasing along with the numbers of criminal filings for family violence. Given the legitimate needs of other judicial and social service specializations, we are faced with excruciating decisions about where to prioritize the use of existing resources. The chaotic nature of the timing of the many family events which are related to violent families makes our efforts at significant interventions even more difficult.

There are many important questions still unanswered. Further research is critical to continued progress. In the area of protection orders, we need to learn how effective they are in protecting victims from future violence. Should they be available to

children? And are police departments providing adequate enforcement? In training judges, we need to be able to tell them what the most effective dispositions and court orders should include. Probation departments need guidelines about supervising family violence offenders - how much and for how long? What methods of treatment for batterers, sexual abusers and abusive parents are the most effective?

In terms of allocating court resources, it would be a tremendous advantage to know what the actual co-incidence of various kinds of court cases involving members of one family is. Is the increase in domestic violence cases going to overload the system, or are we in fact already dealing with these families in other ways? What is the best way to combine or coordinate civil and criminal family matters?

Research into the correlates and causes of family violence will help us devise more significant responses. Is there a unique theory of *family* violence which outlines the similarities and distinctions between stranger and family violence? Answers to these questions will lead to specialized policies for significant interventions and treatments.

The court system is not in this alone. Nor does the solution to the problem of family violence lie within the court system. Family violence has been around for a long, long time. Our efforts to put an end to it are embryonic. Yet, they are already making a difference. The court does play an important role in molding community values. Ultimately, the solution lies in shaping a society which chooses to be non-violent, just and free of oppression. It is appropriate, we think, that the justice system and the judiciary take a leadership role in promoting those kinds of social values. Implementation of significant interventions in family violence cases will cause all kinds of social change beyond the courtroom.

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INTEGRATION OF CHILD AND FAMILY LEGAL PROCEEDINGS: COURT STRUCTURE, STATUTES, RULES, AND LITERATURE

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This paper results from research conducted by the National Center for State Courts under Grant No. 88-02B-C-034 from the State Justice Institute. The opinions and recommendations expressed are those of the authors and do not necessarily reflect the views or policies of the grantor or grantee.

INTRODUCTION

This paper surveys court structure, statutes, rules, and literature that relate to the integration of child and family legal proceedings. It is concerned with intracourt and intra-judicial district family-related cases. It does not consider interdistrict, interstate, or international family-related proceedings. It is organized into four sections:

I. A State-by-State Description of Courts Having Jurisdiction over Six Family Casetypes

This section describes the particular court or courts in each state that have jurisdiction over six casetypes: juvenile delinquency, status offense, and dependency, neglect, and abuse*; dissolution (divorce); paternity/child support; adoption; domestic violence protection orders; and intra-family misdemeanor offenses. When the number of courts for all six casetypes are viewed cumulatively in Map I, just eleven states and the District of Columbia are seen to maintain a single court for all six casetypes. Other states use from two to seven courts to handle these six casetypes.

Since individual families may be engaged in several types of actions, it is important to know which court(s) in each state hear family-related cases. This first part of this analysis considers courts with juvenile jurisdiction since the major focus of integrated processing concerns children. Next, a significant number of states are seen to use courts for dissolution (divorce) that are different from the courts of juvenile jurisdiction. A review of the courts with jurisdiction over paternity/child support, adoption, domestic violence protection orders, and intra-family misdemeanor offenses reflects that still different courts are used in many states. This progression has impact on the integration of case handling.

* These three types of juvenile matters have been consolidated into one casetype for the purpose of this analysis.

II. The Impact of Court Structure on Child and Family Legal Proceedings

This section discusses various issues that arise when child and family proceedings are heard in one or more than one court. An assumption can be made that case coordination is more readily achieved when these matters are concentrated in a single court. Yet case concentration in one setting is only the beginning foundation for case coordination. National standards contend that the organization of a family court division in the general jurisdiction trial court is the preferred direction. Such an organization or reorganization may or may not achieve effective case coordination. Experience in the eleven "unified court" states and the District of Coumbia suggests that these jurisdictions generally are not able to achieve meaningful case coordination.

III. Statutes and Rules That Encourage Case Integration

Since there is no single national approach to court structure in dealing with these matters, and since most states have not organized themselves into integrated family courts/divisions, statutes and rules that encourage case coordination between different courts or court divisions are presented in the paper's third section. Short of structural reorganization, these rules and statutes offer another formal solution to the fragmentation of the family by the courts. But here, as with structural integration, there are no research findings as to the frequency or effectiveness of use of existing statutory and procedural rules for increasing the integration of family-related cases.

Rules and statutes are organized into six categories: 1) case coordination authority, 2) the primacy of the jvuenile court's dependency/neglect/abuse jurisdiction, 3) juvenile court termination of dependency/neglect/abuse jurisdiction, 4) mandating or authorizing case transfers between courts or court divisions, 5) provisions for notice of multiple proceedings, and 6) additional provisions that facilitate improved case integration or more expeditious proceedings.

IV. Analysis

This final section raises a series of questions that are pertinent to case integration through structure or by coordination via statutes and rules. A primary question is the extent to which families typically experience more than one type of proceeding that involves one or more family members and the actual nature of these multiple proceedings. Related questions merit systematic investigation: Do states and trial courts with unified structures for family-related cases achieve unified case management and provide judicial hearing officer continuity or information continuity for hearing officers? Is social service delivery integrated in these settings? In states with unified structures, are the effects consistent from trial court to trial court?

Rigorous and comparative examination of such issues within and across states that have unified trial courts or family courts/divisions, in other states that provide coordinating statutes and rules, and in states where neither structure nor formal procedure suggests that integrated case handling is the rule is the next step. This paper provides the foundation for such research through the classification of states according to court structure, discussion of integration issues related to structure, review of formal statutory and procedural authority for case integration, and analysis of integration issues related to unified courts and statutory and rule provisions.

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I. A STATE-BY-STATE DESCRIPTION OF COURTS HAVING JURISDICTION OVER SIX FAMILY CASETYPES

A. Overview

Research was conducted* as to the particular court or courts in each state in 1988 that has or have jurisdiction over six family-related casetypes: juvenile delinquency, status offense, dependency/neglect/abuse**; dissolution (divorce); paternity/child support; adoption; domestic violence protection orders; and intra-family misdemeanor offenses.

These are casetypes that may significantly affect a family's welfare. A family may benefit from some form of case integration when these types of proceedings arise concurrently or sequentially with the same family. There are other pertinent casetypes that are not considered here such as child and adult civil mental illness commitment proceedings, guardianship of the child, and intra-family felony offenses.

The following definitions are used to describe court types:

1. General jurisdiction trial court. This court has jurisdiction over all subject matter or persons within a state's geographical limits except those that may be assigned by law to special jurisdiciton or limited jurisdiction trial courts.

   These courts are the upper level courts or the only trial court in a state. They are known, frequently, as district, circuit, or superior courts, but in some states the district or circuit court may refer to a limited jurisdiction trial court.

* The primary source for this research was State Court Organization 1987 (Williamsburg, VA.: National Center for State Courts, 1988). State sources were contacted directly when there was uncertainty as to the particular court or courts having jurisdiction. Despite serious attempts to eliminate error, errors may occur with jurisdictional analysis. The authors will appreciate corrective suggestions.

** These three types of juvenile matters have been consolidated into one casetype for the purpose of this analysis.

All states have just one general jurisdiction trial court except for Indiana where there is concurrent jurisdiction between the superior and circuit court.

2. Special jurisdiction trial court. This court has jurisdiction over only the special subject matter or persons assigned by law to the court.

   These courts are separately structured from other courts. They include separate juvenile, family, probate, and chancery courts. This type of court may be organized as a statewide entity or serve one or more geographically circumscribed areas within a state.

3. Limited jurisdiction trial court. This court's jurisdiction is restricted to the subject matter or persons assigned by law.

   These are the lower level courts. This type of court may be organized as a statewide entity or serve one or more geographically circumscribed areas within a state. Not uncommonly, there may be one or more limited jurisdiction trial courts within a particular geographical area.

Table I provides a cumulative summary of state court structure, the particular states that use one, two, three, four, or five or more different courts to handle these six casetypes, whether these courts are general jurisdiction, special jurisdiction, or limited jurisdiction trial courts, and the specific court or courts having jurisdiction over the six casetypes.

When the six casetypes are viewed cumulatively, only eleven states and the District of Columbia exclusively vest jurisdiction for all casetypes in one court. This court is the general jurisdiction trial court except for the family court in Delaware. Eleven states and Puerto Rico vest jurisdiction over the six casetypes in two courts, fourteen states in three courts, five states in four courts, and nine states in five or more courts.

TABLE I

Legend

GJ = General jurisdiction trial court
SJ = Special jurisdiction trial court
LJ = Limited jurisdiction trial court

State-by-State Cumulative Summary: Courts having jurisdiction over juvenile delinquency, status offense, and dependency, neglect, and abuse; dissolution (divorce); paternity and child support; adoption of children; domestic violence protection orders; and intra-family misdemeanor offense.

A. One Court Structure (11 states and District of Columbia)

1. One general jurisdiction trial court

District of Columbia	Superior Court
Hawaii	Circuit Court
Idaho	District Court
Illinois	Circuit Court
Iowa	District Court
Kansas	District Court
Minnesota	District Court
Missouri	Circuit Court
Oklahoma	District Court
South Dakota	Circuit Court
Wisconsin	Circuit Court

2. One special jurisdiction trial court

Delaware	Family Court

B. Two Court Structure (11 states and Puerto Rico)

1. One general jurisdiction and one special jurisdiction trial court

Connecticut	Superior Court (GJ); Probate Court (SJ)

2. One general jurisdiction and one limited jurisdiction trial court

Alaska	Superior Court (GJ); District Court (LJ)
Florida	Circuit Court (GJ); County Court (LJ)
Kentucky	Circuit Court (GJ); District Court (LJ)
Maryland	Circuit Court (GJ); District Court (LJ)
New Jersey	Superior Court (GJ); Municipal Court (LJ)
North Carolina	Superior Court (GJ); District Court (LJ)
North Dakota	District Court (GJ); County Court (LJ)
Puerto Rico	Superior Court (GJ); District Court (LJ)
Virginia	Circuit Court (GJ); District Court (LJ)
West Virginia	Circuit Court (GJ); Magistrate Court (LJ)

3. One special jurisdiction and one limited jurisdiction trial court

Rhode Island	Family Court (SJ); District Court (LJ)

C. Three Court Structure (14 states)

1. One general jurisdiction, one special jurisdiction, and one limited jurisdiction trial court

Alabama	Circuit Court (GJ); Probate Court (SJ); District Court (LJ)
Colorado	District Court (GJ); Juvenile Court (SJ); County Court (LJ)
Georgia	Superior Court (GJ); Juvenile Court (SJ); State Court (LJ)
Maine	Superior Court (GJ); Probate Court (SJ); District Court (LJ)
Nebraska	District Court (GJ); Juvenile Court (SJ); County Court (LJ)
Vermont	Superior Court (GJ); Probate Court (SJ); District Court (LJ)

2. One general jurisdiction and two limited jurisdiction trial courts

Arizona	Superior Court (GJ); Municipal Court (LJ); Justice of the Peace (LJ)
California	Superior Court (GJ); Municipal Court (LJ); Justice Court (LJ)
Montana	District Court (GJ); Municipal Court (LJ); Justice of the Peace (LJ)
Nevada	District Court (GJ); Justice Court (LJ); Municipal Court (LJ)
New Mexico	District Court (GJ); Magistrate Court (LJ); Metropolitan Court (LJ)
Ohio	Court of Common Pleas (GJ); County Court (LJ); Municipal Court (LJ)
Washington	Superior Court (GJ); District Court (LJ); Municipal Court (LJ)

3. One special jurisdiction and two limited jurisdiction trial courts

South Carolina	Family Court (SJ); Magistrate Court (LJ); Municipal Court (LJ)

TABLE I (Continued)

D. Four Court Structure (5 states)

1. One general jurisdiction, one special jurisdiction, and two limited jurisdiction trial courts

Michigan	Circuit Court (GJ); Probate Court (SJ); District Court (LJ); Municipal Court (LJ)
New Hampshire	Superior Court (GJ); Probate Court (SJ); District Court (LJ); Municipal Court (LJ)
Utah	District Court (GJ); Juvenile Court (SJ); Circuit Court (LJ); Justice of the Peace Court (LJ)

2. One general jurisdiction and three limited jurisdiction trial courts

Pennsylvania	Court of Common Pleas (GJ); District Justice Court (LJ); Municipal Court (LJ); Magistrate Court (LJ)
Wyoming	District Court (GJ); County Court (LJ); Municipal Court (LJ); Justice of the Peace Court (LJ)

E. A Structure of Five or More Courts (9 states)

1. One general jurisdiction, two special jurisdiction, and two limited jurisdiction trial courts

Louisiana	District Court (GJ); Juvenile Court (SJ); Family Court (SJ); City Court (LJ); Parish Court (LJ)
Massachusetts	Superior Court (GJ); Juvenile Court (SJ); Probate and Family Court (SJ); District Court (LJ); Municipal Court (LJ)
Mississippi	Circuit Court (GJ); Chancery Court (SJ); Family Court (SJ); County Court (LJ); Justice Court (LJ)

2. One general jurisdiction, one special jurisdiction, and three limited jurisdiction trial courts

Arkansas	Circuit Court (GJ); Chancery and Probate Court (SJ); City Court (LJ); Police Court (LJ); Municipal Court (LJ)

3. One general jurisdiction and four limited jurisdiction trial courts

Oregon	Circuit Court (GJ); County Court (LJ); District Court (LJ); Justice Court (LJ); Municipal Court (LJ)
Texas	District Court (GJ); County Court at Law (LJ); Constitutional County Court (LJ); Municipal Court (LJ); Justice of the Peace Court (LJ)

4. One general jurisdiction, two special jurisdiction, and three limited jurisdiction trial courts

Tennessee	Circuit Court (GJ); Juvenile Court (SJ); Chancery Court (SJ); General Sessions Court (LJ); Criminal Court (LJ); Municipal Court (LJ)

5. One general jurisdiction, two special jurisdiction, and four limited jurisdiction trial courts

New York	Supreme Court (GJ); Family Court (SJ); Surrogate's Court (SJ); District Court (LJ); City Court (LJ); Criminal Court (LJ); Town and Village Justice Court (LJ)

6. Two general jurisdiction, one special jurisdiction, and four limited jurisdiction trial courts

Indiana	Superior Court (GJ); Circuit Court (GJ); Probate Court (SJ); County Court (LJ); City Court (LJ); Town Court (LJ); Municipal Court (LJ)

The following parts of this section provide a state-by-state description of the particular court or courts having jurisdiction over each of these six casetypes. This casetype-by-casetype analysis forms the basis for the cumulative summaries that are described in this paper. The number of courts in each state by casetype were aggregated so that the number of courts for one, two, three, four, five, and six casetypes could be described cumulatively.

B. Juvenile Matters

There are multiple approaches to court structure for courts of juvenile jurisdiction as shown by Table II. The primary typology is that of a general jurisdiction trial court. Twenty-five states, the District of Columbia, and Puerto Rico placed these matters in that one court.

Altogether there are nine other types of court structure for courts of juvenile jurisdiction. A second typology, a special jurisdiction trial court, includes six states: Delaware, Michigan, New York, Rhode Island, South Carolina, and Utah. A third typology, a limited jurisdiction trial court, also includes six states: Kentucky, Maine, New Hampshire, North Carolina, Vermont, and Virginia.

Thirteen states place this jurisdiction in two or more courts. For example, there may be a general jurisdiction trial court along with one or more special jurisdiction trial courts and/or one or more limited jurisdiction trial courts. There are other dual or multiple court structures. One of these courts, typically, has exclusive jurisdiction in a particular part or parts of that state. The jurisdiction, however, is concurrent in several states or parts of those states.

Altogether, fifteen states place this jurisdiction in whole or part in a limited jurisdiction trial court. In thirty-seven states, the District of Columbia, and Puerto Rico, one trial court has exclusive jurisdiction over juvenile matters. Nationally, seventy-two courts are engaged with this casetype.

TABLE II

COURTS HAVING JURISDICTION OVER
JUVENILE DELINQUENCY, STATUS OFFENSE, AND
DEPENDENCY, NEGLECT, AND ABUSE

A. One Court Structure (37 states, District of Columbia, Puerto Rico)

1. One general jurisdiction trial court

Alaska	Superior Court	Nevada	District Court
Arizona	Superior Court	New Jersey	Superior Court
California	Superior Court	New Mexico	District Court
Connecticut	Superior Court	North Dakota	District Court
District of Columbia	Superior Court	Ohio	Court of Common Pleas
Florida	Circuit Court	Oklahoma	District Court
Hawaii	Circuit Court	Oregon	Circuit Court
Idaho	District Court	Pennsylvania	Court of Common Pleas
Illinois	Circuit Court	Puerto Rico	Superior Court
Iowa	District Court	South Dakota	Circuit Court
Kansas	District Court	Washington	Superior Court
Minnesota	District Court	West Virginia	Circuit Court
Missouri	Circuit Court	Wisconsin	Circuit Court
Montana	District Court		

2. One special jurisdiction trial court

Delaware	Family Court
Michigan	Probate Court
New York	Family Court
Rhode Island	Family Court
South Carolina	Family Court
Utah	Juvenile Court

3. One limited jurisdiction trial court

Kentucky	District Court
Maine	District Court
New Hampshire	District Court
North Carolina	District Court
Vermont	District Court
Virginia	District Court

B. Two Court Structure (7 states)

1. One general jurisdiction and one special jurisdiction trial court

Arkansas	Circuit Court; Chancery and Probate Court
Colorado	District Court; Juvenile Court
Georgia	Superior Court; Juvenile Court

2. One general jurisdiction and one limited jurisdiction trial court

Alabama	Circuit Court; District Court
Maryland	Circuit Court; District Court

3. One special jurisdiction and one limited jurisdiction trial court

Nebraska	Juvenile Court; County Court
Tennessee	Juvenile Court; General Sessions Court

C. Three Court Structure (5 states)

1. One general jurisdiction and two limited jurisdiction trial courts

Texas	District Court; County Court at Law; Constitutional County Court
Wyoming	District Court; County Court; Municipal Court

2. Two general jurisdiction and one special jurisdiction trial courts

Indiana Superior Court; Circuit Court; Probate Court

3. Two special jurisdiction and one limited jurisdiction trial courts

Massachusetts	Juvenile Court; Probate and Family Court; District Court
Mississippi	Chancery Court; Family Court; County Court

D. Five Court Structure (1 state)

1 One general jurisdiction, two special jurisdiction, and two limited jurisdiction trial courts

Louisiana District Court; Juvenile Court; Family Court; City Court; Parish Court

C. Dissolution (Divorce)

The primary typology of courts having jurisdiction over dissolution (divorce), as shown by Table III, is that of a general jurisdiction trial court. Thirty-eight states, the District of Columbia, and Puerto Rico fit this typology.

A second typology, a special jurisdiction trial court, includes six states: Arkansas, Delaware, Massachusetts*, Mississippi, Rhode Island, and South Carolina.

Only one state, North Carolina, vests this authority entirely in a limited jurisdiction trial court. Altogether, forty-five states, the District of Columbia, and Puerto Rico maintain exclusive jurisdiction over dissolution in a single trial court. Five states use a two court structure.

When viewed cumulatively, one trial court has exclusive jurisdiction over juvenile and dissolution matters in twenty-nine states, the District of Columbia, and Puerto Rico. The dissolution court, frequently, is a different court than the juvenile court. Further, in states that use two or more courts of juvenile jurisdiction, at least one of these courts does not have dissolution jurisdiction. Nationally, a total of eighty-four courts are engaged with these two casetypes.

* For the purposes of this analysis, the probate and family court in Massachusetts is considered a special jurisdiction trial court (other Massachusetts trial courts, except for the general jurisdiction superior court, are also considered either special or limited jurisdiction trial courts).

TABLE III

COURTS HAVING JURISDICTION OVER
DISSOLUTION (DIVORCE)

A. One Court Structure (45 states, District of Columbia, Puerto Rico)

1. One general jurisdiction trial court

Alabama	Circuit Court	Nebraska	District Court
Alaska	Superior Court	Nevada	District Court
Arizona	Superior Court	New Hampshire	Superior Court
California	Superior Court	New Jersey	Superior Court
Colorado	District Court	New Mexico	District Court
Connecticut	Superior Court	New York	Supreme Court
District of Columbia	Superior Court	North Dakota	District Court
Florida	Circuit Court	Ohio	Court of Common Pleas
Georgia	Superior Court	Oklahoma	District Court
Hawaii	Circuit Court	Oregon	Circuit Court
Idaho	District Court	Pennsylvania	Court of Common Pleas
Illinois	Circuit Court	Puerto Rico	Superior Court
Iowa	District Court	South Dakota	Circuit Court
Kansas	District Court	Utah	District Court
Kentucky	Circuit Court	Vermont	Superior Court
Maryland	Circuit Court	Virginia	Circuit Court
Michigan	Circuit Court	Washington	Superior Court
Minnesota	District Court	West Virginia	Circuit Court
Missouri	Circuit Court	Wisconsin	Circuit Court
Montana	District Court	Wyoming	District Court

2. One special jurisdiction trial court

Arkansas	Chancery and Probate Court
Delaware	Family Court
Massachusetts	Probate and Family Court
Mississippi	Chancery Court
Rhode Island	Family Court
South Carolina	Family Court

3. One limited jurisdiction trial court

North Carolina	District Court

B. Two Court Structure (5 states)

1. One general jurisdiction and one special jurisdiction trial court

Louisiana	District Court; Family Court
Tennessee	Circuit Court; Chancery Court

2. One general jurisdiction and one limited jurisdiction trial court

Maine	Superior Court; District Court
Texas	District Court; County Court at Law

3. Two general jurisdiction trial courts

Indiana	Superior Court; Circuit Court

D. Paternity and Child Support

The primary typology of courts having jurisdiction over paternity/child support, as shown by Table IV, is that of a general jurisdiction trial court. Thirty-five states, the District of Columbia, and Puerto Rico fit this typology.

A second typology, a special jurisdiction trial court, includes six states: Arkansas, Delaware, Massachusetts, New York, Rhode Island, and South Carolina. One state, North Carolina, vests this authority entirely in a limited jurisdiction trial court. Altogether, forty-two states, the District of Columbia, and Puerto Rico maintain exclusive jurisdiction over paternity/child support in a single trial court.

There is a clear pattern that courts with dissolution jurisdiction also have jurisdiction with paternity/child support matters. The great majority of states confine paternity/child support exclusively to the court having dissolution jurisdiction. Only two states, New York and Virginia, vest paternity/child support jurisdiction exclusively in a court that does not have dissolution juridiction.

When viewed cumulatively, one trial court has exclusive jurisdiction over juvenile, dissolution, and paternity/child support casetypes in twenty-nine states, the District of Columbia, and Puerto Rico. Nationally, a total of eighty-five courts are engaged with these three casetypes.

TABLE IV

COURTS HAVING JURISDICTION OVER
PATERNITY AND CHILD SUPPORT

A. One Court Structure (42 states, District of Columbia, Puerto Rico)

1. One general jurisdiction trial court

Alaska	Superior Court	Montana	District Court
Arizona	Superior Court	Nebraska	District Court
California	Superior Court	Nevada	District Court
Connecticut	Superior Court	New Hampshire	Superior Court
District of Columbia	Superior Court	New Jersey	Superior Court
Florida	Circuit Court	New Mexico	District Court
Georgia	Superior Court	North Dakota	District Court
Hawaii	Circuit Court	Ohio	Court of Common Pleas
Idaho	District Court	Oklahoma	District Court
Illinois	Circuit Court	Oregon	Circuit Court
Iowa	District Court	Pennsylvania	Court of Common Pleas
Kansas	District Court	Puerto Rico	Superior Court
Maine	Superior Court	South Dakota	Circuit Court
Maryland	Circuit Court	Utah	District Court
Michigan	Circuit Court	Washington	Superior Court
Minnesota	District Court	West Virginia	Circuit Court
Mississippi	Circuit Court	Wisconsin	Circuit Court
Missouri	Circuit Court	Wyoming	District Court

2. One special jurisdiction trial court

Arkansas	Chancery and Probate Court
Delaware	Family Court
Massachsuetts	Probate and Family Court
New York	Family Court
Rhode Island	Family Court
South Carolina	Family Court

3. One limited jurisdiction trial court

North Carolina	District Court
Virginia	District Court

B. Two Court Structure (5 states)

1. One general jurisdiction and one special jurisdiction trial court

Colorado	District Court; Juvenile Court

2. One general jurisdiction and one limited jurisdiction trial court

Alabama	Circuit Court; District Court
Kentucky	Circuit Court; District Court
Texas	District Court; County Court at Law
Vermont	Superior Court; District Court

C. Three Court Structure (3 states)

1. One general jurisdiction and two special jurisdiction trial courts

Louisiana	District Court; Juvenile Court; Family Court
Tennessee	Circuit Court; Chancery Court; Juvenile Court

2. Two general jurisdiction and one special jurisdiction trial courts

Indiana Superior Court; Circuit Court; Probate Court

E. Adoption of Children

The primary typology of courts having jurisdiction over the adoption of children, as shown by Table V, is that of a general jurisdiction trial court. Twenty-nine states, the District of Columbia, and Puerto Rico fit this typology.

A second typology, a special jurisdiction trial court, includes twelve states: Alabama, Arkansas, Connecticut, Delaware, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, Rhode Island, South Carolina, and Vermont. One state, Nebraska, vests this authority entirely in a limited jurisdiction trial court. Altogether, forty-two states, the District of Columbia, and Puerto Rico maintain exclusive jurisdiction over adoption in a single trial court.

When viewed cumulatively, one trial court has exclusive jurisdiction over juvenile, dissolution, paternity/child support, and adoption casetypes in twenty-six states, the District of Columbia, and Puerto Rico. The number of states with unified court structures has reduced by three due to the adoption jurisdiction held by the probate court in Connecticut, the general jurisdiction trial court in North Carolina, and a limited jurisdiction trial court in Oregon. The total number of statewide special jurisdiction trial courts has increased significantly with the adoption casetype. This is due to the separate probate courts in Alabama, Connecticut, Maine, New Hampshire, and Vermont that maintain this jurisdiction. Nationally, a total of ninety-three courts are engaged with these four casetypes.

TABLE V

COURTS HAVING JURISDICTION OVER ADOPTION OF CHILDREN

A. One Court Structure (42 states, District of Columbia, Puerto Rico)

1. One general jurisdiction trial court

Alaska	Superior Court	Nevada	District Court
Arizona	Superior Court	New Jersey	Superior Court
California	Superior Court	New Mexico	District Court
District of Columbia	Superior Court	North Carolina	Superior Court
Florida	Circuit Court	North Dakota	District Court
Georgia	Superior Court	Ohio	Court of Common Pleas
Hawaii	Circuit Court	Oklahoma	District Court
Idaho	District Court	Pennsylvania	Court of Common Pleas
Illinois	Circuit Court	Puerto Rico	Superior Court
Iowa	District Court	South Dakota	Circuit Court
Kansas	District Court	Virginia	Circuit Court
Kentucky	Circuit Court	Washington	Superior Court
Maryland	Circuit Court	West Virginia	Circuit Court
Minnesota	District Court	Wisconsin	Circuit Court
Missouri	Circuit Court	Wyoming	District Court
Montana	District Court		

2. One special jurisdiction trial court

Alabama	Probate Court
Arkansas	Chancery and Probate Court
Connecticut	Probate Court
Delaware	Family Court
Maine	Probate Court
Massachusetts	Probate and Family Court
Michigan	Probate Court
Mississippi	Chancery Court
New Hampshire	Probate Court
Rhode Island	Family Court
South Carolina	Family Court
Vermont	Probate Court

3. One limited jurisdiction trial court

Nebraska	County Court

B. Two Court Structure (6 states)

1. One general jurisdiction and one special jurisdiction trial court

Colorado	District Court; Juvenile Court
Tennessee	Circuit Court; Chancery Court
Utah	District Court; Juvenile Court

2. One general jursdiction and one limited jurisdiction trial court

Oregon	Circuit Court; County Court
Texas	District Court; County Court at Law

3. Two special jurisdiction trial courts

New York Family Court; Surrogate's Court

C. Three Court Structure (1 state)

1. Two general jurisdiction and one special jurisdiction trial courts

Indiana Superior Court; Circuit Court; Probate Court

D. Five Court Structure (1 state)

1. One general jurisdiction, two special jurisdiction, and two limited jurisdiction trial courts

Louisiana District Court; Juvenile Court; Family Court; City Court; Parish Court

F. Domestic Violence Protection Orders

The primary typology of courts having jurisdiction over domestic violence protection orders, as shown by Table VI, is that of a general jurisdiction trial court. Twenty-nine states and the District of Columbia fit this typology. Four other states vest this jurisdiction in a single trial court: Arkansas and Delaware in a special jurisdiction trial court; North Carolina and Tennessee in a limited jurisdiction trial court.

Ten states and Puerto Rico fit a two court structure typology. Most prominent in this classification is the combination of a general jurisdiction and limited jurisdiction trial court. Four states use a three court structure for this casetype and three states use a five court structure.

When viewed cumulatively, one trial court has exclusive jurisdiction over juvenile, dissolution, paternity/child support, adoption, and domestic violence protection order casetypes in twenty-one states and the District of Columbia. These matters are heard more frequently in limited jurisdiction trial courts than the other casetypes that have been considered previously. Nationally, a total of 110 courts are engaged with these five casetypes.

TABLE VI

COURTS HAVING JURISDICTION OVER
DOMESTIC VIOLENCE PROTECTION ORDERS

A. One Court Structure (33 states and District of Columbia)

1. One general jurisdiction trial court

Alabama	Circuit Court	Minnesota	District Court
Alaska	Superior Court	Missouri	Circuit Court
California	Superior Court	Montana	District Court
Colorado	District Court	Nebraska	District Court
Connecticut	Superior Court	Nevada	District Court
District of Columbia	Superior Court	New Mexico	District Court
Florida	Circuit Court	North Dakota	District Court
Georgia	Superior Court	Ohio	Court of Common Pleas
Hawaii	Circuit Court	Oklahoma	District Court
Idaho	District Court	Oregon	Circuit Court
Illinois	Circuit Court	Pennsylvania	Court of Common Pleas
Iowa	District Court	South Dakota	Circuit Court
Kansas	District Court	Utah	District Court
Kentucky	Circuit Court	West Virginia	Circuit Court
Michigan	Circuit Court	Wisconsin	Circuit Court

2. One special jurisdiction trial court

Arkansas	Chancery and Probate Court
Delaware	Family Court

3. One limited jurisdiction trial court

North Carolina	District Court
Tennessee	General Sessions Court

B. Two Court Structure (10 states and Puerto Rico)

1. One general jurisdiction and one special jurisdiction trial court

Louisiana	District Court; Family Court

2. One general jurisdiction and one limited jurisdiction trial court

Maine	Superior Court; District Court
Maryland	Circuit Court; District Court
New Jersey	Superior Court; Municipal Court
Puerto Rico	Superior Court; District Court
Vermont	Superior Court; District Court
Virginia	Circuit Court; District Court
Wyoming	District Court; County Court

3. One special jurisdiction and one limited jurisdiction trial court

New Hampshire	Probate Court; District Court
Rhode Island	Family Court; District Court
South Carolina	Family Court; Magistrate Court

C. Three Court Structure (4 states)

1. One general jurisdiction and two limited jurisdiction trial courts

Arizona	Superior Court; Municipal Court; Justice of the Peace
Washington	Superior Court; District Court; Municipal Court

2. One general jurisdiction, one special jurisdiction, and one limited jurisdiction trial court

Massachusetts	Superior Court; Probate and Family Court; District Court
Mississippi	Circuit Court; Chancery Court; County Court

D. Five Court Structure (3 states)

1. One general jurisdiction and four limited jurisdiction trial courts

Texas	District Court; County Court at Law; Constitutional County Court; Municipal Court; Justice of the Peace Court

2. One special jurisdiction and four limited jurisdiction trial courts

New York	Family Court; District Court; City Court; Criminal Court; Town and Village Justice Court

3. Two general jurisdiction, one special jurisdiction, and two limited jurisdiction trial courts

Indiana	Superior Court; Circuit Court; Probate Court; County Court; Municipal Court

G. Intra-Family Misdemeanor Offenses

The typologies of courts having jurisdiction over intra-family misdemeanor offenses, as shown by Table VII, are diverse. No one typology is dominant; three major types of court structure are evident. Eleven states and the District of Columbia maintain this jurisdiction exclusively in a general jurisdiction trial court. Eleven states maintain this jurisdiction exclusively in a limited jurisdiction trial court. Ten states maintain this jurisdiction in two limited jurisdiction trial courts. It should be noted that Delaware also maintain this jurisdiction in a single court, its family court.

Considering all the courts used for this casetype, nineteen states, the District of Columbia, and Puerto Rico use a general jurisdiction trial court, just four states use a special jurisdiction trial court, and thirty-nine states use one or more limited jurisdiction trial courts. Not unexpectedly, a limited jurisdiction trial court is the most common forum for these matters.

When viewed cumulatively, one trial court has exclusive jurisdiction over juvenile, dissolution, paternity/child support, adoption, domestic violence protection orders, and intra-family misdemeanor offense casetypes in just eleven states (Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Oklahoma, South Dakota, Wisconsin) and the District of Columbia. Nationally, a total of 148 courts are engaged with these six casetypes.

TABLE VII

COURTS HAVING JURISDICTION OVER
INTRA-FAMILY MISDEMEANOR OFFENSES

A. One Court Structure (23 states and District of Columbia)

1. One general jurisdiction trial court

Connecticut	Superior Court
District of Columbia	Superior Court
Hawaii	Circuit Court
Idaho	District Court
Illinois	Circuit Court
Iowa	District Court
Kansas	District Court
Minnesota	District Court
Missouri	Circuit Court
Oklahoma	District Court
South Dakota	Circuit Court
Wisconsin	Circuit Court

2. One special jurisdiction trial court

Delaware	Family Court

3. One limited jurisdiction trial court

Alabama	District Court
Alaska	District Court
Colorado	County Court
Florida	County Court
Kentucky	District Court
Maine	District Court
Maryland	District Court
Nebraska	County Court
New Jersey	Municipal Court
Vermont	District Court
Virginia	District Court

B. Two Court Structure (15 states and Puerto Rico)

1. One general jurisdiction and one limited jurisdiction trial court

Georgia	Superior Court; State Court
North Carolina	Superior Court; District Court
North Dakota	District Court; County Court
Puerto Rico	Superior Court; District Court
West Virginia	Circuit Court; Magistrate Court

2. One special jurisdiction and one limited jurisdiction trial court

Rhode Island	Family Court; District Court

3. Two limited jurisdiction trial courts

Arizona	Municipal Court; Justice of the Peace Court
California	Municipal Court; Justice Court
Louisiana	City Court; Parish Court
Michigan	District Court; Municipal Court
New Hampshire	District Court; Municipal Court
Ohio	County Court; Municipal Court
South Carolina	Magistrate Court; Municipal Court
Utah	Circuit Court; Justice of the Peace Court
Washington	District Court; Municipal Court
Wyoming	County Court; Justice of the Peace Court

TABLE VII (Continued)

C. Three Court Structure (8 states)

1. One general jurisdiction and two limited jurisdiction trial courts

Mississippi	Circuit Court; County Court; Justice Court
Montana	District Court; Municipal Court; Justice of the Peace
Nevada	District Court; Justice Court; Municipal Court
New Mexico	District Court; Magistrate Court; Metropolitan Court

2. Three limited jurisdiction trial courts

Arkansas	City Court; Police Court; Municipal Court
Oregon	District Court; Justice Court; Municipal Court
Pennsylvania	District Justice Court; Municipal Court; Magistrate Court
Tennessee	General Sessions Court; Criminal Court; Municipal Court

D. A Structure of Four or More Courts (4 states)

1. One general jurisdiction, one special jurisdiction, and two limited jurisdiction trial courts

Massachusetts	Superior Court; Probate and Family Court; District Court; Municipal Court

2. Four limited jurisdiction trial courts

Texas	County Court at Law; Constitutional County Court; Justice of the Peace Court; Municipal Court

3. One special jurisdiction and four limited jurisdiction trial courts

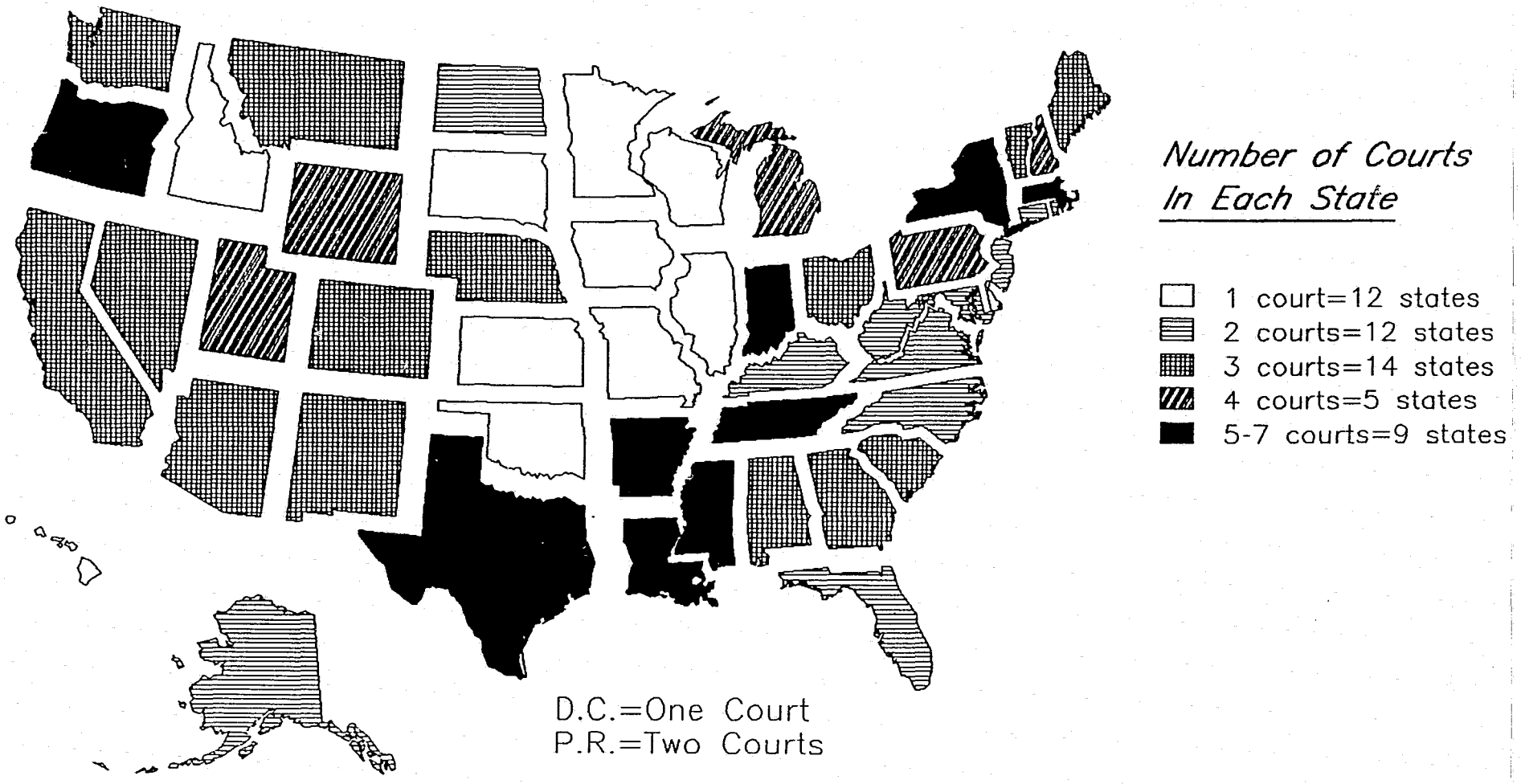
New York	Family Court; District Court; City Court; Criminal Court; Town and Village Justice Court

4. Two general jurisdiction and four limited jurisdiction trial courts

Indiana	Superior Court; Circuit Court; County Court; City Court; Town Court; Municipal Court

MAP I

Number of Courts w/Initial Jurisdiction: Delinquency, Dependency, Neglect, Abuse; Dissolution; Paternity/Child Support; Adoption; Domes.Vio.Protec. Orders; and Intra-Family Misdemeanors, 1988



H. Summary

Map I illustrates the cumulative number of courts that have jurisdiction over these six casetypes in each of the fifty states, the District of Columbia, and Puerto Rico. The map shows in a different and more graphic way the basic information that was summarized in Table I. Eleven states and the District of Columbia provide jurisdiction over the six casetypes in just one court. This is the general jurisdiction trial court except in Delaware where the one court is the family court. Eleven states and Puerto Rico use two courts for the six casetypes. Fourteen states use three courts. Five states use four courts. Nine states use from five to seven courts. Nationally, the cumulative number of courts that are engaged with these six casetypes is 148.

II. THE IMPACT OF COURT STRUCTURE ON CHILD AND FAMILY LEGAL PROCEEDINGS

Section I has described the number and types of courts that have jurisdiction over these proceedings. It needs to be stated, however, that the presence of multiple court jurisdiction with a single casetype may or may not result in multiple court jurisdiction in practice. Although two courts statewide may have jurisdiction over a single casetype, a statute may restrict jurisdiction over this casetype to a single court in a particular district. For example, the jurisdiction of the separate Denver Juvenile Court is not concurrent with the district court in that jurisdiction; elsewhere in Colorado, all district courts have jurisdiction over juvenile matters. The circuit court in Maryland has juvenile jurisdiction statewide except for Montgomery County where the district court maintains exclusive juvenile jurisdiction. Conversely, two or more courts may have concurrent jurisdiction over a particular matter in practice. The circuit and superior court in Indiana maintain concurrent jurisdiction over child and family legal proceedings; these matters can be brought in either court.

Further, as with intra-family misdemeanor offenses, not all of the lower courts listed are omnipresent throughout each state; there is greater choice of forum in some parts of some states.

Also, as stated earlier, the Section I description was limited to six family casetypes. Several other family-related casetypes are pertinent to the integration concern but have not been considered here.

Note should be made, also, that not all courts having juvenile jurisdiction are authorized to both adjudicate dependency/neglect/abuse and, later, to proceed to terminate parental rights to this child. For example, in Kentucky, the juvenile session of the district (lower) court performs the first function, but the circuit (upper) court is solely authorized to terminate parental rights (K.R.S.620.070,625.020).

Finally, the three subsets of juvenile matters are characteristically handled by the same court or courts, but there are exceptions to this rule.

Section II will consider the implications of various court structures on the integration of family-related proceedings.

A. CONSOLIDATION OF THE PRIMARY PROCEEDINGS IN A SINGLE COURT

Section I had shown two models of state court organization that consolidated all casetypes in a single court. The "unified" court may be either the general jurisdiction trial court (District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Oklahoma, South Dakota, and Wisconsin) or a specialized trial court (Delaware Family Court).

1. General Jurisdiction Trial Court

On the surface, case integration appears more achievable here since the different casetypes are all centered in one court. However, except for the District of Columbia and Hawaii where there are statutory family divisions of the general jurisdiction trial court, these unified trial

courts, especially in more populous locations, maintain a number of court divisions that, in reality, make case integration quite difficult. For example, the circuit court in Milwaukee, Wisconsin, has jurisdiction over all of these matters. But, adoption proceedings take place in the probate division; juvenile matters are heard in the children's division; dissolution, domestic violence protection orders, and paternity/child support are centered in the family division; and intra-family misdemeanors are heard in the misdemeanor and traffic division.

Elsewhere, juvenile matters tend to be heard in one division and dissolution cases in another division. Other family-related casetypes may be heard in one of these divisions or elsewhere in the court. Judicial hearing officer continuity with the same family is severely fragmented despite the presence of the primary proceedings in a single court. Judicial cognizance of a family's other cases is limited. A one-judge general trial court in a rural jurisdiction would not experience this problem. A two-judge general trial court may or may not divide its family-related workload.

Case integration may be complex even in a fully unified family division structure. For example, the family division of the superior court, Washington, D.C., maintains four branches that hear different casetypes: the domestic relations branch, the intra-family and neglect branch, the juvenile branch, and the mental health and mental retardation branch. The family casetypes are present in one division, but a family's multiple casetypes are heard by different judges in different branches.

Typically, in larger trial courts, case information systems are separated by division. The division structure is an obstacle to a coordinated information system. A very substantial effort is needed to enable cross-division cross-indexing. Information sharing across divisions, as to prior or concurrent cases involving the same family, will require significant effort but should be more readily obtainable than with a multiple court structure.

The technology for computerized information systems that would enable a court to instantly discern whether a new case filing involves a family that earlier has been known to the court is now, reportedly, available. A court interested in knowing and using this information for case integration purposes can develop such a system, although there are cost considerations, decisions to be made as to the definition of family, the inclusiveness of proceedings, the extent of "backloading" to be accomplished, and other factors.

State or local court rules authorizing cross-division transfer of cases should be easier to achieve here that in a court structure that includes two or more separately organized courts dealing with child and family matters.

Generally, judicial rotation schemes are present in these unified courts with judges rotating into and out of particular divisions on a regular basis, often annually. Rotation thwarts judicial hearing officer continuity with the family. Rotation schemes may be associated with judicial apathy or antipathy regarding a juvenile or domestic relations assignment. Still, other judges may seek this assignment as well as reassignment to one of these divisions. Other rotation approaches have resulted in the same judge or judges accepting a multi-month assignment to one of these division year after year, though families generally do not follow the judge when he or she has rotated into a new assignment.

Some contend that having the same judge hear the same family as it appears with different casetypes is a primary goal of case integration. This objective is difficult to achieve for many courts and all large courts. Obtaining information on this family's previous legal events for timely review by a different judge, so that decisions can be consistent one to the other, is a more practical objective.

An additional factor that complicates judicial hearing officer continuity in unified general trial courts is the presence of several levels of judges in certain of these states. Illinois maintains circuit judges and associate circuit judges; the workload of the latter judiciary is restricted. Iowa and Idaho also maintain several levels of judges.

It is by no means easy to achieve integrated case handling by probation and social service agency staff with a unified structure. Juvenile probation officers do not also serve as the staff member who provides assistance with an intra-family misdemeanor offense. Child custody evaluators and mediators may be attached to the court's divorce division and not be a part of the juvenile probation department. Child protective service workers are staff member of external agencies.

Rhode Island initiated the family court direction in 1961. Hawaii enacted its family division structure in 1966. The District of Columbia, Delaware, South Carolina, and Connecticut implemented family courts/divisions during the 1970's. Only New Jersey has been added to this list during the 1980's. The trend toward unified trial courts makes easier the blending of juvenile and domestic relations matters into a broadly-based family division of a general jurisdiction trial court. Yet no trend toward a family division structure is apparent. Growing concern with present judicial system approaches to handling child and family cases may expand interest in some form of family court organization.[3] But

placing all or most family-related casetypes in a single division does not assure that a judge has pertinent information concerning prior appearances by family members in this division.

The organization of a court system into a family division has long been advocated as a structural solution to improving the integration of child and family legal proceedings.[1] Current national standards urge the structure of a family division of the general jurisdiction trial court.[2] The minimum casetype definition for such a division encompasses traditional juvenile court matters as well as dissolution, paternity and child support, adoption, and intra-family misdemeanor offenses.

The broad jurisdiction of the family division of the circuit court in Hawaii encompasses the above stated matters, guardianship of the person of children and adults, civil mental illness and retardation proceedings for children and adults, and proceedings under the Uniform Reciprocal Enforcement of Support Act. The court's intra-family criminal jurisdiction includes any offense committed against a child by a parent, guardian, or custodian, and husband-wife misdemeanor offenses. The court may enter domestic abuse protection orders and act on violations of these orders. (See the appendix for the Hawaii jurisdictional provision).

In addition to the District of Columbia and Hawaii, five other states are generally viewed as "family court states," i.e., statewide authorization of either a family division or a separately structured family court with broad family-related jurisdiction. Connecticut and New Jersey, the two other states that authorize family divisions of the general jurisdiction trial court, are not unified courts. The family division in Connecticut is not authorized to hear intra-family misdemeanor offenses; these matters in New Jersey are initiated in a municipal court. A separate probate court in Connecticut hears adoptions.

2. Special Jurisdiction Trial Court

Delaware, of the three states with separate statewide family courts, is the only one that has a unified court for all these proceedings. On the surface, case integration is most easily achievable here (and in the District of Columbia and Hawaii general jurisdiction trial court family divisions).

A case information system is more readily implemented since the caseload is centered at one site. All new cases can be entered and checked against former cases. Legal case record and social file information can be more readily shared in conjunction with a family's new case although, in fact, this may not be done.

Court rules can more readily drafted and approved to focus on case integration.

In a separate family court, judges are characteriscally elected or appointed to this particular bench and remain there during their tenure. In seeking this position, many are motivated to make a positive difference through the execution of their role. Yet this is not always the case. Further, certain long term judicial specialists may so dominate their courts that lawyers and families must conform to excessive judicial control. Such courtroom dominance may also be true with long-term family division and other judicial specialists in alternation court structures.

Masters, quasi-judicial hearing officers with limited authority, are used in the Delaware Family Court. Their use may enable a judge to concentrate on more serious of difficult cases, but this intrudes on judicial hearing officer continuity with the family. Further, judges and masters may be assigned to casetypes, not to families.

The assignment of judges or masters to families in family courts (or divisions), some contend, will reduce judicial system fragmentation of families in that the hearing officer is presumed to be aware of prior court events with this family. There are numerous questions and implementation problems that surround such a practice as well as opportunities for case integration.

More social service delivery can be integrated here. Yet, as in Delaware, while child custody and child support mediators are court employed, the juvenile probation and adult probation function are administered by executive agencies. Accordingly, the concept of a broadly-based team intake approach that covers the range of child and family proceedings is not achievable in Delaware without major organizational restructuring.

The separate family court structures of Rhode Island, Delaware, and South Carolina meet the basic definition for a "family court". New York is excluded from this classification since its separate statewide family court does not embrace original jurisdiction with dissolution proceedings.

Rhode Island and South Carolina are not unified courts. The family court in Rhode Island shares jurisdiction with the limited jurisdiction trial court over domestic violence protection orders and intra-family misdemeanor offenses. The family court in South Carolina lacks exclusive jurisdiction over domestic violence protection orders and is not authorized to hear intra-family misdemeanor offenses.

B. CONSOLIDATION WHEN TWO OR MORE COURTS HANDLE FAMILY PROCEEDINGS

1. A Two Court Structure

A state with two courts having jurisdiction over these six casetypes is, seemingly, the next easiest structure for achieving case integration. Statutes and rules to bridge between cases, as set forth in Section III, may be promulgated, though implementation is not easily achieved without clear guidelines, a philosophic commitment, and information sharing across the two courts. Information concerning prior or concurrent court handling of the same family arguably is more difficult to ensure across courts than between divisions of the same court. The way court divisions are organized, whether the several courts are housed in the same building, and whether the several courts are administered by a single presiding general trial court judge and trial court administrator are other relevant factors.

Judicial rotation schemes concerns apply here as well.

Achieving primary social service delivery unitary management or even information as to family members' progress and problems is substantially more difficult.

2. A Three Court Structure

A three court structure should have less success in achieving case integration, but this may not be the case. For example, the common pleas court in Ohio, which is the general trial court, has exclusive original jurisdiction over five casetypes. County and municipal courts have jurisdiction over intra-family misdemeanors. Substantial case integration may be facilitated by a general trial court division structure that consolidates the basic juvenile jurisdiction and the domestic relations jurisdiction into a family division. This necessitates, of course, success in creating a new substructure and

day-to-day integration of a myriad of tasks. It requires, further, a delineation of which cases shall go back before the same judge, if the same judge retains this assignment for an additional time period.

Information sharing as to a family's legal events should be more difficult to achieve across three courts than across two courts or one-multi division court.

Primary social service integration as well as social information concerning family members are rendered still more difficult than in less complex court structures.

3. A Structure of More Than Three Courts

The complexities described earlier apply still more forcefully with this combination. While statutes and rules that direct case consolidation or coordination may have value, the number of courts involved may tend to narrow such statutes and rules to fewer casetypes.

C. PRACTICAL CONSIDERATIONS: FAMILIES WITH MULTIPLE PROCEEDINGS

A unified family court/division structure with broad jurisdiction over all child and family legal proceedings is assumed to most readily enable integrated case handling. A multi-division structure within the same court should, the logic follows, make integrated case handling more difficult. Two or more different court structures make integrated case handling still more difficult.

The absence of a single court forum more likely furthers concerns such as:

1. Achieving early and effective termination of parental rights when separate courts/divisions adjudicate dependency/neglect/abuse and terminate parental rights.

2. Monitoring whether adoption takes place at the earliest feasible time with a child whose parental rights have been terminated when separate courts/divisions terminate parental rights and approve an adoption.
3. Forum or judge shopping when two separate courts have concurrent jurisdiction with adoption.
4. Avoiding relitigation of child sexual abuse when separate courts/divisions have jurisdiction over dissolution (and child custody determination) and dependency/neglect/abuse.
5. A divorce court grants custody to a parent without knowledge that the parent has earlier been found by a juvenile court to have abused or neglected the child.
6. Following a denial of a motion for a domestic relations restraining order in a divorce court, a domestic violence protection order is obtained in another court/division.
7. The entry of sequential and differing child support orders, as when two separate courts/divisions have jurisdiction over dissolution (and child support determination) and paternity/child support.
8. The entry of a juvenile court order of child support, for the cost of care for an out-of-home placement, that follows a different child support order entered by the divorce court.
9. A juvenile court adjudicates a child neglected and retains the child's custody with the parents without knowledge that another court/division has entered a domestic violence protection order that involves the parents.
10. A juvenile court enters dispositional orders concerning a delinquent juvenile without knowledge of the currency of the father's compliance with a child support order in another court/division.

11. Different guardians ad litems are appointed in criminal court and juvenile court child abuse proceedings.
12. Consideration of a parent's motion to defer testimony in a juvenile court abuse case, claiming denial of the right against self-incrimination, until the criminal court case has been heard.
13. One court terminates parental rights to a child without notification to another court which earlier entered a child support order.
14. The adoption court approves a step parent adoption without knowing that the adopting father is seriously delinquent in child support payments to other children.

D. PRACTICAL CONSIDERATIONS: FACTUAL SITUATIONS FOR THE PARTIES, ATTORNEYS, AND OTHERS

Some fact situations involve a choice of actions that may be brought concurrently or sequentially. These options are influenced by the parties, attorneys, probation and social service agency staff recommendations and intervention capabilities, court structure, perceived court efficiency and effectiveness, and other factors. These alternative choices may include:

1. Requesting a domestic violence protection order or filing an intra-family misdemeanor offense charge or seeking a temporary restraining order in conjunction with a divorce complaint.
2. Initiating a civil child abuse petition or seeking child custody in conjunction with a divorce complaint that alleges the other parent abused a child or bringing a charge of criminal child abuse.
3. Proceeding on a delinquency petition or a neglected child petition or a civil mental illness action.
4. Petitioning for child support or bringing a divorce complaint that requests child support.

Conceivably, one multi-problem family may initiate or be the subject of an extensive range of causes: domestic violence protection order, intra-family misdemeanor or felony offense, child support, criminal non-support, divorce with contested child custody, civil neglect or abuse with termination of parental rights and adoption, criminal neglect or criminal abuse of a child, juvenile delinquency, civil mental illness or retardation proceedings.

III. STATUTES AND RULES THAT ENCOURAGE CASE INTEGRATION

For some years there has been interest in facilitating case consolidation, coordination, or transfer to a court or court division that has a specialized role with child and family proceedings. The approaches taken may be statewide or local in nature. It appears that more of these boundary spanning mechanisms are being enacted or promulgated and it is likely that more case consolidation or coordination approaches will be developed for state or local court system use as concern for multiple, overlapping proceedings increases.

This section reviews statutes and rules that are intended to facilitate case integration regardless of court structure. This review is not an exhaustive state-by-state, court-by-court presentation. Its intent, rather, is illustrative. It should be noted that the existence of a statute or a rule provision that authorizes or even mandates a particular procedure does not mean that this procedure is in fact followed on a consistent basis. Further, there is an absence of research as to the frequency, regularity, or effectiveness of use of available individual case consolidation or coordination mechanisms.

A. CASE CONSOLIDATION AUTHORITY

State rules of civil procedure authorize generic consolidation of actions that may include child and family legal proceedings. The West Virginia Rule No. 42 is illustrative:

> **Consolidation; Separate Trials. (a) Consolidation of actions in same court. - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay....**
>
> **(b) Consolidation of actions in different courts. - When two or more actions arising out of the same transaction or occurrence are pending before different courts or before a court and a justice of the peace, the court in which the first such action was commenced shall order all the actions transferred to it or any other court in which any such action is pending. The court to which the actions are transferred may order a joint hearing or trial of any or all of the matters in issue in any of the actions; it may order all the actions consolidated; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay....**

Consolidation of case may have complex dimensions. For example, Standard 9:00, Care and Protection Proceedings, Standards of Judicial Practice, District Court Department of the Trial Court of Massachusetts provides:

> **Care and protection cases may be consolidated with other pending actions. In such situations, these standards should be observed, and the parties retain all existing procedural and substantive rights and responsibilities which would normally apply in a care and protection case. Separate findings and orders must be issued for each of the actions which has been consolidated.**

Care and protection cases (dependency/neglect/abuse) are heard in Massachusetts primarily in either a district (lower) court or a separate juvenile court depending on the location where the case arises. But they may be heard in the Probate and Family Court as part of an unfitness proceeding preliminary to adoption. The probate and family court in that state hears dissolution, adoption, and other matters. These and all other trial courts constitute the Trial Court of the Commonwealth.

The commentary to this standard states that generally speaking consolidation should take place only when cases involve related parties and the same or basically similar issues. "The most likely type of case to be joined with a care and protection in this manner would be a CHINS petition. For example, parents may files a CHINS petition against a child who is already the subject of a care and protection petition, or vice versa. By scheduling both cases together, common issues may be sorted out more effectively, and the court may be able to dispose of one of the petitions in its early stages".

The commentary continues to indicate that a district court judge may be assigned across courts or departments to sit as a juvenile or probate court judge to hear a case which is related to a pending district court care and protection proceeding. "This may include another care and protection involving siblings, a guardianship petition, a petition to dispense with parental consent to adoption, or adoption proceedings".

The cross-court case consolidation objective, however, involves a cumbersome process under the statute (G.L. c. 211B,s.9). Where two or more actions are pending in different departments, a request for interdepartmental assignment may be made to the administrative justice of each department in which the related actions are pending. A copy of the request shall be provided to all parties in the related cases, and if a case has been especially assigned to the trial judge any party opposing the request will have seven days to file a letter in opposition, with a statements of reasons, with the administrative justices of the respective departments. The administrative justices will review the requests and any letters in opposition, determine whether consolidation would advance the administration of judicial business, and then forward this information and

their recommendations to the chief administrative justice of the Trial Court of the Commonwealth. This official will then notify the administrative justices and all parties of the decision on each request.

It is important that case coordination efforts be speedily accomplished to avoid use of this mechanism as a trial delay strategy. It would be of interest to learn the extent of child and family case coordination need and use in the Massachusetts district courts and across trial court departments. A recent Massachusetts study commission recommended "substantially more frequent use" of the authority provided by this statute.[4]

A more expeditious approach to case transfer and consolidation is embodied in a Connecticut statute (C.G.S. Fam. Law 466-5) that authorizes the chief court administrator to transfer cases between family relations dockets and general dockets when deemed "necessary for the proper dispatch of business."

B. THE PRIMACY OF THE JUVENILE COURT'S DEPENDENCY/NEGLECT/ABUSE JURISDICTION

The same child or family may experience concurrent or sequential consideration by divorce courts and juvenile courts. Divorce courts determine child custody, visitation, and support provisions; juvenile courts ascertain whether a child may be dependent, neglected, or abused and make a custody award following such determination. A statute may grant the supervening authority to a juvenile court as in the Colorado provision (C.R.S.19-1-104(5)):

> **Where a custody award has been made in a district court in a dissolution of marriage action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth in this section.**

The statute that grants primacy to the juvenile court's jurisdiction also encompasses delinquent juveniles, guardianship appointments, termination of parental rights, and adoption. Accordingly, a juvenile court may modify a divorce court award of custody to the mother and instead grant it to the father or to a social services or youth correctional agency.

The comparable Utah statute authorizes the juvenile court to not only change the custody but, also, to alter the divorce court's support and visitation provisions. (U.C.A.78-3a-17(6)):

> **Where a support, custody, or visitation award has been made in a district court in a divorce action or in another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may nevertheless acquire jurisdiction in a case involving the same child if the child is dependent or neglected or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-16.**
>
> **The juvenile court may by order change the custody, support, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.**

A 1987 California Statute (W.&I.C. 304) is emphatic as to the juvenile court's authority in regard to child custody determinations, but this authorization, unlike the Colorado and Utah provisions, is limited to dependent, neglect, or abused children. It provides:

> **When a minor has been judged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360, no other division of the superior court may hear proceedings pursuant to Section 4600 of the Civil Code regarding the custody of a minor. While the minor is a dependent child of the court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter. This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.**

This provision covers only the adjudicated child, not the child pending adjudication. It may be inferred that the juvenile court may also determine child support and visitation.

It is important that a divorce court be informed of a supervening juvenile court order. For example, unless the juvenile court informs the divorce court that it has terminated parental rights to a child for whom a child support order has been entered, one would not want enforcement proceedings to be brought against a parent for an arrearage accrued subsequent to the juvenile court's termination decree. Similarly, the juvenile court's commitment of child to a state youth agency with an order that a parent pay a specified amount for child support while in care needs also to be communicated to the divorce court so that a modification may be made with the latter court's child support order.

An interplay between a divorce court and a juvenile court may be used by parties seeking a particular decision growing out of an acrimonious divorce and child custody dispute. The concern here is one of relitigating a matter in juvenile court that had been ruled on in a divorce court, as occurred in a California case.[5] There, following nineteen days of trial, a mother's allegations that the father had sexually abused their child were held completely unfounded by the court. Intra-family tensions continued and a year later petitions were filed in the juvenile court alleging sexual abuse by the father and later amended to allege the child was dependent due to the pyschological trauma inflicted upon the child by the ongoing custody battle which may have rendered each parent unfit as a custodian. The juvenile court sustained the petition and placed the child in the legal custody of the probation officer for physical placement in the mother's home.

On appeal, the California Court of Appeals rejected the father's contention that juvenile court lacked jurisdiction in light of the domestic relations court's prior ruling on the issue of custody. The court held the issues presented were distinct for jurisdictional purposes in that the juvenile court did not address itself to the previously decided sexual abuse issues and was thus free to assess the child's dependency on the separate ground that parental warfare had harmed the child and made her a dependent of the court.[6]

Despite the primacy of the juvenile court in areas of its jurisdiction, the basis of a juvenile court finding, as with dependency, neglect, or abuse, may in time be remedied and the child no longer requires that court's protective authority.

C. JUVENILE COURT TERMINATION OF DEPENDENCY/NEGLECT/ABUSE JURISDICTION

A California statute (W.&I.C. 362.4) seeks to clarify that a custody order shall continue even though the court has now terminated its jurisdiction. In effect, the child is no longer dependent but the court's order shall continue subject to any further court proceedings. For example, it may subsequently be modified by a divorce court order.

> **When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the person's attainment of the age of 18 years, and either proceedings for the declaration of the nullity or dissolution of the marriage of the minor's parents are pending in the superior court of the same county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion may issue an order directed to either of the parents enjoining any action specified in paragraph (2) or (3) of subdivision (a) of Section 4359 of the Civil Code or determining the custody of or visitation with the child.**

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity or dissolution at the time the juvenile court determinates its jurisdiction over the minor, and shall become a part thereof.

Presumably, a party or an attorney for a party would advise the juvenile court of any pending dissolution proceeding, so that the former's order may be filed in the latter court. There is no guarantee, of course, that such notice will be given. Further, parties may not contemplate a divorce at the time of juvenile court termination and may not necessarily inform a divorce court judge, in a subsequent divorce proceeding, of the juvenile court's earlier jurisdiction and order.

D. MANDATING OR AUTHORIZING CASE TRANSFERS BETWEEN COURTS OR COURT DIVISIONS

There may be provisions for either mandatory or discretionary case transfer, as from a divorce court to a juvenile court, for child custody determination.

1. Mandatory Transfers

A Utah statute is illustrative (U.C.A.78-3a-17(3)a)):

However, if a petition involving the same child is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same child, the district court shall certify the question of support, custody, and visitation to the juvenile court for determination.

The Utah provision encompasses dependency, neglect, and abuse as well as juvenile delinquency and other juvenile court concerns. Utah district court judges require a triggering mechanism that informs them of the pending or adjudicated case in the separate juvenile court. Utah rules that require notice by attorneys filing domestic relations actions as to any concurrent juvenile court proceedings are discussed in Section VI. The mandatory transfer by the domestic relations division of the district court to the separate juvenile court applies to all child custody

determinations and not just those that are contested. It would be important to learn whether Utah's notice provisions have been effectuated consistently, how many and the proportion of domestic relations cases that are in fact transferred to the juvenile court, when there is notice whether the case is indeed transferred, and the burden this statute has placed on the juvenile court.

2. Optional Transfers

Utah authorizes discretionary transfers from a divorce court to a juvenile court for custody determination when there is no pending or adjudicated juvenile court matter involving the same child or family. The Utah statute (U.C.A.78-3a-17(4)) provides:

> **A district court may at any time decline to pass upon a question of support, custody, and visitation, and may certify those questions to the juvenile court.**

The purpose of this type of provision is not case integration. Rather, its intent may be to take advantage of a more informal juvenile court approach, the purported special interest of juvenile court judges in children and child welfare, and the greater social service capability that may be present in a juvenile court. A Utah rule (Rule 4-902, Code of Judicial Administration) directs that optional transfers shall be "for good cause shown" upon the motion of the court or either party.

A Florida rule of juvenile procedure (Rule 8.530) that allows optional case transfer is narrowly drawn as to dependency and specifically requires consultation with a juvenile division judge:

> **(a) Transfer of Cases within Circuit Court.**
> **If it should appear at any time in a proceeding initiated in a division other than the juvenile division of the circuit court that facts are alleged which essentially constitute a dependency, the court may upon consultation with the juvenile division order the transfer of action and the transmittal of all relevant papers to the juvenile division. The juvenile division shall then assume jurisdiction only over matters pertaining to dependency , custody, and visitation.**

3. Other Approaches to the Coordination or Consolidation of Multiple Proceedings

A purpose of Local Rule 307, Superior Court for Los Angeles County, California, states:

> **The best interests of the child, litigants and court are promoted by early identification and coordination of custody proceedings involving the same child. To that end, all departments involved in custody issues shall cooperate to eliminate multiple custody proceedings. Whenever possible, such proceedings shall be handled in one department and consolidated for purposes of trial.**

An objective of the rule is to alleviate problems caused by the involvement of both the family law department and the dependency court (both divisions of the superior court) when a dependency petition is filed during the course of a pending child custody action.

To alleviate this problem, the supervising judges of the two divisions are to confer, determine whether the case should be coordinated and the hearings consolidated and, if so, decide which court offers the more appropriate form for litigating the child custody and dependency issues. Criteria for making a determination are specified. Upon a decision to coordinate/consolidate, the case is transferred to the more appropriate court. When agreement is not reached, the question will be resolved by the presiding judges of the superior court and the juvenile court division. With the decision to coordinate or consolidate, the judicial officer assigned to hear the matter will sit both as a family law and juvenile court judge, empowered to make appropriate orders in both cases.

Local Rule 307 also applies to a situation where the juvenile court is unable to terminate jurisdiction over a dependent child's placement with a nonoffending parent due to the parent's failure or financial inability to establish paternity or initiate a child custody proceedings. The juvenile court has authority to appoint an attorney for the parent, the attorney

files this action in the family law department together with a motion to coordinate/consolidate. Following joint judicial determination of the most appropriate forum, a judge with dual authority may establish paternity and/or make a child custody award and terminate the child's dependency status.[7]

While the consolidation of family-related matters into a single court division in California or elsewhere could form a basis for facilitating case integration, court rules to guide case handling for such a division may be needed. The extent of family-related proceedings to be heard in such a division is both a policy and practical concern. For example, the broadly-based New Jersey family division authorization limits the types of intra-family offenses to be heard in that consolidated forum.

The superior court family division in New Jersey, technically known as the chancery division, family part, has initial jurisdiction over only two types of intra-family criminal actions, interference with custody and willful nonsupport. Additionally, an intra-family felony may be transferred to the family part from the law division of the superior court or an intra-family misdemeanor from a municipal court (Rule 5:1-3(6)). Such transfers do not require earlier family part involvement with the family. But the family part may not hear a criminal offense that allows for a jury trial unless the defendant waives this right.

E. PROVISIONS FOR NOTICE OF MULITPLE PROCEEDINGS

To facilitate cross-court integration of child and family legal proceedings, Utah rules (Rule 4-901, Code of Judicial Administration) provide:

(B) Civil/domestic matters

(i) In civil and domestic matters where the custody of child (ren) is at issue, the complaint or petition shall contain a brief recital

alleging that "upon information and belief" the proceedings involving the custody of the child(ren) have or have not been filed in the juvenile court, and if so, the complaint or petition shall identify the juvenile court caption, file number, name of judge and status of such proceeding.

(ii) If the plantiff's attorney is not aware of proceedings pending in the juvenile court and the defendant's or respondent's attorney is aware that proceedings involving the custody of the child(ren) are pending in the juvenile court, the defendant's or respondent's attorney shall file the necessary notice.

(C) Subsequent juvenile court filing

If a proceeding is commenced in the juvenile court subsequent to arraignment or filing of the complaint or petition, the written notice shall be filed in the circuit or district court upon first notice of the existence of the proceeding.

(2) Juvenile Court Filing

(A) The county attorney shall file with the court, at the time of filing the petition, written notice of any related matter pending in the circuit or district court. The notice shall include the court caption, case number, name of judge and status of proceedings.

(B) If a proceeding is commenced in the circuit or district court subsequent to filing the petition, written notice shall be filed in the juvenile court upon first notice of the existence of the proceeding.

(C) If the county attorney is not aware of proceedings pending in the circuit or district court or fails to file appropriate notice, any other party or the attorney for any other party shall file the necessary notice.

Rule 4-902 provides for procedures to implement this rule. When the juvenile court has entered its orders concerning the certified questions, the file shall be transmitted back to the clerk of the district court who shall refer it to the judge assigned to handle the matter.

Rule 4-901 also makes a notice requirement with criminal case filings in order to facilitate the coordination of cases that are pending in two or more courts, but there is no follow up rule specifying what actions shall be taken when there is knowledge of multiple proceedings:

(a) Criminal actions. The county attorney shall file with the [district or circuit] court, at the time of arraignment, written notice of any related matter pending in the juvenile court. The notice shall include the juvenile court case caption, file number and name of the judge. A copy of the notice shall be filed at the same time with the juvenile court.

The notice requirement with criminal actions informs both the criminal court judge and a juvenile court judge of a common case. In a case involving criminal sexual abuse, a Utah county attorney is responsible for both the criminal court and juvenile court dimensions of this matter. In larger districts of that state, different county attorneys are responsible for criminal and juvenile court actions. Some form of office guideline should determine how these types of actions are coordinated within that office, e.g., which case should proceed first to adjudication and the reasons supporting this. Since the two judges are informed of the dual proceedings, they may wish to impact this decision.

A related approach, though limited to civil custody and support concerns, is embodied in Rule 5, Cuyahoga County (Cleveland, Ohio) Rules of the Court of Common Pleas Domestic Relations Division.

Rule 5. Concurrent jurisdiction with other courts.

It shall be the obligation of the party initiating an action involving custody or support of minor children to inform the Court of the status of any prior action in any domestic relations or juvenile court, including the amount of any prior support orders. Any action involving custody must be accompanied by an affidavit of custody pursuant to O.R.C.3109.27(A). If any custody or support

order has been entered by any other court in this state, no order regarding such issue(s) will be entered by this Court except upon order from the court previously acquiring jurisdiction transferring jurisdiction of this Court. If any custody or support order has been entered by any court outside this state, an order regarding such issue(s) will be entered only upon a showing that jurisdiction properly lies with this Court pursuant to the Uniform Child Custody Jurisdiction Act if the issue is custody and/or visitation, or upon a showing that this Court otherwise has jurisdiction to entertain an action including personal jurisdiction over both parties, if the issue is other than custody and/or visitation.

The intent of this rule is to avoid relitigation and conflicting orders between the domestic relations and juvenile divisions of this court, with other courts having these jurisdictions within Ohio, and with courts in other states.

A different approach to obtaining information of multiple proceedings is contained in a District of Columbia Superior Court rule (Rule 2, Family Division, Intrafamily Proceedings):

(c) Consolidation with other matters. When a petition is filed the Clerk shall note in the file the existence of any other causes before the Family Division involving the same parties. If deemed appropriate, the Court may consolidate the action with the other causes, provided that said consolidation shall not delay any hearing on the petition for a civil protection order. Copies of the order of consolidation shall be filed in each case consolidated, and all further proceedings shall be filed in each case consolidated, and all further proceedings shall be conducted in one action designated in the order of consolidation, with all subsequent pleadings and orders filed in each case consolidated.

Courts, then, are proceeding in two different fashions to obtain knowledge of multiple proceedings. One is a notice requirement for the public or private attorneys or the parties. A second requires a clerk to cross-index case filings in that court. Computerized case tracking systems can facilitate the latter approach provided the information provided is current, accurate, and used.

F. ADDITIONAL PROVISIONS THAT FACILITATE IMPROVED CASE INTEGRATION OR MORE EXPEDITIOUS PROCEEDINGS

In New York, where adoption proceedings may be initiated either in family court or surrogate's court, the state constitution (Article VI, Section 14) provides:

The legislature may at any time provide that outside the city of New York the same person may act and discharge the duties of county judge and surrogate or of judge of the family court and surrogate, or of county judge and judge of the family court, or of all three positions in any county.

Intended for less populous regions of the state, this provision, if implemented, would eliminate court shopping with adoption proceedings.

With another subject area, involuntary civil commitment procedures for children who may require hospitalization for mental illness or institutionalization due to a developmental disability, the jurisdictional grant is sometimes awarded to juvenile or family courts. Elsewhere this jurisdiction is normally handled by probate courts or probate divisions of general trial courts. On occasions, a child charged with juvenile delinquency is evaluated in the context of whether mental illness or retardation was a causative factor in the delinquent offense. If so, the generally accepted preferable practice is to proceed through civil commitment procedures rather than committing the juvenile to a mental hospital on the basis of a delinquency adjudication. An Ohio statute (O.R.C.A.2151.23(A)) enables a juvenile court:

(4) **To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapters 5122. and 5123. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code.**

Child sexual abuse and more serious cases of child physical abuse often proceed simultaneously in both criminal and juvenile courts. Issues as to whether the abuser or the child is removed from the home, the return of the child to the home, and the progress of the alleged abuser in a treatment program while one or more of these actions is taking place are among the pertinent factors that may favor speedy judicial system case resolution. A Minnesota docket priority statute (M.S.A. 630.36) supports speedy resolution of the criminal case:

Subdivision 1. Order. The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court directs an indictment or complaint to be tried out of its order:

(1) indictments or complaints for felony, where the defendant is in custody;
(2) indictments or complaints for misdemeanor, where the defendant is in custody;
(3) indictments or complaints alleging child abuse, as defined in subdivision 2, where the defendant is on bail;
(4) indictments or complaints for felony, where the defendant is on bail; and
(5) indictments or complaints for misdemeanor, where the defendant is on bail....

A companion Minnesota docket priority provision (M.S.A. 260.135) requires the juvenile court to give docket priority to any case alleging child abuse except those delinquency matters where a youth is being held in a secure detention facility.

Where abuse proceedings are pending in both a criminal and juvenile court and the juvenile court chooses to proceed first, a parent may seek a continuance of the juvenile proceeding on the claim that his or her testimony might compromise the right against self incrimination. The denial of this motion was affirmed in a California case[8] since the following California statute (W. & I. C. 355.7) eliminated the potential prejudicial effects of juvenile court testimony:

Inadmissable evidence. Testimony by a parent, guardian, or other person who has the care or custody of the minor made the subject of a proceeding under subdivision (a) or (d) of Section 300 shall not be admissible as evidence in any other action or proceeding.

The separate juvenile court for Jefferson Parish, Louisiana, a three judge court, has jurisdiction over delinquency, status offense, dependency/neglect/abuse, adoption, a child support procedure that is titled criminal neglect of family, and other actions. Its Rule 2.3 direct judicial hearing officer continuity:

(b) Cases involving family members shall be allotted to the same section of court. When there are prior records of family members, the cases shall be cross-indexed and transferred to the court assigned with the case bearing the lower docket number.

IV. ANALYSIS

State court systems need to improve their integration of child and family case handling and reduce their own contribution to the fragmentation of the family. The directions discussed in this paper have reviewed court structure and statutes and rules that may impact present shortcomings.

A. FAMILY COURT/DIVISION

Court system restructuring that accomplishes a family court/division has been modest, though this direction may expand. The questions that surround the implementation of a family court/division include:

1. What percentage of families experience multiple proceedings? What patterns in casetypes are there with multiple proceedings?
2. Have these structures handled families differently than non-family courts/divisions?
3. Have these changes have beneficial?
4. How does one measure beneficial?
5 Has judicial hearing officer continuity with the same family been implemented? To what extent? With what limitations? To what effect?

6. Where the same judge hears another legal event concerning the same family, what information regarding the prior event and subsequent developments is provided to the judge?
7. What due process concerns occur if one judge handles multiple casetypes with the same family?
8. How have judicial assignment systems been implemented?
9. Have primary social service delivery systems been restructured? To what effect?
10. Has greater use of intervention services been promoted? If so, has the effect been positive, illusory, or negative?
11. Do juvenile delinquency proceedings receive any different attention than in regular juvenile courts?
12. How have information systems been used to achieve court purposes?
13. What problems have been experienced with the definition of family?
14. What do the families say as to their experiences?
15. What tasks and burdens necessarily accompany restructuring and reorganization?
16. Is there advantage to piloting restructuring/reorganization in one or two judicial districts before a decision is made to implement this approach statewide?

B. STATUTES AND RULES

Some statutes and rules have been available for years; other are new. This source of case consolidation, consolidation, or transfer offers a practical direction that may reduce family processing fragmentation without massive and perhaps problematical restructing/reorganization. The questions that surround the use of these procedures include:

1. What percentage of applicable cases are in fact consolidated, coordinated, or transferred?
2. When invoked, how have families been handled differently? With what benefit?
3. What use is made of information from other case proceedings?
4. What are the triggering mechanisms to achieve this?
5. Are there other triggering mechanisms that would better ensure consistent notice and use of these provisions?
6. What obstacles occur to implementation of these statutes and rules?
7. Does their use reduce delay or cause delay?
8. How have information systems been used to achieve this purpose?
9. What additional statutes or rules might profitably be enacted?
10. What existing statutes or rules should be prioritized?

The improved integration of child and family legal proceedings can better proceed when the answers to these questions have been achieved.

FOOTNOTES

1. Roscoe Pound, "The Place of the Family Court in the Judicial System," National Probation and Parole Association Journal, April 1959, recommends a family court division rather than a separate family court.

2. National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office, 1973), Standard 14.1; American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Court Organization (Chicago: American Bar Association, 1974), Standard 1.12; Institute of Judicial Administration-American Bar Association Juvenile Justice Standards Project, Standards Relating to Court Organization and Administration (Cambridge, Mass.: Ballinger Publishing Company, 1980), Standard 1.1; National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention (Washington, D.C.; Government Printing Office, 1977), Standard 8.1

3. See Governor's Constituency for Children, A Family Court for Florida, September 1988, p.19, that recommends a separate family court structure. Also see M. M. Poznanski and S. Bassett, "A Family Court for Michigan?" 66 Mich. Bar Jrnl.: 657-661.

4. Report of the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children, 1988, p.36.

5. In re Anne P., 244 Cal Rptr.490(1988).

6. But see Jones v. A.W.,519 So.2d 1141(Fla.App.1988): Evidence that children of divorcing parents were upset and apprehensive over turmoil resulting from the custody battle was insufficient grounds for finding the children dependent.

7. See Leonard P. Edwards, "The Relationship of Family and Juvenile Courts in Child Abuse Cases," 27 Santa Clara L. Rev.(Spring 1987): 201-278. This article analyzes between-court concerns and cases and appends the Los Angeles County rule and a Draft Protocol for Santa Clara County (California) Family and Juvenile Court Management of Child Abuse Cases.

8. In re Katrina L., 247 Cal. Rptr. 754 (1988).

APPENDIX

STATUTORY JURISDICTION OF THE FAMILY DIVISION OF THE CIRCUIT COURT, STATE OF HAWAII

571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

(1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.

(2) Concerning any child living or found within the circuit:

(A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;

(B) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare;

(C) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or

(D) Who is in violation of curfew.

(3) To determine the custody of any child or appoint a guardian of the person of any child.

(4) For the adoption of a person under chapter 578.

(5) For the termination of parental rights under sections 571-61 to 571-63.

(6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.

(7) For the treatment or commitment of a mentally defective , mentally retarded, or mentally ill child.

(8) Under the Interstate Compact on Juveniles under chapter 582.

(9) For the protection of any child under chapter 587.

(10) For a change of name as provided in section 574-5(a)(2)(C).