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Family court: An analysis of a unified judicial system to serve the administration of justice for all juvenile and family matters

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FAMILY COURT: AN ANALYSIS OF A UNIFIED JUDICIAL
SYSTEM TO SERVE THE ADMINISTRATION
OF JUSTICE FOR ALL JUVENILE
AND FAMILY MATTERS

by

Lori Ann Higdon

A thesis submitted in partial fulfillment
of the requirements for the degree of

Master of Arts

in

Ethics and Policy Studies

Institute for Ethics and Policy Studies
University of Nevada, Las Vegas
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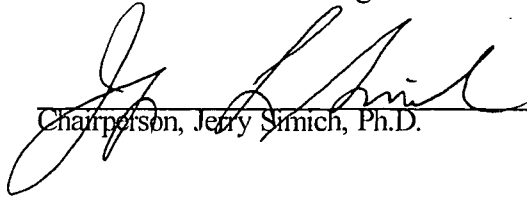
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APPROVAL PAGE

The Thesis of Lori Ann Higdon for the degree of Master of Arts in Ethics and Policy Studies.



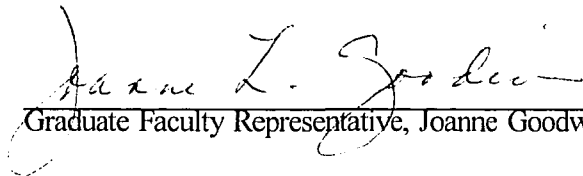
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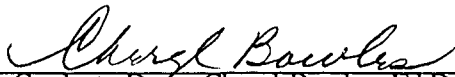
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ABSTRACT

Several states have created family courts by coordinating juvenile and family law matters within one court in an effort to provide efficient and timely service delivery to children and families. This thesis will evaluate this court model by providing a literary review, including problems facing children and families. Ethical concerns regarding family preservation, the quality of justice, parent's rights vs states obligations, punishment vs rehabilitation and the social worker vs cop role conflict will be included. A survey which was conducted as a part of this thesis together with a previous survey provides current evidence supporting the premise that the new family court model is a more efficient system which provides better services to litigants by involving a teamwork approach, better utilization of community resources, and the development of alternative resolutions. The conclusion contains recommendations for improvements of this model.

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INTRODUCTION

C.C. Torbert, Jr., in his opening remarks at "The Future and the Courts Conference", stated, "The common picture of an American court is that of an institution rooted in the past, resistant to change, and resigned to inefficiency."¹ However, in recent years the justice system has come under a great deal of scrutiny. Several states have re-evaluated the justice system and have concluded that their systems cannot effectively treat one part of the family unit without affecting the others.

Statement of The Problem

Often it becomes necessary for litigants to pursue legal matters in several forums. Judicial overlap, over-crowded calendars, and conflicting dispositions are some of the problems encountered when utilizing this fragmented system. This judicial process is particularly cumbersome for family law problems for several reasons. First, some family law matters need to be resolved in a timely manner to avoid further hardship for the youth and families involved. Avoiding prolonged resolution of legal matters dealing with youth, enables closure of sometimes painful experiences. Second, it has been observed that many families involved in family legal matters often are referred for more than one reason. Therefore, under the fragmented system, several court appearances may be required in different courts. Also, the dispositions may be

¹Robert Page, "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes," *Juvenile and Family Court Journal* 44, (1993): 1, citing C.C. Torbert, Jr., in his opening remarks at "The Future and the Courts Conference held in San Antonio in May 1990."

conflicting and the litigants may be referred to many different community resources which could prove to be burdensome.

It is apparent that our society needs a justice system that is responsive to the needs of the community and can provide effective intervention. Restructuring the present system is seen as being inevitable to those involved in the state courts. Advocates have sprung into action, attempting to reshape the old system by establishing a unified court to hear family law matters. Instead of several courts with jurisdiction in various matters dealing piecemeal at the same time with the issues of one family experiencing difficulty, one unified court could more effectively and efficiently handle the matter.

As a result of the national reorganization movement, local executive, judicial and legislative branches of government, collectively with the legal community, community resource agencies and citizens, have participated in the development of the concept of a unified and comprehensive family court model appropriate for implementing in Nevada. In the 1989 legislative session, State Senator Sue Wagner introduced Senate Bill 446 calling for the creation of a family court. The bill resulted in a Senate Joint Resolution which allowed a ballot measure to amend the state constitution to allow for the creation of the court. The resolution passed and in the 1990 general election ballot Nevadans overwhelmingly supported the concept.²

The court reform to establish family courts is a relatively new movement (initially utilized in the 1960s). At the present time, over half of the United States have created a family court act or conducted feasibility studies or have pilot programs in existence. This concept, however, has expanded internationally as well. Unified family courts have been established in Canada and New Zealand.

²Jeffrey A. Kuhn. Final Report of the Nevada Family Court Task Force (Reno: National Council of Juvenile and Family Court Judges, 1991), Introduction Letter.

Purpose of the Paper

This thesis will inform the reader about current problems facing youth and families today. It will address the courts role in family preservation and why the family is an important institution. It will review current family courts and present evidence to prove this new model is an improvement over the previous court system. In conclusion, policy suggestions and criticisms will be given.

CHAPTER I

PROBLEMS FACING YOUTH TODAY

National News

"Two men were fishing by a stream when an infant floated past. The first fisherman jumped in, rescued the child and handed him up to safety in the second fisherman's arms. No sooner had they settled the child down on the grass, when a second infant floated along. Again, the fishermen jumped in and rescued the baby. A third baby floated along, a fourth, and so on. The fishermen saved each in turn. Finally, a whole group of babies came floating downstream. The first fisherman grabbed as many as he could and looked up to see his friend walking away. "Hey," he shouted, "what's wrong with you? Aren't you going to help me save these babies?" To which the second fisherman replied, "You save these babies, I'm going upstream to see who's throwing all those babies into the river!"³

America's children and families are in crisis. Like the fishermen parable, politicians, judges, social workers, probation officers, law enforcement authorities, and many other groups are not in agreement about how to resolve the problems. Problems which once plagued inner city families, minorities and the poor are no longer isolated to these groups. Children from all socioeconomic, racial and ethnic groups are experiencing inadequate child care and health care,

³American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and Their Families, America's Children At Risk, (Chicago: American Bar Association, 1993), v, citing Folk Parable.

lack of housing or high cost housing, family breakdown and a decline in available quality schools.⁴ Child neglect and abuse referrals continue to climb year after year. Children are becoming involved with drugs and alcohol at earlier ages. Adolescent suicide rates have dramatically increased in the last decade. Gang membership has more than tripled in the United States' major cities. Today's children face more dangers and experience far more stress than their predecessors.

In the hope of effecting legal reform which will handle the essential needs of children and their families, the problems which they face must be explored in depth. An accurate analysis and recognition of the problems are the first steps to developing solutions.

Child Care

Healthy child development depends upon quality time with the parents as well as adequate child care during their absences. According to the ABA's report, America's Children at Risk, during the weekdays, approximately ten million children five years of age or younger are cared for by someone other than their parents. 32% are cared for in family care home, 27% attend child care centers and 30% are supervised by relatives. From 1970 to 1990 the percentage of women with children under the age of 18 in the work force rose from 39% to 62%; 50% of women with children under a year old were working. Two-thirds to three quarters of these women work full time.⁵

As the figures demonstrate, there is a serious demand for quality child care, especially among the low income families. Far too often these families are forced to choose between staying unemployed (due to the shortage of affordable child care) or working, (leaving the children

⁴Tbid.

⁵Tbid., 14.

unsupervised or improperly supervised.) According to a 1991 federal government study, child care costs amount to 25% of household incomes under \$15,000. Families earning over \$40,000 spend approximately 6% on child care.⁶ "In major cities, the problem is even worse. There, the typical annual cost of center-based child care is about half the median income of single mothers who have one or more children under the age of six."⁷ In recent years federal grants and increasing the Head Start program have assisted low income family with child care needs. These modest attempts seem like drops in the ocean to millions who seek help.

Availability and quality are separate issues requiring attention. Health and safety standards are set by each state and vary tremendously. The American Bar Association has recommended focus on legal reform to regulate the quality as well as the supply of child care for the protection of the children. The ABA has recommended that Congress direct the administration to establish national child care standards for all programs receiving federal funds. They also recommend the states adopt similar regulations on all child care facilities regardless if they receive public moneys or not.¹² Expansion of the Safe Key Programs for school-age children would provide a structured supervised alternative for parents. A Department of Education report revealed that many parents who rely on homework to occupy their unsupervised children after school would benefit from Safe Key. "Latchkey" children who now number between 4 to 7 million, would also benefit from Safe Key. School Districts and communities should receive federal funding to encourage expansion of before and after school programs which are provided on school grounds and adult supervised.

⁶Ibid.

⁷Ibid, citing Dan Braveman, "Children, Poverty and State Constitutions, " Emory L.J. 38 (1989): 577, 582.

¹²Ibid.

Health Care

A healthy childhood can foster a healthy adulthood. Whether a universal health care plan will solve this country's health care crisis remains to be seen. There are several things which are known and can not be disputed.

"In 1991, over 8 million children were completely uninsured, and an additional 26 million children—40% of all children under 18—lacked employer-based coverage."¹³ It is estimated that by the year 2000 half of all children (75% to 80% African-American and Latino children) will lack employer-based coverage.¹⁴

The United States ranks 17th among nations in the percentage of one year olds fully vaccinated.¹⁵ "Our polio immunization rate for children of color ranks 70th in the world."¹⁶ It is exasperating that a nation which has vehemently pushed to eradicate polio from the face of the Earth by providing vaccine for 3rd world nations neglects its own children. America's neglect of immunization has staggering consequences. Diseases like pertussis, rubella and mumps reappeared in the 1980's. 60,000 people were stricken with measles.¹⁷

Neonatal costs in America are at an all time high. Low birth weight and infant mortality can be traced back to inadequate or no prenatal care. "One quarter of the pregnant women in the United States do not receive adequate prenatal care."¹⁸ Because of the lack of preventative services the U.S. ranks 19th in the world in infant mortality among all countries.

¹³Ibid., 35, citing Mercer L. Sullivan, Getting Paid: Youth Crime and Work in the Inner City (1989), 103-05.

¹⁴Ibid., citing Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey (Mar, 1992), unpublished table.

¹⁵Ibid., citing Edward B. Lazere, et al., A Place to Call Home: The Crisis in Housing for the Poor (Center on Budget and Policy Priorities & Low Income Housing Information Service, 1989).

¹⁶Ibid., xiii.

¹⁷Ibid., 36-37.

¹⁸Ibid., 36, citing Cushing N. Dolbeare, Out of Reach: Why Everyday People Can't Find Affordable Housing (Low Income Housing Information Service, 1990), 3.

A poor health care system is detrimental to America's families. Its devastating inadequacies will be endured for many generations until all Americans regardless of race, income or religious beliefs receive adequate services.

Housing

Sylvia Hewlett, in When The Bough Breaks, states that "approximately 30% of the homeless are families."¹⁹ Homelessness can be devastating to children. "The loss of a home often leads to the dissolution of a family: two older children in foster care; the wife and baby in a public shelter; the husband sleeping on a park bench or under a bridge."²⁰ The loss of the warmth and security that a home provides to children can cause serious emotional disturbance.

The federal housing projects have been repetitively plagued by fraud, lack of funding, policy neglect and poor management. Adequate and affordable housing are issues bantered about by Congress annually. Yet poverty and discrimination continues to defeat many Americans from achieving their dream of becoming homeowners.²¹

"In 1989, 9.6 million households with incomes under \$10,000 competed for 5.5 million units with rents under \$250 – the only rents they could afford by federal standards, which recommend that families spend no more than 30% of their incomes for housing."²² "In many states, a minimum wage earner would have to spend between 50% to 90% of his or her income to rent" a two bedroom apartment.²³ "A recent study found that parents spent 40% of their income for housing, forcing parents to choose between housing their children and feeding them."²⁴

¹⁹Sylvia Hewlett, When The Bough Breaks, (New York: Basic Books, Inc., 1990), 45.

²⁰Ibid., 45.

²¹ABA, 17.

²²Ibid., citing The State of America's Children, supra 5.

²³Ibid., 37.

²⁴Ibid., 18, citing A Place to Call Home.

The quality of the housing available is often hazardous, endangering the family's safety and the children's health and development. Many landlords respond to parents' concerns about hazards by illegally evicting them.²⁵ "The National Academy of Sciences estimates that 100,000 American children go to sleep homeless every night."²⁶ This is a reality we should all be ashamed of. Failure to enforce The Fair Housing Act results in minority families being discriminated against. Unreasonable restrictions and major obstacles limit housing opportunities for these groups.

Family Breakdown

The definition of family has undergone many changes over the past century. The American extended family is becoming a thing of the past. The nuclear family is here today but perhaps this too will be gone tomorrow. More often, non-traditional families are becoming the norm. Single parent and blended families continue to rise in numbers as the divorce rate climbs.

Sociologists do not agree on whether the institution of the family is breaking down or rather is continuing to evolve in response to society's needs. Much has been written to suggest the family patterns of the 1950's were unique and unlike any other decade. These years are often referred to as the golden age of American family life. Family crisis has been defined to include any problems affecting children, men, and women over issues of divorce, finances, drug abuse, alcoholism, unemployment, or countless other problems. The idea that the traditional family of the golden years did not experience these problems is completely unrealistic and full of falsehoods. Shifts in family life styles of the middle class have occurred in response to a

²⁵Ibid., 20.

²⁶Ibid., 22, citing Committee on Health Care for Homeless People, Institute of Medicine, Homelessness, Health and Human Needs (1988), 13.

redefinition of the meaning of family in the 1960's, according to Arlene Skolnick in Embattled Paradise. During the 1960's and 1970's the family evolved rapidly. The happy, secure family life portrayed on television shows like "Father Knows Best", "Leave It to Beaver," and "The Adventures of Ozzie and Harriet" were not a realistic analysis of what existed during that era. The family was as diverse in income, race, social class, life-style and degree of happiness as it is today. The 1960's to 1970's the decade of "peace and love": swinging singles, open marriages, sex before marriage, women-liberation. The extreme changes from what had come to be the model of the American family (false as it was) to what was emerging caused much concern. Fragmentation of families, women in the work force, and unmarried couples living together were commonplace. Then almost as fast as it arrived, the passion for liberation and change fizzled out. By the 1970's, traditional morals and old fashioned values were once again in celebration.

Historically there is evidence to support that there have been concerns about the family for centuries . Perhaps a positive view point on the subject is more appropriate. It is amazing that the family institution has continued to evolve, develop, and cope with the cultural changes which have occurred over the past three centuries. This is indeed an amazing accomplishment. To this day it is clear that the family institution is durable and continues to be highly valued throughout our society.²⁷ Therefore, family preservation should be a priority of all policy makers. Without this institution the society would be less productive and incapable of functioning without severe detriment.

Judy Stacey suggests that children today have a childhood overwhelmed by an environment defined too much by electronics and speed.²⁸ Children are preoccupied by "becoming an adult". More of their time is spent with peers than with their families. The amount of family

²⁷Arlene Skolnick, Embattled Paradise (New York: Basic Books, Inc., 1993), xi-13.

²⁸Judith Stacey, Brave New Families. (New York: Basic books, Inc., 1990), 3-17.

time has declined drastically. According to the 1989 study by the Family Research Council of Washington D.C., the amount of time parents spent with their children dropped 40% during the last quarter century. In 1965, parents spent 30 hours of contact per week with their children. Today parents average approximately 17 hours per week. Hectic parental schedules limits time for family functions. Thus, the children are often forced into accepting responsibility for themselves.²⁹ The deficit in parental time can also be attributed to single parent homes, increase in working mothers, abandonment by fathers, and divorce. "These trends translate into a significant decline in the quantity and quality of time parents spend caring for their children."³⁰

In The Way We Never Were, Stephanie Coontz emphasizes that people need to become comfortable with what they are and what their parents did wrong. This will free up time to devise a plan to solve the problems. She suggests beginning to build on a community network involving schools and other advocacy groups. Her research has shown that families have been the most successful when they have built meaningful, solid networks and have made commitments to solving their problems. She further concludes, "we may discover that the best thing we will ever do for our own families, however we define them, is to get involved in community or political action to help others."³¹

A court system that will support family preservation by providing services which assist in this goal is greatly needed. Acknowledging the importance of this institution, policy makers must continue to support new programs with innovative approaches for this unique institution.

²⁹Ibid., 73-74.

³⁰Sylvia Hewlett, When The Bough Breaks, 73.

³¹Stephanie Coontz, The Way We Never Were, (New York: Basic Books 1992), 277-278.

Declining Quality of Schools

"Every child must enter school ready to learn, every school must be able to meet the needs of its students, and every American must value education and impart that value to children."³²

"According to the Committee on Economic Development, dropouts are three and a half times as likely as high school graduates to be arrested and six times as likely to be unwed parents,...are seven and a half times as likely as graduates to be dependent on welfare...and twice as likely to be unemployed and to live in poverty."³³ Statistics prove that dropouts are more likely to become juvenile delinquents and have far less a chance succeeding as a productive adult. The American education system seems to be failing miserably at keeping children in school and providing them adequate academic achievement to compete at international levels. "Deficiencies in the American educational system are especially glaring for poor children, children of color and children with disabilities."³⁴ "A typical 17 year old in a poor urban area only achieves a proficiency level equivalent to that of the average 13 year old in a more affluent area."³⁵ "Children of color are less likely than whites to graduate from high school or receive an equivalence degree: in 1990, 87% of white 19 and 20 year olds had diplomas, compared with only 78% of African-Americans and 60% of Latinos."³⁶

The education system of the United States is not a national system. The states retain jurisdiction of their education system. Many states rely on local government to regulate education. Thus, similar to the court system, there are vast differences in what is provided among the states

³²ABA, 25, citing National Commission on Children, Beyond Rhetoric: A New American Agenda for Children and Families (1991), 177.

³³Ibid., citing Lisbeth B. Schorr, Within Our Reach: Breaking the Cycle of Disadvantage (1993), 8.

³⁴ABA, 25.

³⁵Ibid., citing Beyond Rhetoric, supra note 34, (citing A.N. Applebee, et al., Who Reads Best? Factors Related to Reading Achievement in Grades 3, 7, and 11 8 (1988), tbl. 1.1.

³⁶Ibid., citing State of America's Children.

and individual local governments. These discrepancies have been the root problem on many court cases. Equitable school districts would alleviate the majority of educational discrimination which still exists today in most states. The ABA is in support of increasing federal funding for those school districts abiding by federal standards which affect the curriculum and instruction in public schools. It is impossible to achieve equal opportunities when educational disparities continue to hinder the poor and minorities. Non-traditional educational services funding must also be improved upon. Vocational training programs, special education childrens' programs and availability of education for homeless children are policy issues federal, state and local governments must address aggressively.

Child Neglect and Abuse

"Today the vast majority of people--nearly three out of four in one survey, both parents and non-parents--believe that the quality of life for America's children has declined since their own childhood."³⁷ The 1970's and 1980's brought a heightened awareness of children who were victims of physical and sexual abuse. Since 1982, the National Committee for Prevention of Child Abuse has conducted a nation-wide survey on an annual basis to monitor reports of child abuse, neglect and the services provided by each state. The findings of the 1991 report continue to show an increase of reports in all three areas. For the fourth consecutive year child maltreatment fatalities remained above 1,100. The statistics reflect data provided by more than 80% of the states. If all 50 states have responded the actual numbers would be significantly higher. These figures only account for abuse fatalities and in some states do not include children under the age of two, cases known to protective services prior to death or in which there were surviving siblings.

³⁷Arlene Skolnick, Embattled Paradise, 206.

Therefore, the statistics are not a true representation of the problem. Efforts are underway to define reporting procedures. This will improve the validity of the statistics.³⁸

The problems of neglect range from environmental and medical to educational. No longer do parents reap economic benefits from raising children as in the 18th century. Children are major expenditures for parents and usually do not become productive until their early twenties.³⁹ The United States lends very little public support for these parents. This is a grave injustice when America receives the majority of economic rewards after the parents are successful in rearing productive members of the society.⁴⁰

Drugs and Alcohol

Adolescence is a time of experimentation and trial with the risk of error, of breaking rules and exercising extreme autonomy. It is a time when social and cultural norms, values, and role models greatly influence our youths' behaviors and attitudes. Many of these young people are considered "at risk" of becoming victims or perpetrators.

Despite the War on Drugs launched by President Reagan our communities continue to experience problems of drugs and violence. Drugs pose a constant threat to the youth of America. In 1985, the ABA reported escalating health problems, automobile accidents, life-threatening injuries and fatalities that stemmed from increased drug and alcohol abuse by children.⁴¹ A recent University of Michigan study suggests an increase in use of drugs by 8th graders and a decrease

³⁸Smith, Peggy, and Dr. Michael Durfee, Child Death Review. A Review of Unpublished Reports By States, January 1991, 6-13.

³⁹Silvia Hewlett, When The Bough Breaks, 27.

⁴⁰*Ibid.*, 28.

⁴¹ABA, 38, citing Report accompanying ABA Policy Recommendation on Youth Alcohol and Drug Problems, published July 1985, revised March 1986, 4-5.

in peer disapproval for drug and alcohol experimentation.⁴² According to the recent annual survey of high school students, just under half of the seniors in 1992, 47.9% of the 15,676 surveyed, had used an illicit drug at least once in their lives.⁴³ Money is a strong motivator for disadvantaged kids. These children learn through exposure at an early age that big money can be made quickly in the drug trade. It is extremely hard to provide legal alternatives that are as lucrative. Yet the risks are high. The media reports daily deaths resulting from drug related incidents.

Drug exposure is no longer just a teen problem. The crack epidemic has spread this addiction to unborn children by the thousands. Drug-exposed babies begin life with and in agony. Treatment and rehabilitation programs are expensive. Success stories of these young addicts are few. The damage caused by the drugs they receive in the womb cause life long disabilities.

Suicide

Failing to cope with the stress and emotional havoc children face today can lead to suicide. Adolescent suicide has dramatically increased over the past 25 years.⁴⁴ According to the *Child Death Review Report*, "Among 5 to 9 year olds there are less than five recorded suicides each year."⁴⁵ The rate of teen suicides has increased dramatically in the past ten years. The most common age group are children between the ages of 15 to 19. The numbers of this group have tripled between 1960 and 1986. Seventy-five percent of these children were white males and more than 60% of the suicides were carried out by firearms. A even larger number of children have thoughts of suicide or attempt suicide each year. "The number of suicide attempts is much

⁴²Ibid., citing Monitoring the Future. University of Michigan High School Senior Survey, April 13, 1993, Tbls. 1, 9.

⁴³Bertha M. Cato, "Youths Recreation and Drug Sensations: Is There a Relationship?" Journal Drug Education 22, (1992): 293-300.

⁴⁴Ibid., 70.

⁴⁵Smith and Dufree, Child Death Review, 19.

larger than the number of completed suicides, but statistics on attempts are not as reliable."⁴⁶ Drug, alcohol usage and genetic mental illnesses have been presented as key factors in adolescent suicides. However, there are other psychological and sociological causes. Negative trends such as crime, declining academic achievement, changes in the family through divorce, death or marriage can affect a child's well-being. One thing is certain, the death or irreversible damage of youth will bring about serious problems for American society. These are issues that should continue to be on the policy agenda of all governments, federal, state and local.

Gangs

It is a given fact that adolescents value their peers far more than they value any other reference group. Therefore, it is not surprising that youth gang membership has increased dramatically over the past decade. This preference of being together and belonging to something is actually considered a normal activity for youth. Many of the gang characteristics are mere extremes of other adolescent groups, such as boy scouts or girl scouts. What differentiates the gang from these other socially accepted groups is the gang's level of participation in criminal activities. They also declare "turf" (an area designated as their stomping grounds) and are usually well managed with designated leaders.⁴⁷

A look back into history reveals that between 1910 and 1925 there was a great influx of immigrants from Mexico due to the revolution and the political instability in that country. These families congregated in several areas in California. Rivalries developed between the youth from Mexico who were separated by original native customs and value systems. These developed into

⁴⁶Arlene Skolnick, *Embattled Paradise*, 208.

⁴⁷Ira Schwartz, ed., *Juvenile Justice and Public Policy* (New York, Toronto, Oxford, Singapore and Sydney: Lexington Books, Maxwell Macmillan Canada and Maxwell Macmillan International, 1992), 22-23.

the first gangs in California. Each group claimed an area referred to as their turf. The gangs continued to grow in numbers as the migration to California increased from families relocating from Arizona, New Mexico and Texas. Urban renewal in the 1960's and 1970's also contributed to the formation of many new ethnic groups claiming gang culture. Today California has earned the name of the nation's gang capital with an estimated 85,000 Crips and Bloods and 61,000 hispanic gangs in Los Angeles County alone. Of the known 959 gangs, most function loosely without organized leadership. Gang related murders in the city of Los Angeles increased from 103 in 1982 to 435 by mid-1992 (See Figure 1).⁴⁸

The U.S. Department of Justice has been tracking gang migration. In the past several years, Los Angeles gang members have relocated to nearly all 50 states and are involved in drug trafficking and recruiting. Gangs are not a new problem, in fact the largest metropolitan areas have regarded gangs as a problem since the 1950s. Gangs of the 1980s and 1990s are more numerous and dangerous. Failures in long term social policy development causes this phenomenon to perpetuate. The underlying socioeconomic problems must be addressed in order to facilitate adequate changes in this subculture. Most of the efforts

**LA CITY
Gang Related Murders**

1982	-	103
1983	-	123 (+19%)
1984	-	119 (-3%) (Olympics)
1985	-	150 (+26%)
1986	-	187 (+25%)
1987	-	205 (+10%)
1988	-	257 (+25%)
1989	-	303 (+18%)
1990	-	329 (+9%)
1991	-	375 (+14%)
1992	-	435 (+16%)

1992 MURDER ANALYSIS

435 Gang = 40%
1100 Total

* Final total estimated to be 445 - 455.

Figure 1

⁴⁸Special Enforcement Detail Las Vegas Metropolitan Police Department, May 1992, table.

against gangs are mere crisis management techniques.⁴⁹

Many major cities have formed task forces to develop and implement diversion programs for alternatives to gang membership for youth. Former gang members have become involved in gang education. Gang truces have been encouraged by religious leaders and law enforcement. Trade programs and work programs have helped to initiate positive activities. Law enforcement agencies are becoming educated and trained about gangs and how to deal with them. A clearing house for gang-related information has been established by the Office of Juvenile Justice and Delinquency Prevention located out of Virginia. Gang manuals, referrals, newsletters, conferences and training seminars are services offered in response to gang problems.⁵⁰

Youth Problems in Nevada

Education

The problems of our local youth are sure to grow in the near future. Enrollment in Clark County (Nevada's largest county) school district increased from 100,039 in 1987/88 to 136,188 in 1992/93. The graduation rate for the 1991/92 school year in Clark County, Nevada was 74.6% (not adjusted for population growth.) The dropout rate for students in grades 9 - 12 was 7.9%. This number represents a decrease of 1% from the previous year. The gender breakdown reflects: 50.2% boys and 49.8% girls, 974 students were retained in their present grade during the 1991/92 school year, representing 0.8% of the student population. A total of 4,349 students were suspended in 1991/92 compared to 2,384 in 1990/91. A total of 171 students were expelled. 92

⁴⁹Ibid., 32.

⁵⁰"Gang Training, Seminars and Resources," *Police* (May 1993): 40.

of these expulsions were for possession of weapons.⁵¹

Child Neglect and Abuse

The Clark County Juvenile Court Statistical Report for calendar year 1993 reported a total of 8542 referrals to the Court for neglect and abuse charges. 51% of these referrals involved male youths and 49% female. The age range 3 to 5 years old ranked the highest number of referrals with 1843 referrals or 21.5% of the total. 5,622 referrals or 65.8% of the youth were Caucasian. African American and Hispanic children ranked 2nd and 3rd highest ethnic groups referred with 1876 or 22.0% and 872 or 10.2% respectively. These statistics show a tremendous increase since 1989.⁵²

Nevada had the highest percentage of females in the labor force in the United States in 1988, 66% compared to 56.6% in the nation. In 1986, 41% of the child/abuse neglect reports statewide were due to "lack of supervision". The State Welfare Department reported in 1989 that 4,712 cases of child abuse or neglect were referred, 53% or 2,498 involving insufficient family income. In 1989 Nevada ranked 42nd in the nation in Aid to Dependent Children enrollments. Family and Child Services Workers reported in 1989 that one out of five ADC recipients is an adolescent. Protective Services Officers in 1989 report that nearly three out of five ADC recipients are adolescent.⁵³

In 1992 insufficient or inadequate incomes were considered a high level of stress factor in 63.1% of the substantiated cases of child abuse and neglect. This represented an increase from

⁵¹Clark County School District Public Information Office, 1991/92 Annual Report (Las Vegas: CCSD, 1991), 6.

⁵²Clark County, Annual Report: Fiscal Year Ended for Calendar year 1993 (Las Vegas: Clark County, 1986), 4.

⁵³Ibid.

60.3% in 1991. Figure 2 on the next page presents the total list of family stress factors involved in substantiated cases for the 1993 calendar year.⁵⁴ In the 1993 calendar year, Clark County substantiated 2,457 child abuse/neglect reports, representing 55.7% of the total reports by Clark County, and Washoe substantiated 1,038 cases or 23.5% of the total for Washoe County. Figure 3 on page 29 presents the raw numbers of child abuse/neglect reports received by county in Calendar Year 1993. In Clark County alone, only one third of the total complaints received were substantiated. In 82.0% of the substantiated cases the child was victimized by the natural parents.⁵⁵

⁵⁴State of Nevada Division of Child and Family Services, Nevada Child Abuse & Neglect Statistics 1993 (1993), 25.

⁵⁵Ibid., 1, 17.

Nevada Child Abuse & Neglect Statistics

Factor	# Cases	% Total Factors	% Subs. Cases
Alcohol/Drug Dependency	2,406	8.2%	54.6%
Mentally Retarded Caretaker	128	0.4%	2.9%
Mentally Retarded Child	175	0.6%	3.9%
Health Problem Caretaker	780	2.7%	17.7%
Health Problem Child	851	2.9%	19.3%
Inadequate Housing	1,217	4.0%	27.6%
Social Isolation	865	2.9%	19.6%
Job Related Problem	1,465	5.0%	33.2%
Insufficient Income	2,780	9.4%	63.1%
Transient	467	1.6%	10.6%
Mismanaged Income	512	1.7%	11.6%
Spousal Abuse	609	2.1%	13.8%
Family Violence	913	3.1%	20.7%
Parents Cannot Cope	5,119	17.5%	116.1%
Marital Problems	1,825	6.6%	41.4%
New Baby/Pregnancy	943	3.2%	21.4%
Other Stress Factors	5,355	18.2%	121.5%
None	922	3.1%	20.9%
Unknown	2,005	6.8%	45.5%
Total	29,337		

Figure 2

Nevada Child Abuse & Neglect Statistics

COUNTY	UNKNOWN	UNSUB-STANTIATED	SUB-STANTIATED	TOTAL REPORTS
Carson City	28	317	130	475
Churchill	14	257	163	434
Clark	1,345	2,445	2,457	6,247
Douglas	11	125	69	205
Elko	34	368	113	515
Esmeralda	0	1	0	1
Eureka	0	7	7	14
Humboldt	15	118	63	196
Lander	2	70	29	101
Lincoln	1	13	13	27
Lyon	27	235	127	389
Mineral	13	67	35	115
Nye	19	41	46	106
Pershing	7	60	43	110
Storey	0	15	4	19
Washoe	419	1,962	1,038	3,419
White Pine	6	118	71	195
Rural NV	177	1,812	913	2,902
NEVADA	1,941	6,219	4,408	12,568

Figure 3

Drugs and Alcohol

In 1991, Nevada ranked 2nd in the nation in alcohol consumption and in the number of regular cocaine users. In 1989, 47% of child abuse cases in the state involved drugs. In 1990, 199 babies were referred to juvenile court due to drug dependence. In 1992, alcohol/drug dependency rated high as stress factors in 54.6% of the substantiated cases. This was an increase from 1991 from 53.7%.⁵⁶

Gangs

Youth gangs in Nevada are usually organized along ethnic lines. As of June 1994, statistics reported show out of 132 gangs with 5 or more members, 40% were African American, 34% Hispanic and 17% Caucasian (See Figure 4 on page 31). Occasionally gangs will allow associate members to be outside of the specific ethnic group. Few white gangs have been identified and do not seem to be located in any specific geographical area.

The structure of a gang can vary from loosely structured with a few youths committing crimes together, to a highly structured group with a leader who acts as a mentor and teacher. This individual would call most of the shots. Leaders are often designated by proving to be the "baddest" of the gang. The level of violence is determined by the leader. There were 299 drive by shootings in the Clark County area in 1993. By June 1994, 175 drive bys had occurred (See Figure 5 on page 31). The primary age group of youth gang members ranges from 13 to 20, although recruiting has taken place from youngsters as young as age 9 or 10. Figure 6 on page 32 represents gang membership/association by age. This table indicates ages 18 - 21 years represented the highest age group with 2257 members.

⁵⁶Ibid., 25.

Children join gangs for a variety of reasons. Some of the most common reasons are: 1) they receive recognition and attention from their peers they feel they do not receive at home, 2) the cohesiveness of the gang gives them a sense of belonging and a sense that someone cares, 3) some join for protection from other gangs in their neighborhood and 4) some members are forced to join by their peer group.

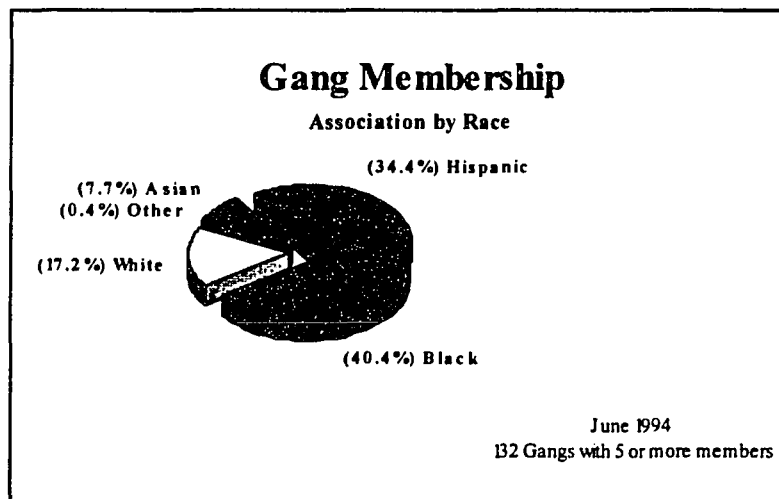


Figure 4

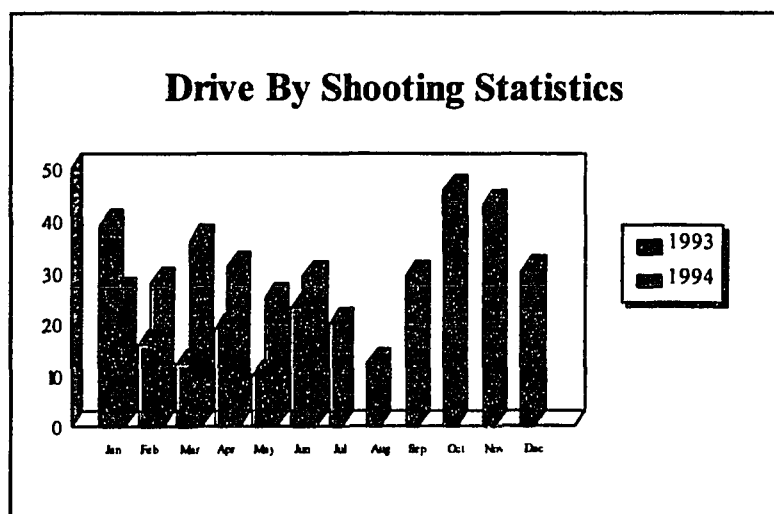


Figure 5

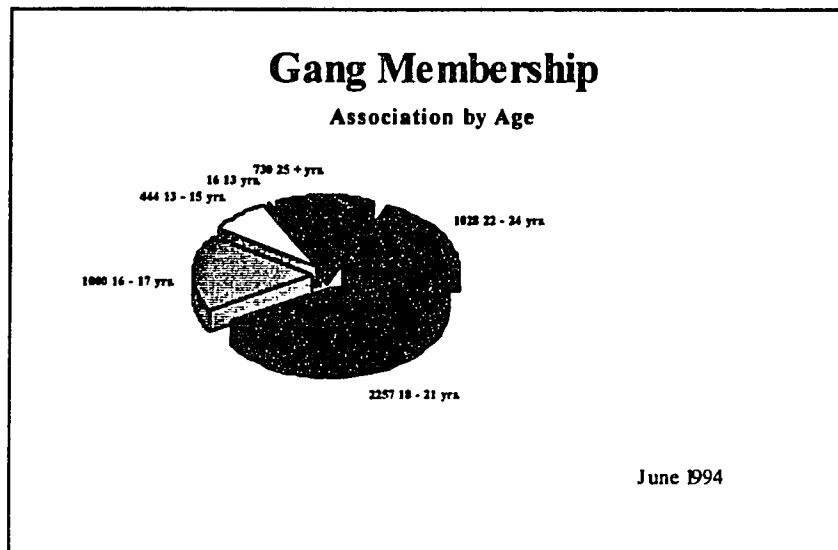


Figure 6

Nevada is attempting to acknowledge these needs by developing a unified family court system that will not only address the juveniles' and families' needs but provide referrals to community based services and on-site services beyond those previously provided.

CHAPTER II

THE EVOLUTION OF THE FAMILY COURT SYSTEM

This chapter will discuss the development and structure of the court system, the role of the judiciary, the establishment of specialized tribunals, the reform movement and the development and implementation of the family court model.

Development and Structure of the Court System

The United States' courts derive their existence and power from the United States Constitution and subsequent legislation. Federal courts operate as the judiciary for the federal government. Their authority and jurisdiction is limited by Congress. The first Congress enacted the Judiciary Act of 1789 creating the federal court system. The Constitution created a dual court system, federal and state. The United States Supreme Court has appellate jurisdiction over both systems. It does not, however, review all decisions of state courts. It will hear only those cases involving federal law or where a violation of civil rights may have occurred.

The state courts were modeled after the English court system, with a few modifications. The colonists were in fear of dictatorship and leery of the state governor's influence on the courts, because of the history of the royal governors from England. During the post-revolutionary period the legislatures took measures to ensure the judiciary would not become an extension of the governors' power. The state courts began to develop independently and became more responsive

to the communities they represented.⁵⁷

The states retain jurisdiction in all areas not specified as federal. The states have authority to decide almost every type of case and are limited only by each individual state's constitution and statutes. Interpretation of law may vary from state to state. Although some states may have similar laws, each may interpret them differently. The process is further diversified by the judges' authority to have discretion when interpreting and applying the law.⁵⁸ Most of the state courts are decentralized and easily accessible to the community. Each court is designed to perform specific functions, dealing with certain problems. Few state court systems are centrally administered or funded by state government. Most are funded and staffed by city and county government. Because of the fragmented system, the local governmental units have developed uniquely. Each state court is influenced by the political and social aspects of the particular community. Thus, resources, funds, backlogs, and sentencing can vary enormously.⁵⁹

The state-federal dual court structure makes the United States court system unique. Some cases may be filed in federal, while others may only be filed in state courts. In certain instances, cases may be heard in both courts.⁶⁰ Jurisdiction of federal and state courts are established by the Congress and state law respectively. Adjudicatory procedures have been developed through a blend of legislative enactments and judicial precedent.⁶¹

Specialized courts such as juvenile courts, labor courts, criminal courts, and the most recent reform, family courts, were created to serve the needs of a particular group of people or particular types of cases.

⁵⁷George F. Cole, The American System of Criminal Justice (Pacific Grove: Brooks/Cole Publishing Company, 1989), 402-403.

⁵⁸Ibid., 121.

⁵⁹Ibid., 400-401.

⁶⁰Fannie J. Klein, Federal and State Court Systems -A Guide (Cambridge: Ballinger Publishing Company, 1977), 1

⁶¹Cole, The Amer. System of Crim. Just., 121.

Role of the Judiciary

Traditionally, the executive branch enforces law, the legislative branch creates law and the judicial branch interprets law. Although each branch has a set of defined duties, in practice, the three branches exercise a mixture of power. In order to be credible and effective they must work collectively. As the functions of the branches become intertwined, the legitimacy of these functions is scrutinized. Recently, more than ever, the judiciary has provided a forum for groups and individuals who lack political influence to have their concerns heard and to advance their objectives. These parties would otherwise be unable to influence policy-making decisions.⁶²

From the beginning of the tripartite system, the framers reserved many powers for the individual state governments. They further intended the legislative branch to carry the responsibility of most of the policy-making authority. As time progressed, the judiciary became more involved in this function and the distribution of this authority changed. There are those who would argue against judicial intervention into policy making. Those opposed are concerned with those judges who are appointed and may or may not represent the public's point of view, thus defeating our democratic premise, government with representation.

Judges are adjudicators, negotiators, and administrators. Since Brown v The Board of Education, judges have become involved in mediation beyond what was once considered within the realm of their bestowed duties. Policy oriented law suits have thrust the judiciary into the arena of remedial decrees. Remedial decree litigation challenges the judiciary with difficult tasks testing the limits of their abilities and authority to develop and administer equitable remedies.⁶³ Therefore, it is easy to conclude, the judges' role has evolved.

The judicial range of discretion is very broad and concerns many issues. Judges' scope

⁶²Christopher Smith, Courts and Public Policy (Chicago: Nelson Hall Publishers, 1993), 3.

⁶³Cooper, Phillip J., Hard Judicial Choices (New York: Oxford University Press, 1988), 12-13.

of discretion is very extensive within the general doctrinal limits. Judicial effectiveness can be measured by their capacity to remedy the situation. They may also be evaluated in other litigation forums based upon the number of appeals which are successfully overturned.

With the development of the court system and judicial roles in mind, a look at how juvenile court has evolved throughout United States history may give further insight as to how the present court system has emerged.

Specialized Courts - Juvenile Courts

Herbert Lou wrote in his book, Juvenile Courts in the United States, that "the juvenile court is conspicuously a response to the modern spirit of social justice."⁶⁴ The validity of this statement is reflected in the evolution of the juvenile court's philosophy, as well as its legal and procedure safeguards. While the majority of Americans are in agreement that disintegration of the traditional family, juvenile crime and child abuse and neglect are serious problems requiring government actions, there is no consensus on the approaches that should be taken. Thus, the court system has progressively developed many programs and expanded services in an attempt to resolve apparent inadequacies in social conditions which foster criminal behavior.

Proponents of protection for children became organized in the early 19th century. They were concerned with rehabilitation, education and character reform. Other significant factors contributing to various reform activities were urbanization, industrialization and immigration. The massive growth rate experienced by many of the major cities in the United States further propelled the reform efforts. There was a growing concern that criminal charges against juveniles

⁶⁴Monrad Paulsen and Charles Whitebread, Juvenile Law and Procedure, Juvenile Justice Textbook Series (Reno: National Council of Juvenile Court Judges, 1974), 1, citing Lou, Juvenile Courts in the United States 2, (1927)

often resulted in extremely detrimental consequences and even sometimes capital punishment. Advocates for reform of the current system supported the creation of a court system independent of the criminal court system, with the objective of benefiting the community and the child by educating, treating and training the child in the direction of becoming a productive good citizen.⁶⁵

Three major legal developments took place at that time. The states expanded their jurisdiction and power over juveniles, treatment facilities "reform schools" were constructed (i.e. New York House of Refuge established in 1825) and pre-court procedures for specialized treatment of juveniles in separate courts began.⁶⁶

In 1861 in Chicago, Illinois, the mayor appointed a commissioner to hear minor charges against juveniles. This responsibility was later given to a judge. Massachusetts, Rhode Island, and New York all enacted separate sessions for juvenile cases thereafter. In 1899, the Illinois Juvenile Court Act was enacted. This triggered similar legislation nation-wide. The courts' authority originated from the English Doctrine Parens Patriae. Parens Patriae gave the crown the power to protect children and other incompetents' welfare. The crown provided protective guardianship but did not have jurisdiction over children charged with criminal conduct. This was modified with the newly formed courts to include those children charged with delinquent acts. By invoking the power to protect children against criminal proceedings the courts characterized the proceedings as civil and not criminal.

The jurisdiction of the juvenile court encompassed 1) delinquent acts - acts that if committed by an adult would be a crime, 2) children in need of supervision for non-criminal conduct, 3) children whose parents refused to provide proper care or harmed the children, 4) children whose parents could not provide for them. Jurisdiction may vary from state to state

⁶⁵Ibid., 5, citing Ex parte Sharp, 15 Idaho 120, 127, 129-30, 96 Pac. 563, 564, 565 (1908).

⁶⁶National Institute of Law Enforcement and Criminal Justice, Prosecution In The Juvenile Courts: Guide Lines For The Future (Washington, D.C.: United States Department of Justice, 1973), 4-5.

because it is established through state legislature. Certain ages and crime types are excluded from juvenile court jurisdiction. In Nevada, jurisdiction extends from age 8 to 17. Minors charged with murder or attempted murder are automatically certified as an adult on those charges and the proceedings are handled in criminal court. Some states have provisions for criminal cases involving adults who meet extraordinary circumstances acknowledged by the court and the case is remanded down from criminal court to juvenile court. In Nevada, the precedent has established extraordinary circumstances as diminished mental capacity, emotional instability and extreme immaturity.

The juvenile courts operated nearly 66 years without major legal criticism. The 1950's and 1960's were decades for procedural changes with the Supreme Court decisions Kent in 1966, In re Gault in 1967, Winship in 1969 and McKeiver in 1971. Kent v. United States was the first juvenile court case reviewed by the Supreme Court. The court affirmed that waiver hearings "must measure up to the essentials of due process and for treatment."⁶⁷ Whether juvenile court dispositions were equitable and fair was not questioned until this time. Kent held due process standards applicable to juvenile court. Included in this decision was the requirement that medical reports and staff reports considered by the juvenile judge prior to adjudication be shared with counsel. In re Gault afforded more due process rights to minors, such as: adequate, timely written notice of allegations, the right to counsel, the right to confront witnesses and cross examine opposing witnesses and privilege against self incrimination.⁶⁸ Winship demanded the same fact-finding and caution be used in trial proceedings of juveniles as is applied in criminal court. The McKeiver opinion affirms that the due process standards set up in Gault and Winship are considered to establish "fundamental fairness." Jury by trial is not considered a right required

⁶⁷Paulsen and Whitebread, Juv. Law and Proc., 12.

⁶⁸Ibid., 15.

by juvenile court proceedings. It was not considered a necessary component to achieve fairness.

These rights became firmly embedded with the following decisions. In re Collins 1969 held parents are not permitted to waive their child's rights. Brookhart v. Janis, 1966 held counsel could not waive their minor clients' rights. Reasoner v. State, 1971, extended this doctrine to include guardian ad litem or attorney.⁶⁹

The Uniform Juvenile Court Act in 1968 and the Children's Bureau's Legislative Guide for Drafting Family and Juvenile Court Acts in 1969 assisted in establishing guidelines and procedures. The informality of the juvenile court prior to these monumental decisions and acts led to the development of procedures and dispositions. Criticism surrounded the juvenile court philosophy, charging their goals were ineffective and futile. Juvenile legislation was ambiguous and rehabilitation effects far too ambitious. In retrospect it would appear that with the separation of the juvenile court from the criminal court the juveniles lost due process to gain an ineffective approach at behavioral modification. These criticisms were taken seriously and from this time forward the reform has been ongoing.

So began a philosophical battle which is sustained today. The juvenile court philosophy was borrowed from England and existed three quarters of a century prior to the 1899 juvenile court act.⁷⁰ The emphasis on child welfare has at times over shadowed and severely narrowed penological theory and due process procedural rights of the minors it seeks to protect. Justice Stewart remarked in his dissent opinion in Gault that the purpose and mission of juvenile proceedings is the very opposite of a prosecution in criminal court. The object of one is correction of a condition. The object of the other is conviction and punishment for a criminal

⁶⁹Tbid., 108.

⁷⁰Fox, Sanford J., Juvenile Courts In A Nut Shell (St. Paul, West Publishing Company, 1971), 259.

act."⁷¹ The early juvenile courts were created to impose penal law, attempt rehabilitation through behavior modification and provide predictions of future juvenile crime. "It became apparent in the course of the twentieth century, however, that crime prediction among children is a far more subtle and difficult task than the nineteenth century juvenile justice reformers could have imagined."⁷² Changes in the system's mission became inevitable.

As the courts progressed from their main role of child advocate to that of a formal court of law with penal consequences, the role of the judges and staff changed significantly. The judge and probation officers roles have expanded as law enforcement agents.⁷³ Judges no longer take on the role of "friendly fathers" protecting society's children nor do probation officers only focus on treating social ills believed to be the underlying cause of juvenile crime.

Court Reform On The Rise

Roscoe Pound, a prominent jurist and educator, was known for his dominant role in court reform in the early 1900's. His theory, sociological jurisprudence, recognized contemporary social conditions when establishing rules. His speech in 1906, "The Causes of Popular Dissatisfaction with the Administration of Justice" addressed the organizational inadequacies of the judicial system and initiated much enthusiasm in reform efforts. His analysis of the trial court system revealed that there were too many courts and a great waste of resources, efforts were duplicated, and boundaries were too rigid. The remedy called for the creation of a unified court system.⁷⁴

These ideas coincided with the twentieth century Progressive movement, which utilized business principles to improve efficiency, simplicity, unification, and coordination of the court

⁷¹Ibid., 17.

⁷²Ibid., 260.

⁷³Ibid., 261.

⁷⁴Cole, The Amer. System of Crim. Just., 401.

system. Four themes were generally present in the court reform efforts at this time. "These themes: 1) structure, 2) centralization of administrative authority, 3) funding, and 4) a separate personnel system, have been at the forefront in the movement to reform the state courts."⁷⁵

Nevertheless, regardless of the tireless efforts to improve what was recognized as an ineffective system, politics and judicial bureaucracy smothered the flame of reform. Geoff Gallas was quoted, reflecting on the reformers' failed efforts, that he felt their downfall was the "belief that simple structural and process reforms will solve complex behavioral problems."⁷⁶ The major stumbling block to create a unified court system was the reformers' neglect in taking into consideration the political realities and the participants' unwillingness to change.

The development of family law is a recent new innovation which sprang to life with the help of the women's movement, children's rights movement and increased legislation giving legal status to children.⁷⁷ Effective coordination of the court system is a need our society has identified.⁷⁸ The development and implementation of the unified court system is an attempt to alleviate some of the problems. The principles, rules and practices of this unified system will be addressed at greater length in the later chapters. The establishment of juvenile and domestic relations courts acknowledges society's realization of the impact court intervention has on children and families. More citizens are exposed to family court than any other part of the court system. A large majority of these families come back frequently and for a variety of reasons.

⁷⁵Ibid., 402.

⁷⁶Ibid., 402, citing Geoff Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *Justice System Journal* 2, (Summer 1976): 54.

⁷⁷Robert W. Page. "Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes.", *Juvenile & Family Court Journal*, vol. 44, no. 1, (1993): 3.

⁷⁸Theresa Homisak, Hunter Hurst, III, and Linda Szymanski, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family* (Pittsburgh: National Center for Juvenile Justice, 1992-93), 3.

Development and Implementation Of The Family Court Model

The concept of a unified and comprehensive family court system has progressed over the past thirty years. The idea of combining all judicial proceedings involving juveniles and families has been considered internationally, as well as nationally. The recent surge in interest has been attributed to the increase in court calendars with relation to problems within dysfunctional families.

Unified family courts have been proposed or are in existence in Canada, Australia, and New Zealand. A study of the literature reveals many similarities of these systems with that of the systems of the United States. All of the systems studied revealed a dedication to finding solutions and making decisions in the best interest of the family, realizing you cannot sanction one member of the family without affecting the others. Thus, the family courts have created goals of providing both social and legal functions for their clients. These auxiliary services are part of all the family courts which have been established thus far.

Not only is the philosophy of the family courts similar in nature, many of the reasons behind the court reform are much the same. Efficiency, equality, and the protection of the family unit are all basic concerns expressed by family court advocates. The family law revision of Quebec's civil laws marked these very issues as strong concerns, and proposed reforms recognizing fundamental human rights.

In 1977, the Civil Code Revision Office of Quebec, Canada, reported on the Quebec Civil Code. The reports of the C.C.R.O. discussed family law revision and family courts. The main focus of reform revolved around human rights, persons over property. Noted equally as important was equality before the law concerning guardians, parents, and children. The rights of affection and security for the children and the protection of the family unit also weighed heavily throughout the legislation.

The committee proposed that all conflicts or matters arising with a family should be dealt with by the family court. The committee recommended the jurisdiction of the family court to include two sections: a civil section and a penal section. The court would hear matters regarding relations between consorts, parents and children, and offenses committed by adults and juveniles. The court would furthermore have authority to refer juvenile delinquency cases to criminal courts.

Training and experience was also considered of high priority. It was acknowledged that the success of the family court would greatly depend upon the competence and dedication of the judges and staff working in the court. Therefore, the committee established clearly defined job duties and required specific training and education for all judiciary and staff.

Also noted as of great importance was the need for collaboration among the various services working with the court. Coordination techniques were recommended to ensure the communication among the various elements of the family court, service providers and government authorities remained free of gaps.

From 1866 to 1985, family law in Quebec underwent a re-appraisal and reform of its basic fundamentals. It was modernized and has emerged as a family court whose basic goal is justice and insuring its effectiveness in practice through the conflict resolution process.⁷⁹

In Australia, supporters of the family court found it was a desirable goal, however, they acknowledged its implementation is faced with problems. Constitutionally only three avenues avail themselves to effect this goal. The third, under section 77(iii), is that the parliament is able to confer jurisdiction on a state court over matters under federal law. Thus, a state court could create a unified federal court if the federal government agreed to confer their respective family jurisdiction on to the state court. Under this section, state family courts can be established by

⁷⁹ Claire L'Heureux-Dube, "The Quebec Experience: Codification Of Family Law and A Proposal For The Creation Of A Family Court System," Louisiana Law Review 44, (1984): 1575 - 1640.

state legislature and funded by the federal government. It is perplexing that three years following the passing of Family Law Act of 1975 empowering the creation of family courts, only Western Australia had co-operated with the federal government and established a state family court. Mr. John Wade in his article, "The Family Court of Australia and Informality in Court Procedure," suspected perhaps the other states feared the possibility of eventually being financially responsible for the continuation of the family court once it was established.⁸⁰

Mr. Wade cautiously analyzed the family court in Western Australia and concluded that changes in procedure seemed to have been an improvement compared to the previous traditional jurisdiction system. He questioned, however, whether empirical evidence of client satisfaction and improved efficiency could be assembled. He further stated that the family court could benefit from a broader jurisdiction and by more specific statutes concerning matrimonial property.⁸¹

The movement of court reformers on the establishment of family courts dates back to the early 18th century. Today, the movement has gained momentum as the desire to emerge as a respected court increases and as the importance of these courts hearing intrafamilial disputes is brought to the public's attention. The first family court was established in Hamilton County (Cincinnati) Ohio. The State of Rhode Island began the first statewide comprehensive family court in 1961.⁸² The State of Hawaii passed a family court act in 1965 which set precedent as the most comprehensive jurisdiction in the United States.⁸³

As defined by the Family Court Resource Center at the National Council of Juvenile and Family Court Judges, family courts are those that have coordinated all juvenile and family law matters within one court and have made reasonable efforts to coordinate efficient and timely

⁸⁰John Wade, "The Family court of Australia and Informality In Court Procedure," International and Comparative Law Quarterly 27, (1978): 820-848.

⁸¹Ibid., 848.

⁸²Ibid., citing Rhode Island General Laws Section 8-10-3 (1961).

⁸³Ibid., citing Hawaii Revised Statutes 31, section 571 (1965).

service delivery to children and families. The following governments have active family courts: Delaware, District of Columbia, Hawaii, Kentucky, Louisiana, Missouri, Nevada, New Jersey, Ohio, Oregon, Rhode Island, South Carolina, Vermont and Virginia. Additional states have formed task forces or steering committees devoted to exploring or developing a unified family court. These are listed as: Colorado, Georgia, Illinois, Indiana, Kansas, Maryland, Michigan, New York, and Washington.

The term "family court" is interpreted many different ways by state, county and local governments. It is further diversified by individual states' jurisdiction, mission and goals. The dedication of the judiciary, administrators and staff to those strategic goals and management objectives will determine the effectiveness of the court system. Although the family courts have some differences in jurisdiction, funding mechanisms and training requirements, combined they share some basic purposes. The family court system embraces courts staffed with judiciary, administrators, and other personnel who are specifically trained in family law and who are required to exercise skill, knowledge and compassion in the performance of their duties. The family courts are committed to conflict resolution and the protection of the family unit.

The family court system provides legal remedies as well as social services or referrals when necessary. Most family court systems have adopted similar goals which in many ways are directly linked to solving existing problems in the past court systems. Efficiency in case management, uniformity in policies and procedures, the development of interagency cooperation and coordination of services, and improving public understanding of the family court are among most states' family court list of goals.

Let us now take a closer look at the Family Court of Hawaii. Honolulu's model was patterned after the family court model developed by Judge Alexander in Toledo.⁸⁴ It has been

⁸⁴"The Family Court of Hawaii," *Family Law Quarterly* vol. 2, (1968): 35.

claimed as the most comprehensive model, with jurisdiction over all matters involving the relationship of the husband and wife or parent and child. The Family Court of Hawaii also handles a few other matters. The court is a division of the circuit court of general jurisdiction. The chief justice annually designates the family court judges. Jurists who are trained in the theory of the family court and who possess specialized training in techniques utilized in the family court are given preference. Upon the establishment of the court the juvenile judge and the domestic relations judge were designated senior family court judge and family court judge, respectively.⁸⁵ The smooth transition was effective on July 1, 1966. In addition to the implementation of the family court, family law legislation was adopted in 1965, 1966 and 1967 which further enhanced the modern approach applied by the family court. Other acts have made improvements by simplifying pleadings and the service process: a wage assignment statute was passed in aid of support orders; divorce hearings are no long required to be heard in open court, but in private; a mandatory 30-day waiting period between filing and the hearing was repealed; conciliation procedures are instituted in all criminal cases before legal action is taken; marriage and family counseling is available. The Family Court Judges of Hawaii hoped to develop the court utilizing social service techniques. Its goal has been to become a positive force in the community for family stability, and a source for research and planning in family law.⁸⁶

Many court reform advocates look to the family court model as an opportunity to clarify and achieve unfilled dreams, clouded visions and unmet goals. Yet, there are ethical concerns which should be addressed. Public policy must refocus its efforts so that families in crisis receive the best possible service. However, the family's perception of what is the best possible service may conflict with that of the family court's. Parental rights versus states obligations will be

⁸⁵Ibid., 37.

⁸⁶Ibid., 39.

addressed more closely in the next chapter, as well as the family court's family preservation philosophy and the issue of justice versus system success.

CHAPTER III

ETHICAL QUESTIONS

The family court must make decisions which may permanently affect many lives. Consequently, many ethical questions arise concerning the conduct of judicial business. The family court reformists have enthusiastically brought about a model which they believe will replace many of the negatives of the old system. Many of the improvements are targeted to take place within the administrative section of the court. While the cost effectiveness of improved case management and court administration has been beneficial to the clients, some concerns have been voiced on the following issues: first, the courts' role in family preservation and why the family is such an important institution to society; second, the quality of justice; third, parents' rights vs states' obligations; fourth, rehabilitation vs punishment; and fifth, social worker vs cop role conflict. The ethical questions which arise in discussion of these issues will be explained in greater depth within their respective categories. Some counter arguments will be examined and in conclusion a short summary will be offered with suggestions on how these issues might best be ethically evaluated.

Family

The questions, why is the family institution so important? and why is it the courts' role to help with preserving this institution?, have been answered throughout time by various philosophers. In the beginning of civilization people gathered in small clusters. This was largely for protection. It also became apparent that the work load could be shared, thus making survival

easier. Each member of the community took on certain tasks; and specialization and expertise developed. Members of the community bore offspring to ensure continued existence and in fulfillment of an innate desire. The adult members assumed responsibilities of child rearing. Each member of the society was responsible for the betterment of the community. This view is discussed by Aristotle in The Nicomachean Ethics, Book VIII where he states, "...for man is naturally inclined to form couples...but human beings live together not only for the sake of reproduction but also for the various purposes of life; for from the start the functions are divided, and those of man and woman are different; so they help each other by throwing their peculiar gifts into the common stock."⁸⁷

One philosophic theory which could be used to explain the value of the family is provided by Aristotle. An Aristotelian society would be a community in which the members utilize practical wisdom to achieve a mean (norm) with regard to what is best and right, being careful to avoid excess or deficit. A person's virtue is determined by the habits which makes the person productive and a good citizen. By doing just acts and behaving in one way or another, a person becomes just or unjust.

Parents have been their children's teachers with respect to their value systems since the beginning of our species. If these young members of the community are not properly guided with respect to formation of moral habits, if they lack an internal sense of community responsibility, society then begins to break down. Therefore, the family institution is the backbone of every society and every effort must be put forth to reinforce its well-being. The importance of the family institution is evidenced throughout Aristotle's teaching. He places the duties of parents and children equal to such virtues as honor. Those who busy themselves in these duties are to be

⁸⁷David Ross, The Nicomachean Ethics, trans. (London: Oxford University Press, 1925), 1162a6.

praised for their efforts.⁸⁸ Moral upbringing is fundamental in the question of moral excellence (character development). If children are going to have a healthy moral character it will be because good habits have been cultivated from early childhood. "It is a principle of human development that, over time, one becomes what one does. A person's actions, performance, and participation in various relationships all create a personal history that shapes the person's outlook and habits."⁸⁹

According to Aristotle legislators make good citizens by forming habits in them that would ensure moral virtue. Aristotle reaffirms the purpose of communities and the legislators' role in assisting the continuance of the community in The Nicomachean Ethics, Book VIII, when he states,

Now all forms of community are like parts of the political community; for men journey together with a view to some particular advantage, and to provide something that they need for the purposes of life; and it is for the sake of advantage that the political community too seems both to have come together originally and to endure, for this is what legislators aim at, and they call just that which is to the common advantage."⁹⁰

For Aristotle, the family is the first, most basic 'part' of the community. This view of family supports the role which the court continues to take today. This role was further defined more recently with the doctrine of Parens Patriae, which was mentioned earlier on in this report.

If the family structure is allowed to continue to fail, non-productive members of the community will result. This is an extreme threat to the community and to the larger picture, our society as a whole. As we look around us, there is vast evidence to support the view that the very moral fibers of our society are strained. In some families these value systems are non-existent. The family court will hopefully acknowledge the importance of their role in monitoring and in some cases providing the moral guidance of those who find themselves involved in the justice

⁸⁸Ibid., 1148a29.

⁸⁹William Damon, Greater Expectations (New York: The Free Press, 1995), 34.

⁹⁰Ibid., 1160a6.

system.

The family court acknowledges the parent's influence on a child's psychological as well as physical development. The family has the greatest effect on the child's opportunities in life. Aristotle recognized the importance of the early stages and parental influence in The Nicomachean Ethics, Book II, when he wrote, "Thus, in one word, states of character arise out of like activities. This is why the activities we exhibit must be of a certain kind; it is because the states of character correspond to differences between these. It makes no small difference, then whether we form habits of one kind or another from our youth; it makes a very great difference or rather all the difference."⁹¹ Research has proven that the once popular belief that criminals are naturally bad, degenerates or moral imbeciles is a fallacy. Studies have shown criminal behavior is not genetic. Many variables influence criminal activity such as the school system, neighborhoods, mass media and the economy. Proper shaping and molding of a youth's character by exhibiting proper behaviors, teaching right from wrong and self control will foster good moral values which will assist youths to abstain from undesirable conduct. These lessons must begin from within the home environment. An example of a lesson a young child must learn is how to deal with anger. Good parenting practices will help the child understand the emotion and show that there are numerous options or choices the child may choose to appropriately deal with the emotion. All of the options should attempt to achieve the same result, to release the anger in an unharmed way and to avoid further anger or frustration by teaching coping mechanisms or diverting the child's energy and attention elsewhere. These techniques will reinforce good habits. Parents who lack parental skills are more likely to approach a child's demonstration of anger with anger, reinforcing the act as a learned behavior. Oftentimes parents use physical or verbal actions as responses even without discussion. This will reinforce acting out in violence and will begin to form a bad habit.

⁹¹Ibid., 1103a33.

During the early childhood years, young children must be guided and nursed through these feelings and emotions. They must be provided with these alternative ways to handle the situations which they will encounter through discovery. It is essential that children abide by firm rules and guidelines which are enforced, in order to develop respect for persons other than themselves. A child must be provided with negative and positive feedback, in order to further their moral development and the socialization process. These are gradual processes achieved through long-term exposure. Children must learn from an early age that their own perspective is not the only reference point to base their judgments. They must be taught to respect others' judgments and guidance.⁹² Parents must guide their children towards building skills, acquiring knowledge and relationships that will lead to healthy self esteem and good human relationships. These building blocks are necessary to foster happy, healthy and productive adult lives.⁹³ Therefore, it is a crucial function of the court to assist families in crisis or families who are struggling with these tasks of moral formation. But when a family is failing because the parents do not perform caretaking and training responsibilities, then it is in the community's, family's, and the child's best interest to provide services to train the parents in their parental responsibilities rather than remove the children to alternate environments.

It is the court's philosophy to provide services which encourage the family unit to remain intact and function properly. Removal of the children is a decision based upon life threatening situations or, in the case of delinquency, when all other treatment plans have been exhausted. When removal becomes necessary, because of safety concerns for a child or because of community protection from delinquency of a child, services are provided throughout the period of separation to assist the family in successful completion of the case plan which addresses the

⁹²William Damon, *Greater Expectations*, p. 80.

⁹³Ibid.

particular problem(s) and ultimately a reunification of the family. Questions of moral upbringing are not directly imposed by the court for purposes of establishing services. Parenting skills are addressed with families after other issues have brought the family before the court.

In the case of divorce, the family court will often refer the family to mediation services. If successful, court and attorney fees can be greatly reduced when parents can mutually agree upon issues of child custody, visitation, and separation of holdings. In addition, the divorce process causes less of a detrimental impact on the children when mediation is successful. The family court often refers the family to a divorce adjustment program and/or educational programs.

The family court has established guardian ad litem programs to represent the children throughout the court's intervention. Highly trained C.A.S.A. (Court Appointed Special Advocate) workers may be assigned to the youth. In some instances attorneys are appointed as guardians. These advocates communicate a non-biased opinion to the family court judge or master on the behalf of the child.

One of the major arguments which further supports the family court's family preservation philosophy is the inadequacy of a major alternative, the foster care system. In the long run it has proven to be, in most cases, more beneficial for the families to remain together than for the children to be separated and possibly bounced from one foster home to another. The American Bar Association reported in 1988 that 48% of foster care children were moved from homes two to five times. Approximately 7% of the children were moved six or more times during their foster care placement.⁹⁴ The ABA reported the number of placements available has increased, yet the quality has decreased. Many children lack supervision or are placed in foster homes where parents are not trained to meet the special needs of the children. Many states also lack proper integration programs for young adult foster care children. They find themselves leaving the homes

⁹⁴ABA, p. 50.

at majority age without the necessary independent living skills. There are few programs teaching foster children how to obtain employment, how to budget expenses and even how to maintain a household. Eventually these young adults end up on the streets or standing in welfare lines.

Although the numbers are few, there are cases where the family preservation philosophy should not be adhered to. One example would be a single parent family where the parent has a severe drug or alcohol problem and is unwilling to remain sober and has proven he or she can not or chooses not to provide for the child. Other situations may include a parent or parents who are incarcerated for crimes sexual or physical in nature. It may be detrimental to the child's physical, mental and emotional well-being to be reunited with the parent. In such cases much damage to the child's moral character has most likely already occurred.

It is therefore beneficial for the family preservation philosophy to be continued. However, there is support that termination of the family unit must be an option considered in some cases. These decisions must be made after extensive investigations and services have been provided and it is blatantly obvious that it is in the child's best interest (ultimately the community's and society's) that the family unit be terminated. These are laborious judicial decisions. Those cases which are not obvious are decided by weighing the facts presented. An example might be the case involving a single parent family with three minors, all under the age of 8 and the parent has a substance abuse problem. If the parent complies somewhat with the treatment plan (i.e. by providing supervision, a suitable living environment, food and clothing, and attends a substance abuse program) but some of the urine analysis test results are positive for the illegal substance the judge may have a difficult decision to make concerning keeping the family unit intact. The majority of the time (when clear and present danger is not present) the judge may rule to continue to monitor the progress of the case in hopes that the parent will begin to make more progress in the drug treatment program. Termination of parental rights or even placement away from the

parent are decisions which are utilized when the health and welfare of the child is severely threatened. The parent is provided with numerous opportunities to comply before a termination of parental rights is considered.

Justice

A major ethical concern for all is whether the family court will provide justice equally and equitably for all. Those who find themselves involved in the justice system certainly have a valid claim to be treated fairly. This is also probably one of the most feared failures of the family court model but perhaps the most common, that the reform would succeed in ways which would impress the politicians, administrators, judiciary, and staff, but fail to meet the needs of the children and the families. By processing cases quickly and efficiently with reduced costs the court, the model would look impressive and alluring to other jurisdictions, but effective services to clients may in fact receive little attention.

As the ABA reported in 1993, the nation is still a long way from providing counsel on behalf of all parties subject to juvenile and family court proceedings. Children and their parents should have counsel throughout all stages of legal proceedings. Additionally, many children routinely give up their right to counsel without understanding the ramifications of their action. Others are represented by counsel who are inexperienced in family law and fail to provide competent representation. In 1979, the ABA was involved in the addition of the provision of counsel in the juvenile justice process. In 1984, the approved resolution was sent to the federal Office of Juvenile Justice and Delinquency Prevention. In 1992, The ABA supported reauthorization of the federal law in this area. The Amendments passed by Congress in 1992 directed the Comptroller General to begin a study by November 1993 of the extent to which children charged in juvenile court have waived their right to counsel or obtained counsel during

the last five years, and to compare access to and quality of counsel of adult proceedings with juvenile proceedings.

The right to counsel, the right against self-incrimination, safeguards to insure that waivers of the rights are voluntary and informed, and the right to confront and cross-examine witnesses testifying under oath were laid down as requirements of the juvenile court by the Supreme Court in the In re Gault decision in 1967. Yet, as stated earlier, the ABA reports that these basic rights, which were granted several decades ago, are still not uniformly applied throughout all juvenile and family courts. The Kent decision expanded upon the importance of competent representation. The ABA recommends that family courts must act upon these obligations and fill the gaps of the previous system to offer the personnel, facilities and techniques to perform adequately as representatives of the youth and families before them.⁹⁵

One counter-argument to those urging these rights might be that providing this representation for everyone will be costly. The family courts will all need to include access to a public defender's office equipped to handle these demands. It is doubtful that the states and counties are prepared for this expense. Nevertheless, this is an extremely important ethical claim which the parents and children are entitled to and must be afforded. Injustice costs less, but defeats the purpose of the laws.

What is justice? What is fairness? How do jurists arrive at their decisions? Aristotle states that judges try to "equalize things by means of the penalty, taking away from the gain of the assailant...for the nature of the judge is to be a sort of animate justice; and they seek the judge as an intermediate, and in some states they call judges mediators, on the assumption that if they get what is intermediate they will get what is just."⁹⁶ Let us take a closer look at the adjudicative

⁹⁵Horowitz, Donald L., The Courts and Social Policy (Washington D.C.: The Brookings Institution, 1977), 171-173.

⁹⁶David Ross, The Nichomachen Ethics, 1132a2.

process and the judges role.

One unique characteristic of the litigation of the family courts is the bargaining and compromising which occur based upon the social facts of the individual case. These usually are not conducive to the adversarial process. In all other courts of law judges are obligated to remove themselves from individuals or groups interested in the outcome to remain impartial. This detachment from social forces may hinder decision making in the family courts where decisions concerning social policy occur daily. The movement into the social policy arena requires specialized training on human behavior to enable the judges to endeavor beyond the historical facts and their traditional detachment in the adjudicative process. The ethical issue at stake here is again fairness. Can these judges hand down fair dispositions in spite of the conflict between the social forces and the facts before them?

Understandably, the rules of evidence are applied equally for historical facts and social facts. Thus, throughout the process of the search for the truth, the hearsay rule may exclude a good deal of material relevant to the social issues. According to Donald Horowitz in his book The Courts And Social Policy, in the past the courts have chosen three ways in which to handle social fact issues. First, these issues are ignored, by assuming that the litigants' case is representative.⁹⁷ Secondly, the judge may attempt to ascertain behavior by measuring the potential benefits and/or penalties derived from the particular situation. Lastly, the judge may attempt to gain information from outside sources by consulting experts.⁹⁸ In this author's opinion combining the second and third way presented here is a fair practice which a family court judge may utilize in the decision making process.

Unlike litigation in other courts of law, family court law must be geared toward planning,

⁹⁷Horowitz, Donald L., The Courts and Social Policy, p. 49.

⁹⁸Ibid.

monitoring and making changes occur, rather than solely rectifying injustices or providing compensation. It is imperative that decisions in family court be based upon consequential facts or those that relate to the impact of the decision on behavior as well as antecedent fact on behavior that antedates the litigation.⁹⁹ Their duty is prospective more so than corrective (of the past). Thereby, family court judges must be sensitive to judicial consequences and must possess a keen sense of ability to forecast their occurrence in advance. Monitoring judicial orders is essential to ensure the court orders have not been deviated from or in the event that modifications are necessary. These practices will help minimize the likelihood of youths and their families receiving ineffective help and will ensure the parties remain committed to the court's order.

One of the concepts associated with many of the family court systems is the "one judge/one family" concept. This concept will now be revisited for the purpose of discussing the issues of fairness and justice. Attorneys, administrators, and clients are concerned that the "one judge/one family" concept may allow too much room for abuse of authority to occur. One single judge presiding over all matters regarding a particular family may place the family at risk of detrimental decisions being made by one official who may have formed unfavorable opinions of those involved. There is also concern that prior knowledge or participation by the judge in mediation or pre-fact finding hearings may jeopardize the rights of the family to a fair trial, not to mention that it may be unethical case management. Therefore, many family courts have entertained the "one judge/one family" concept, but have expressed concerns that this theory may not be practical. Some jurisdictions are too large to effectively administer this concept. Other jurisdictions have contemplated possible reversals based upon judicial prejudice and conflict. Those jurisdictions practicing this theory are careful to avoid allowing one judge to preside over mediation, fact finding hearings and disposition hearings, though in other ways the concept works

⁹⁹Ibid., 51.

as foreseen. A recommendation regarding the concept in practice will be presented in the conclusioning chapter of this thesis.

Parents/State

Although the expansion of the services is praised by the reformists, occasionally the clients complain when the family court orders participation in particular programs. This is an example of the ever occurring battle between the parents' right not to be interfered with and the state's obligation to protect the children. Oftentimes the rights of one abridge the rights of another. It is the jurists' duty to decide at which point someone's rights must be restricted. The precise limits are the result of statutes and case law tempered by judicial discretion. In order to provide equal justice, the judiciary attempts to be consistent in sentencing, to ensure that legal representation is afforded to the juvenile and parents, and that unbiased proceedings are conducted. This adjudicatory process has developed over time.

There are moral issues which are of concern here, along with the court's obvious role to ensure that the child is not in danger of abuse or neglect. In general, as each case comes before the court certain moral values are reviewed. The court must also take into consideration the child's moral upbringing. There is just no counter argument offered by anyone to the idea that little children emulate their parents. Much of what they become later in life is determined by their childhood experiences and the social-economic opportunities provided in childhood.

Parens Patriae, which is the foundation of the paternal role of the juvenile court, supports state intervention into the privacy of the family when parents may be guilty of neglect or abuse. The juvenile courts in the United States built upon this foundation to include those children in need of supervision and those who commit delinquent acts. The family court continues to abide by this mandate.

There are times when the state must balance the demands of justice against the value of family privacy and integrity. This is demonstrated when the court orders separations or investigations into family matters. Furthermore, the family court must acknowledge that parental autonomy is equally important to that of autonomy for children. Advocates of parental rights feel these rights are granted to every citizen as declared in the Declaration of Independence. "The right to childrearing recognizes the individual's legitimate interest in having a well-defined zone within which one need not be on the alert against possible observations and intrusions."¹⁰⁰ There are concerns that if the parents are too encumbered by judicial restraints their loss of empowerment could result in the parent's inability to govern the children in a traditional family power structure, thus losing their credibility and authority. Nevertheless, if parental autonomy is inconsistent with the socially accepted norm of parental responsibilities, the state has an obligation to intervene on behalf of the children.

The family court's aim is to intervene as an essential ingredient needed to assist the family unit with developing, while maintaining the balance between the rights of parents and the children's rights. It is hoped that if parents feel secure that they are a major part of the decision making process in the child rearing role, they are able to take pride in their participation and are more likely to be willingly involved.

The parents' rights prevail on numerous occasions. For example: the parents' right to regain custody of their child is exercised as quickly as the parent follows through with the treatment plan and the court is satisfied that the child is no long in danger of abuse or neglect. On the other hand, if after numerous attempts to correct the hazardous problem within the family (i.e., destitution, alcoholism, drug abuse, physical abuse) the problem persists, the court may choose to terminate parental rights permanently.

¹⁰⁰Jeffrey Blustein, Parents & Children The Ethics of The Family, (1982), 5.

The majority of the responses from the survey mentioned earlier on indicated this particular issue is an important one. However, it is not a widespread obstacle for the family court judicial process. In fact, there are few times when the parents actually resent the court's involvement concerning delinquent or status offenders. Usually the parents welcome whatever relief and/or support is provided by the court. Thus, the disgruntled parents are those who have also been accused of criminal or negligent offenses and most likely possess diminished moral character themselves.

Punishment/Rehabilitation

The question of punishment versus rehabilitation deals with an issue where the offender is the focal point. The early juvenile courts focused on less punitive measures than those handed down from the criminal courts before the establishment of the juvenile division. Although early on the juvenile's rights were often denied and infringed upon, treatment was the choice of rehabilitative methods. Several court cases such as In re Gault¹⁰¹, Winship¹⁰² and Kent¹⁰³ later improved upon the juvenile justice system. However, recently in many states the juvenile corrections systems have moved away from the rehabilitative ideals and are applying more punitive penalties and longer sentences. This is due largely to the increase of serious violent crimes committed by juveniles and the increase in repeat offenders. Each year states are transferring more juveniles into the adult system. The age of certification to adult status has even been lowered in some states, as was recently done in Florida and California from age 16 to 14. Some would argue that this is not morally correct. In fact, this is in conflict with the very reasons

¹⁰¹Donald Horowitz, The Courts and Social Policy, 171 citing 387 U.S. 1 S.Ct. 1428, 1455 (1967).

¹⁰²Ibid., 171 citing 397 U.S. 358 90 S.Ct. 1068 (1970).

¹⁰³Ibid., 172 citing 383 U.S. 541 S.Ct. 1045 (1966).

why the juvenile court was created in the beginning: namely, to separate juveniles from the cruelty of the adult system and provide them with rehabilitative programs to foster productive adult lives. This movement of boundaries also signifies society's unwillingness to allow the moral problems to be solved to be delegated entirely to the family unit. If, in the newest cases, the families are not equipped to handle the children's moral upbringing or choose not to be responsible for the task, then the burden must shift and society must step in.

In 1986, the Oklahoma Department of Corrections conducted a survey, the results of which indicated that 33 out of 50 states (66%) authorized their parole/probation officers to carry weapons. Forty-one states (82%) have peace officer status for their parole/probation officers and 43 states (86%) have the power of arrest authority for their parole/probation officers. A 1989 survey conducted in California revealed that 20 of the 53 counties, in California, authorized their officers to carry firearms. Sixteen of the 53 counties provided ballistics vests for their parole/probation officers and 23 of the 53 counties provided other safety equipment such as: mace, radios, caged cars, flashlights, raid jackets, tear gas defensive training and dog repellent.¹⁰⁴ These results verify the harsh reality that many of the juvenile offenders are extremely dangerous. This explains why perhaps punishment must outweigh rehabilitative efforts which have sometimes been unsuccessful in the past. Law enforcement authorities no longer can afford to perceive juvenile delinquents only as misguided, unmanageable youths needing support and guidance. In ethics this means their characters are already habituated to injustice.

But, in support of rehabilitation, in 1992 the Center for the Study of Youth Policy revealed that most Americans still agree that the main purpose of the juvenile court should be to rehabilitate. Furthermore, they agree that juveniles should not receive the same sentences as adults

¹⁰⁴Frank Lozito and Rick Zinsmeyer, "The Gun Debate," Texas Journal of Corrections, v. 14 n.6 (Nov/Dec 1988): 3,10-11.

or be sentenced to adult prisons. Yet the survey also implied that training schools do not deter juvenile crime and are not effective in their rehabilitation efforts.¹⁰⁵ Perhaps society believes most children are still morally educable.

In conclusion, it would seem that a compromise is needed with regard to this ethical question. Cases must be handled on an individual basis, given a fair judicial process with adequate representation. Those who are deemed amenable to further juvenile services and who appear to have some redeeming attributes should be allowed to continue to exhaust all the services available to them. On the other hand, those who have exhausted the juvenile system, are not found to have any hope for rehabilitation or who have committed violent and heinous crimes deserve to be treated as adults in the criminal justice system.

Social Worker/Cop

The social worker vs cop role conflict brings forth an ethical debate focusing on the court employee. Parole and probation officers often find themselves overwhelmed with unmanageable caseloads and burdened by the philosophical battle between probation practitioners and scholars over whether or not they should play the role of "cop or social worker." Many scholars believe these court officers will be selling out the original intent of the juvenile court's mission if they take on a law enforcement approach associated with officer safety when enforcing court orders and supervising youth. This either/or debate is directly linked with the ethical battle between punishment and rehabilitation, as the latter is directly impacted by the jurisdiction's attitude on the former.

Supervising high risk clients in often volatile atmospheres dictates adequate field safety

¹⁰⁵ABA, p. 60.

training. Insuring officer safety is a high priority of the family court, as is security for all of the court's representatives. The level of training required and the question as to whether to arm the court officers are issues which must be analyzed and decided within each jurisdiction. The judiciary and administrations of each jurisdiction must review statistics with regard to juveniles and violent offenses in their areas, environmental hazards, and current training requirements as well as other related factors such as budget concerns before considering whether to arm their court officers.

A 1987 survey conducted on family courts revealed that the ethical issues of family law are being addressed better in this family court forum.¹⁰⁶ Because of the volatile nature of family law matters, there will most likely be disgruntled clients. Unfortunately, some clients also continue to receive less than quality justice. Many children lack representation or receive poor quality representation. It is encouraging to know however, that this model was created for the improvement of services and these issues are being acted upon.

Within this chapter, ethical issues of family preservation, parents' rights, justice, treatment philosophy and court employee role conflict have been addressed. Counter arguments and opinions have also been provided herein. Overall, the evidence supports that these major concerns are being addressed within the family court model as it attempts to acknowledge the pitfalls of the previous judicial process of the fragmented system and provides a more systematic process improving the quality of justice provided to its clients. The development of this system and the combined teamwork approach of related agencies and an educated, dedicated, and goal-directed staff will begin to produce instrumental social policies in the family law arena.

¹⁰⁶Margot Poznanski and Scott Bassett, "A Family Court for Michigan," The Michigan Bar Journal 66, (1987): 658.

CHAPTER IV

ADVANTAGES AND DISADVANTAGES

As judicial pioneer Roscoe Pound remarked, the advantages of unified treatment of family problems are apparent.¹⁰⁷ As touched upon throughout this thesis, there are numerous reasons why the family court system movement was initiated and why it is currently under consideration or in practice in over half of the United States. The attempts to improve the performance of a court reflects society's belief that more citizens experience family court than any other court. For many reasons, these families come back to court frequently.

Consequently, an efficient operation that ensures prompt appropriate services is of prime concern to citizens. The disadvantages of the family court model will now be addressed through four objections with replies. Evidence supporting these arguments is provided by two surveys. The first survey was conducted by the Family Law Section Council of the University of Michigan and the second survey was conducted as research for this thesis. Summaries of the findings of these surveys shows that the court model has been successful in achieving many of the initially hypothesized goals.

¹⁰⁷Roscoe Pound, "The Place of the Family Court in the Judicial System," Crime and Delinquency 5, (1959): 162.

Advantages

In general, the unified family court system provides a comprehensive remedy for juveniles and families in crisis through extensive social services and legal proceedings. Thus, the advantages to a unified organization can be discussed by breaking the organization into three major parts, those being: judicial, administrative, and services.

With respect to the judicial component, it is hoped that families will receive consistent, coordinated consideration from a unified family court in all family matters.¹⁰⁸ This will reduce the emotional damage often caused by court intervention.

Advocates of the family court model hope to gain increased respect for jurists, administrators, and staff dealing with family law issues. Historically, family law has not been considered equal to adult criminal or civil divisions. These courts have often been the dumping ground for inexperienced staff or those who are being punished by their placement in the family court. It is hoped this perception will change as salaries increase and other "perks" are offered to the family court employees.¹⁰⁹ Increasing the status of these professionals will result in better treatment and satisfaction of clients.

The basic element which characterizes a court system is its jurisdiction. The court's structure and power is derived from its jurisdiction. A broad jurisdiction with a variety of dispositional options has been predominately proposed in the family court legislation. Basically, in the majority of current family courts, the jurisdiction includes the consolidation of the juvenile and domestic relations courts into a separate division. The judiciary decides legal matters involving juvenile delinquency, termination of parental rights, detention, divorce, paternity,

¹⁰⁸Edward P. Mulvey, "Family Courts The Issue of Reasonable Goals," Law and Human Behavior 6, (1982): 51.

¹⁰⁹Robert Page, "Family Courts: An Effective Approach", 18-19.

custody and visitation matters, child support, guardianship of children and adults, domestic violence cases, mental commitments, adoptions, adult abuse cases, juvenile abuse and neglect cases, status offenses, misdemeanors among family matters, felonies between parents and children, emancipation, protection proceedings, and abortion approval. There are slight differences in the variety of jurisdictions by state, but many of the current systems include the majority of these functions.

Training of the judiciary has been addressed with high priority among the states. The decisions made by the family court judge go beyond legal issues. The judge must be trained to see the "big picture" and the totality of the family issues. Most of the current family court systems require that judges adjudicating family law cases must attend specific training in family law upon election or appointment. Training not only provides enhanced professionalism and knowledge, but gives these specialists an opportunity to gather to discuss strategies and to share frustrations. Retreats and seminars are also great stress reducers.¹¹⁰ Training in family law specifics and continuing education assists the judges in quality decision making. The National Council of Juvenile and Family Court Judges, in addition to other entities, offers training for these officials .

Judicial rotation in the family court system continues to be evaluated. At the present, rotation seems to be the preference of the family court judges. Hunter Hurst published his results of a survey conducted on judicial rotation in his journal article, "Judicial Rotation in Juvenile and Family courts: A View From the Judiciary."¹¹¹ His article addressed issues surrounding the impact of judicial rotation on the judiciary and the quality of justice provided by the courts of juvenile and family jurisdiction. The views of a small group of judges with long experience in

¹¹⁰Theresa Homisak, Hunter Hurst, and Linda Szymanski, "Policy Alternatives", 18-20.

¹¹¹Hunter Hurst. "Judicial Rotation in Juvenile and Family Courts: From the Judiciary," Juvenile and Family Court Journal 13, (1991): 13-20.

courts that practice rotation were solicited. The majority thought rotation was beneficial. Some of the merits of rotation were noted as: rotation is one means of dealing with judicial burnout; rotation encourages equality of status juvenile and family jurisdictions with that of criminal and civil jurisdictions; and rotation is a tool for productively managing judicial resources. The judges also noted limitations of rotation as follows: rotation contributes to the leaderless/no one in charge syndrome; rotation puts the judge at a disadvantage in dealing with probation officers, lawyers, prosecutors, and social workers who may be more familiar with protocol; rotation provides disincentive for the practice of "one judge/one family" concept; and rotation diminishes the potency of the judiciary in the matter of fiscal appropriation for resources to support the operation of the juvenile and family division. Some judges feared rotation is too problematic because seniority is often the tool utilized in the selection process of judicial assignment. Assignments can be used as punishments or cooling off periods for malcontent jurists.¹¹²

A unified family court would be tremendously beneficial with respect to case processing and management systems. Opportunities for inaccuracies would be diminished if all complaints and petitions flow through one court, avoiding the piecemeal approach to casework. Uniform procedures developed by a well-trained administrative staff would be very effective in reducing overlapping calendars and duplication of investigatory and administrative efforts. Thus, such unification reduces the expense of legal proceedings by eliminating unnecessary litigation. Furthermore, litigants would be less successful at manipulating the fragmented system by having the cases heard at different levels. A "holistic" approach to the resolution would be emphasized, as compared to one family member benefiting (in an adversarial approach). In addition, the family court could provide substantial screening, assignment and monitoring of cases to ensure appropriate services were being provided and a timely resolution of the case is achieved. The

¹¹²Ibid.

citizens could expect a comprehensive resolution, without being shuffled from one place to another.¹¹³

An effective management team could provide leadership necessary to ensure that the family courts functions remain within established principles and guidelines to achieve desired goals. Set guidelines, principles, and goals, combined with a broad jurisdiction does not guarantee an effective family court system. Without an efficient administration which constantly monitors daily operations, the family court could easily just be another traditional court, a rose by any other name. A dedicated staff and concerned, committed jurists are imperative for the success of this new model. The administration must ensure that highly trained and educated personnel are employed. The administration must be the center of communication, endorsing an open door policy. That is communication among judges, administration, staff, community and government agencies must be encouraged. A "user friendly" and less adversarial climate must flow from the top down.

In order to minimize legal intervention, resolutions of cases depends upon access to support services. Therefore, the family court system is a substantial provider of social services. Social services are provided by the family court, community and government agencies with regard to abuse and neglect cases; divorce, custody and visitation cases; and delinquency cases, to name a few. The services provided range from mediation, alcohol/drug education, family and individual counseling to parenting classes. It is hoped that by providing more than a quick fix to the immediate crisis, the support services will supply the family with skills and tools to enable them to resolve subsequent disputes.¹¹⁴ The family court must play an active role in encouraging the creation of needed services. The judiciary must be aware of the service gaps and openly lobby

¹¹³Robert Page, "Family Courts: An Effect Approach," 16.

¹¹⁴Ibid., 12.

and assist the administration in fiscal planning to address these issues. The administration must maintain a full range of services and educate the public as to their (the services) availability, as well as provide education about the family court. The family court must also monitor the quality of the services provided and hold providers accountable for inadequacies. The new service delivery system should be more effective in allowing public access. It should be more "user friendly" and be less adversarial.

Objections & Replies Regarding Disadvantages

Objection #1: Foremost in most politicians' and administrators' minds when speaking of a large-scale court reform project such as the family court model is the significant cost of establishing and maintaining the system. Reply: Initially there will be increased costs to establish a family court system. Additional staff may need be to employed, structures built, and maintenance expenses paid. Over a period of time, these expenses will be offset by the decreases in expenses brought about by the new system. Each jurisdiction must make a considerable commitment to the purpose of a family department. Fiscal incentives for the development of the department must be researched and presented to the individual governments and legislative bodies. The support for the venture must be long term; quick fix solutions will only result in failures down the line. Costs of statewide implementation can vary depending upon facilities and staff requirements. Advocates claim case processing costs will eventually decrease by eliminating duplication. By providing nonadversarial dispute resolution, litigation costs will be greatly reduced. Effective enforcement of court orders will also decrease expenses to the clients, (e.g. if child support payments are received, the need for public assistance will not be as great).

Objection #2: Another prevalent argument against a unified family court is the danger of abuse of authority due to the "one judge/one family" concept. Reply: Where dockets are

crowded and specialized calendars govern, the "one judge/one family" concept may not be achievable, thereby eliminating this concern. But, at the same time, it would be possible to still operate with uniformity by establishing guidelines and principles to which all the jurists could adhere. However, it is still possible under this concept that one judge would know "too much" about a family. When the judge hears the various proceedings, the judge forms opinions with respect to the parties involved. Motions for recusal may become necessary in the fact-finding portion of the case, especially when the same judge has been involved in preliminary mediation. A recent survey found that 60% of the respondents stated their court does not practice the "one judge" approach. Recent studies have shown that the clients feel more strongly about consistency with regard to services provided by social service workers, probation officers, and other court personnel than about the assignment of one judge.¹¹⁵ So, the "one judge/one family" concept is not crucial to the model.

Objection #3: Judicial and staff "burn-out" is usually mentioned since specialization in family law creates high stress levels. Reply: This argument has been countered effectively with the implementation of judicial rotation. There can be some drawbacks to rotation. Attorneys have expressed concerns that when the period of time between rotations is too short it causes communication problems. Attorneys and staff are some times confused and become uncertain of proper court protocol when the judges continuously rotate and bring with them different expectations. Attorneys have also expressed concern that court staff (i.e. probation officers, social workers, protective service officers) become more familiar with the judges and the system and this sometimes compromises the fairness of the proceedings. Therefore, rotation can be a useful tool, but it must be monitored constantly and modified when necessary to achieve maximum results without compromising client satisfaction.

¹¹⁵Theresa Homisak, Hunter Hurst, and Linda Szymanski, Policy Alternatives, 12-13.

Objection #4: The ultimate disadvantage would be if the effectiveness of the family court model becomes confused with efficiency of the model. Reply: Expectations for the family courts are extremely high. It would be detrimental to perceive that by combining the legal proceedings with the social services that this will promote effectiveness in regulating family dysfunction, just because it improves the efficiency of service delivery. The volatile nature of the family law cases makes it impossible to expend the necessary time it would take to consider the appropriateness of the system's intervention.

1987 Survey Results

The success of the family courts can be measured by a basic set of criteria. First, the skill in selecting judges and staff who are trained and experienced in family law. Second, a "user-friendly" system with fewer adversarial methods for dispute resolution than in traditional systems. Third, maximizing public and private resources and easy access to these resources. Fourth, case management effectiveness. There is relatively little research on the effectiveness of the family court models. In actuality, there are also few family courts which are "comprehensive" family courts. The Family Law Section Council of the University of Michigan undertook a study of the family court systems in 1987. 1300 surveys were sent to State Bar members of the Family Law Sections in Delaware, Rhode Island, South Carolina, and New Jersey.

The following is a brief summary of the survey findings. In New Jersey, surveys were sent to each member of the American Bar Association's Family Law Section. The response was between 20% and 30% for each state. Several concerns were addressed in the survey. First, the participants were asked to determine whether consolidation of all family matters into a single court was an improvement upon the traditional fragmented jurisdiction system. New Jersey, prior to the introduction of the family court, had a bifurcated system. In spite of the initiation of the

family court, the attorneys felt the reform did not accomplish the changes that were desired. There remained a certain set of procedures for one type of family cases, while other judges had another set of procedures for the rest. Another significant factor explaining the attorneys' frustration with the new system may be that the judges rotate in and out of the family court to other divisions of the Superior Court, (unlike other family courts where judges rotate but remain within the family court system). These difficulties account for significantly lower positive percentages provided by New Jersey.¹¹⁶

Delaware participants found there was a significant reduction in the court's caseload because of mandatory mediation of a child support and custody cases. The attorneys were pleased with the new system.

Rhode Island family court judges rotate within the family court, keeping one docket for one year. The Rhode Island family attorneys supported the new system.

South Carolina has been regarded as "the most sophisticated and effective statewide comprehensive family court, "South Carolina's family court put into place many new court rules and policies. Judges are required to attend mandatory orientation sessions and judicial continuing legal education. They are rotated from county to county, but stay in the family court system. Cases are resolved and removed from the docket within six months. Opinions reflect findings of fact to eliminate repeats of "sloppy opinions." South Carolina family law attorneys highly praised the new system.

In summary of the survey results, the family law attorneys almost conclusively agreed that if handled properly, the family court with jurisdiction including all family matters is a significant improvement over the fragmented jurisdiction system. The results indicated a savings in time and

¹¹⁶Margot Poznanski and Scott Bassett. "A Family Court for Michigan," The Michigan Bar Journal 66, (1987): 657.

money. Procedures were more uniform, lending themselves to more efficient case management. The lawyers indicated an increase in the quality of justice, as a direct result of specialization of judges who are qualified and make higher quality decisions. Contributing factors were the increase of judicial training, equal status, pay and compensation. Better communication has enabled judges to make more, as well as higher quality decisions. The use of referees has effectively reduced the dockets. The results also indicate that there is no validation to the suspicion that children's cases will be given less priority when heard in the same court as cases involving adults. Attorneys reported no priority status amongst cases. Although judicial "burnout" is a negative expressed by many, most agree this disadvantage does not offset the significant advantages. "Burnout" has been counteracted in several states by utilizing several techniques (for example: brief "time outs" off the bench for research and writing purposes, seminars and training retreats).

Percentage of Savings		
Savings -	Time	Money
Delaware	95%	76%
New Jersey	71%	48%
Rhode Island	100%	95%
S. Carolina	99%	91%

Figure 7

Figure 7 the percentages of positive responses with respect to savings of time and money.

	<u>Much Better</u>	<u>Better</u>	<u>No Better</u>	<u>Worse</u>	<u>Not Heard by One Judge</u>	<u>Clients Don't Know Difference</u>
DE	72%	57%	4%	0%	24%	0%
NJ	4%	42%	8%	2%	22%	21%
RI	100%	29%	0%	0%	0%	0%
SC	11%	69%	7%	1%	0%	12%

Figure 8

Figure 8 represents the clients' feelings about how beneficial it was for them to be heard in one court by one judge.

	<u>Simpler</u>	<u>Complex</u>	<u>Same</u>
DE	43%	57%	
NJ	57%	17%	26%
RI	71%	29%	
SC	58%	39%	3%

Figure 9

Figure 9 indicates whether the procedures of the family court were simpler or more complex than those of the previous court system.

Intervals Between Court Dates			
	<u>Shorter than</u>	<u>Longer than</u>	<u>Same as before</u>
DE	80%	10%	10%
NJ	55%	5%	39%
RI	88%	12%	
SC	81%	13%	6%

Figure 10

Figure 10 demonstrates that the interval between court dates is shorter with the family court system.

Quality of Judges			
	<u>More Qualified</u>	<u>Less Qualified</u>	<u>Same</u>
DE	80%	13%	7%
NJ	24%	4%	72%
RI	100%		
SC	80%	7%	14%

Figure 11

The survey results in Figure 11 indicate the judges of the family court were also more qualified than the judges who previously handled family matters.

Quality of Decisions			
	<u>Higher Quality</u>	<u>Lower Quality</u>	<u>Same Quality</u>
DE	71%	21%	7%
NJ	36%	8%	56%
RI	100%		
SC	93%	4%	2%

Figure 12

In general the quality of decision increased as the quality of judges increased. Figure 12 represents these percentages.

Percentage of Burnout	
	<u>Percentage of Burnout</u>
DE	41%
NJ	63%
RI	61%
SC	42%

Figure 13

Figure 13 represents percentage of attorneys noticing instances of burnout.

Serious Burnout	
Percentage of burnout classified as serious.	
	<u>Percentage</u>
DE	33%
NJ	50%
RI	30%
SC	28%

Figure 14

Figure 14 indicates that burnout does occur in all the states responding. Yet, the figures do not indicate serious burnout, resulting in function impairment.

"Burnout" has been directly linked with the specialization of the family court. If left unaddressed, it can cause detrimental effects and impair the quality of decisions made by the judiciary. It is interesting that those states which have provided mechanisms to reduce burnout report the smallest amount occurring. In these states, mediation, rotation, and routine time off the bench for research and writing opinions were utilized to minimize burnout.¹¹⁷

1995 Survey Results

The following reveals the data pertaining to the survey conducted in conjunction with this thesis. The Michigan study precluded other professionals from participating. A main feature of the unified court requires a teamwork approach, many professionals collectively work toward

¹¹⁷Tbid., 659-661.

achieving the court models goals. Therefore, the omission of other professionals from contributing their perspective to the survey causes the results to be narrowly focused. Further, the Michigan study did not contain questions regarding some of the ethical concerns addressed in this thesis. These factors lead me to create my own survey. Although the two surveys can not be compared item by item, the surveys results regarding efficiency and quality of services can be compared as both were intended to determine if those areas are being positively impacted by the court model.

The states participating in the survey in conjunction with this thesis are: Hawaii, Delaware, Kentucky, and Missouri. Over 375 surveys were distributed to family court professionals in these states. These jurisdictions were chosen because each had experience with both the old and the new systems. This was of significant importance since some of the questions compared both systems to arrive at the advantages and disadvantages of the new family court model. In addition to soliciting responses from attorneys (as was done in the earlier survey), this questionnaire requested responses from judiciary, court administrators, and other court staff such as: probation officers, social service workers, mediators, protective service officers and other community service providers. It is hoped this data will render a more comprehensive perspective on the evaluation of the family court model. The survey addressed several similar concerns as the 1987 survey directly related to the efficiency of the family court; such as: intervals between court dates, time span from filing date to date of resolution, elimination of separate and unrelated proceedings, difficulty of procedures, efficient case management and cost effectiveness. Questions with regard to quality management and client service were asked. Additional questions regarding some of the ethical concerns mentioned earlier in Chapter 3 were asked (such as: if the family preservation philosophy should be continued, if the controversy between parental rights versus state's obligations has impacted the court, and if the judges are producing higher quality dispositions).

The data were assimilated as follows: the questions were grouped into three categories, 1) efficiency of docket flow and cost effectiveness; 2) improved management and customer services; and 3) quality of justice and family court philosophy. The positive responses from each category were totaled arriving at an average percentage for each state. This average and percentages by profession are presented in bar graphs for each state. If questions were left blank, no response was tabulated at all.

This survey is not meant to be scientific. The intent is to gain the points of view of a cross section of family court professionals in an attempt to validate the efficiency of the family court model. The questionnaire offers data from which this author was able to develop refined descriptive assertions concerning the family court. From the onset, this author hypothesized that there would be a high number of supportive responses which would substantiate the thesis statement. There are several reasons for this. The first reason for positive responses would be because in fact the family court system is an improvement from the old fragmented systems in numerous ways; and secondly, politicians, judges and administrators may see their endeavors through rose colored glasses. There are many who may not be willing to report any negatives of the new system for fear that future funding, job security and other opportunities may be withheld.

Many states were called upon to participate in this survey. However, some problems were encountered which prevented their input. The state of Oregon, although very enthusiastic and interested in the study, declined stating it was impossible to evaluate their system which was newly established in 1994. The state of Missouri managed to provide some responses and was eager to become involved yet cited the same scenario. Their family court was established in September of 1994. Although South Carolina did not participate in the survey, their input was sought via phone conversations. The Family Court of South Carolina is in many respects in the forefront of the models' development. Their representatives provided valuable information. The

following summarizes the results obtained from the survey:

Fifty surveys produced 29 responses from the state of Hawaii for a total response percentage of 58. The following is an account of those 29 who responded: 10 judiciary, 12 court administrators, 6 social workers, and 1 attorney. The combined scores in the three categories yielded the following results:

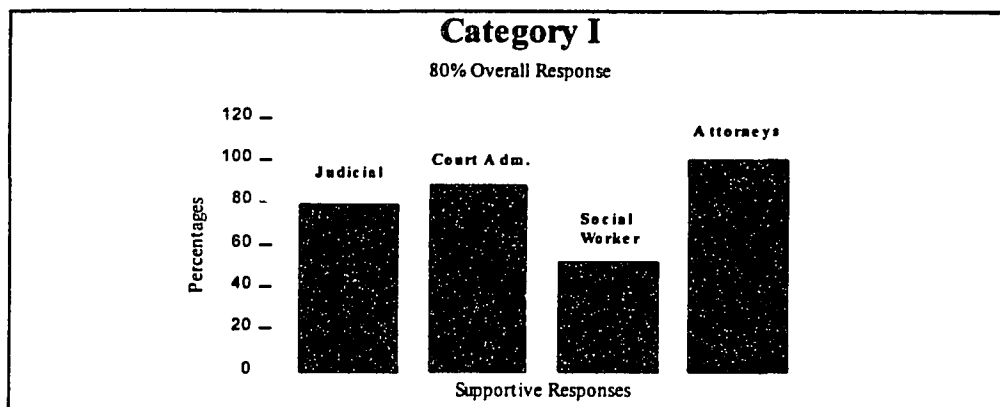


Figure 15

(Category I - efficiency of docket flow and cost effectiveness) 80% overall supportive responses

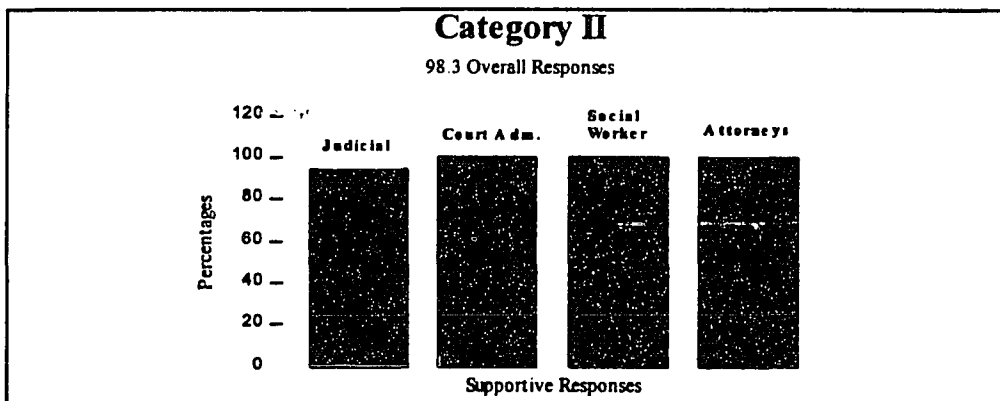


Figure 16

(Category II - improved management and customer services) 98.3% overall supportive responses

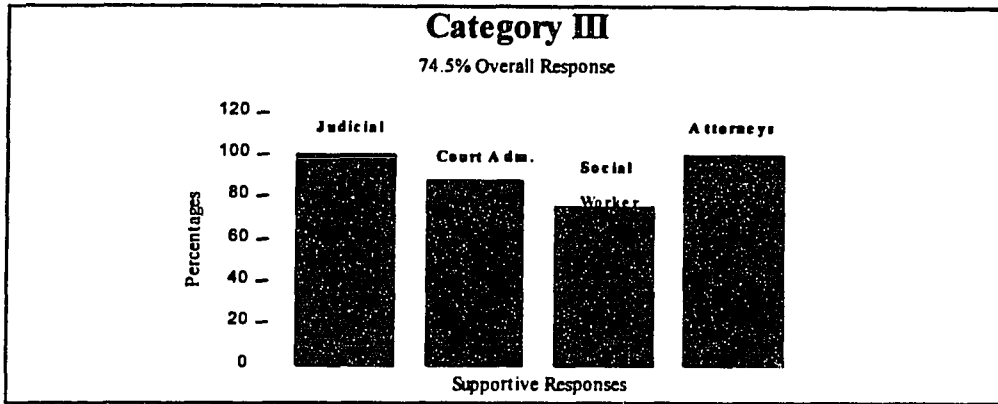


Figure 17

(Category III - quality of justice and family court philosophy) 74.5% overall supportive responses

In the state of Kentucky, 40 surveys yielded 15 responses for a total response percentage of 37.5. Those reporting were: 4 attorneys, 4 social service workers, 3 court administrators, and 2 judiciary. The following provides the major findings for Kentucky:

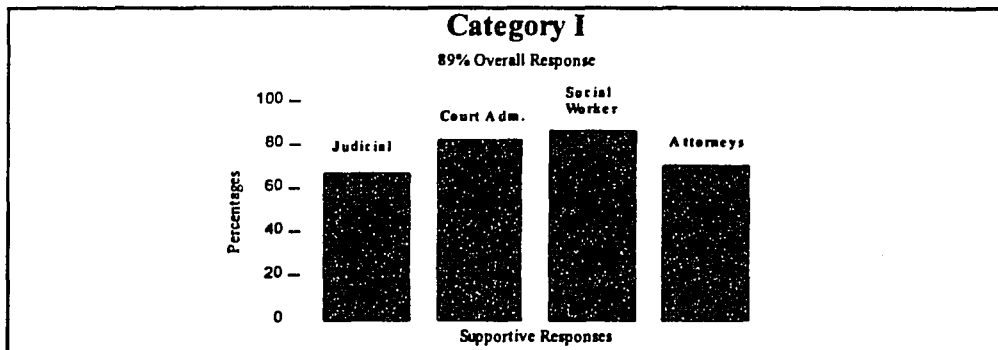


Figure 18

(Category I - efficiency of docket flow and cost effectiveness) 89% overall supportive responses

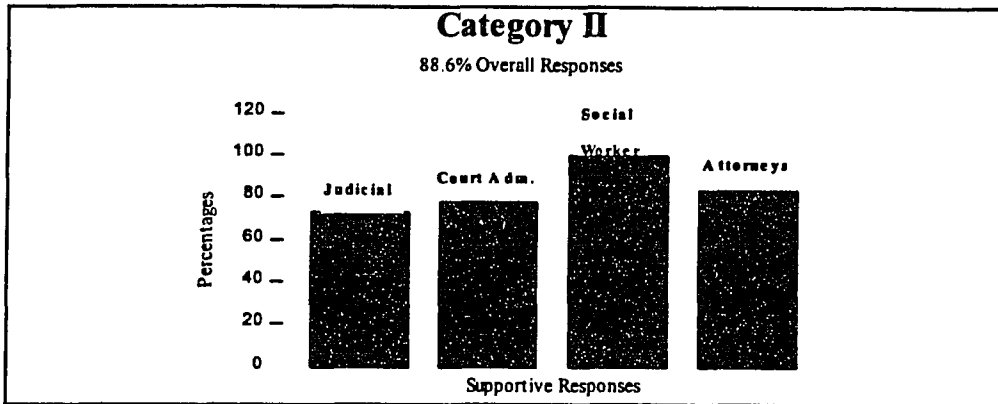


Figure 19

(Category II - improved management and customer services) 88.6% overall supportive responses

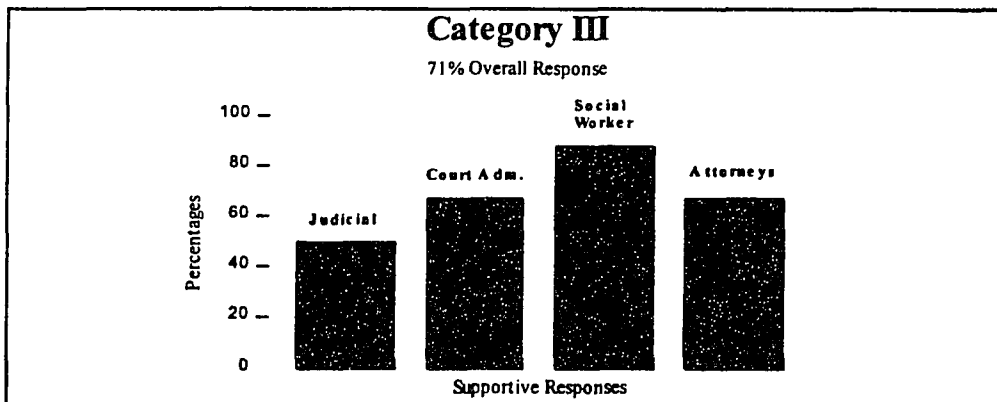


Figure 20

(Category III - quality of justice and family court philosophy) 71% supportive responses

Six responses from 45 surveys yielded a response percentage of 13 from the state of Delaware. Those responding include: 4 judiciary and 2 court administrators. The data yielded the following results:

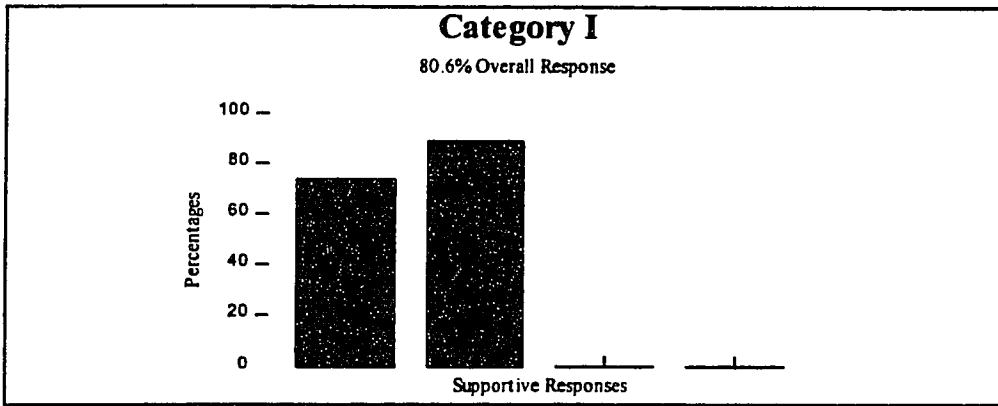


Figure 21

(Category I - efficiency of docket flow and cost effectiveness) 80.6% overall supportive responses

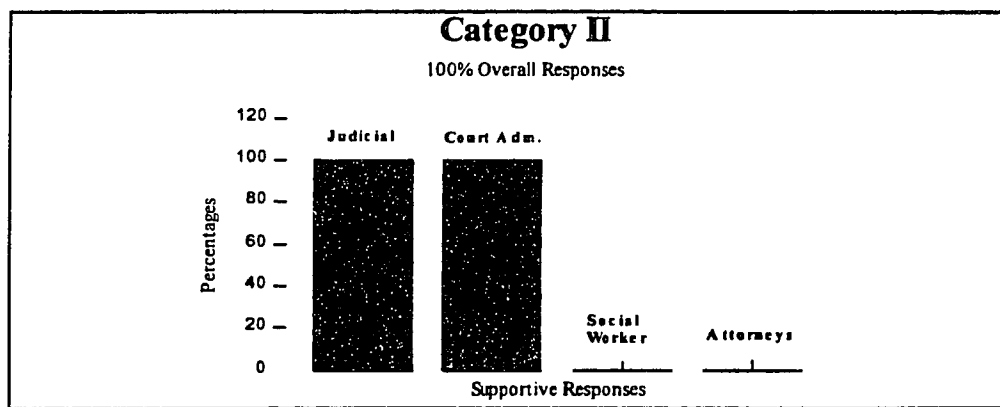


Figure 22

(Category II - improved management and customer services) 100% overall supportive responses

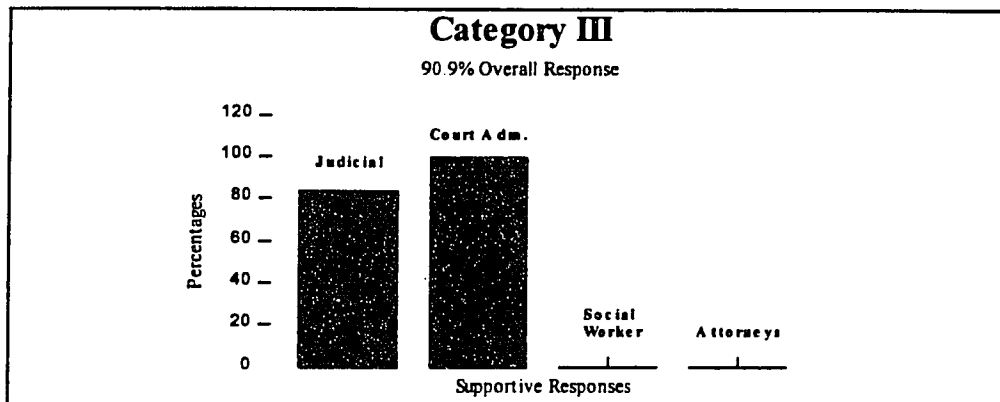


Figure 23

(Category III - quality of justice and family court philosophy) 90.9% overall supportive responses

The state of Missouri yielded a total response percentage of 7 with 14 responses from 200 surveys. Those reporting were: 9 attorneys, 2 judiciary, 2 social workers and 1 court administrators. The following findings are provided:

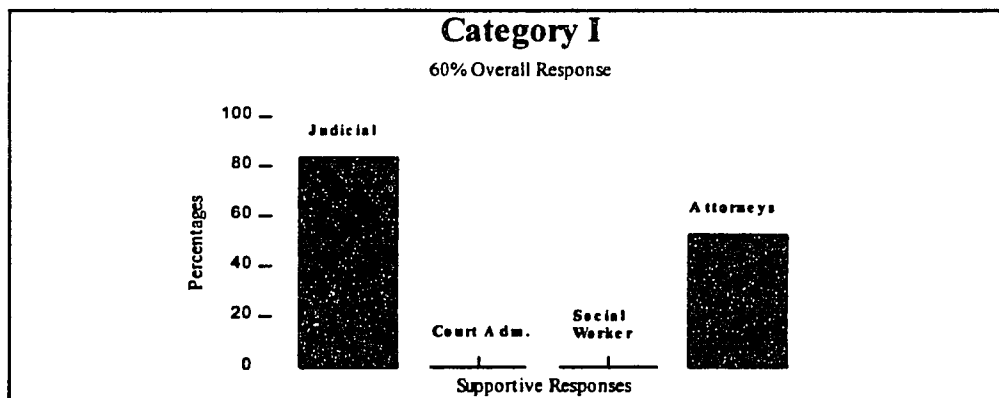


Figure 24

(Category I - efficiency of docket flow and cost effectiveness) 60% overall responses

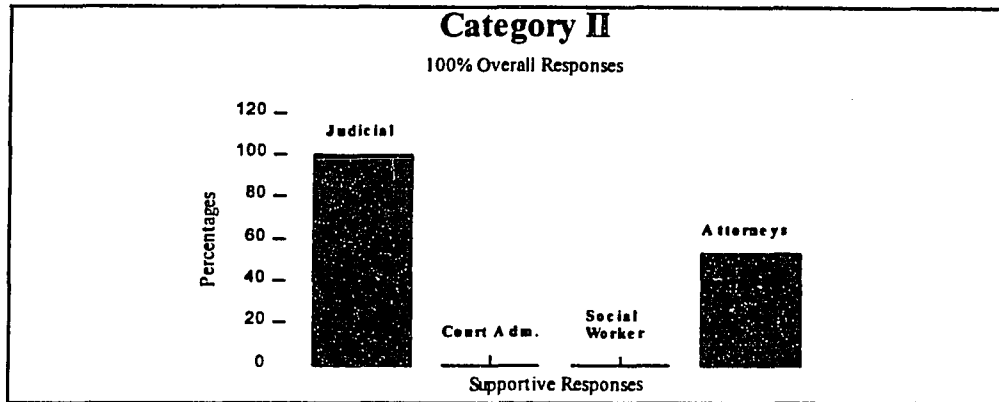


Figure 25

(Category II - improved management and customer services) 100% overall responses

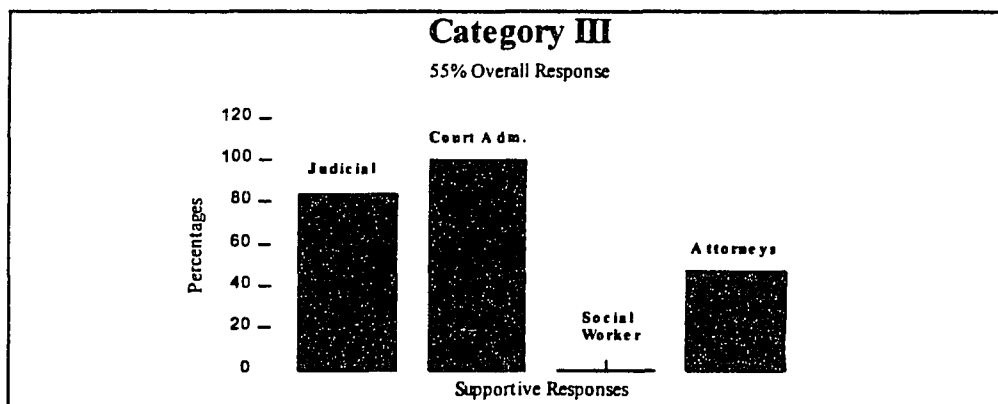


Figure 26

(Category III - quality of justice and family court philosophy) 55% overall responses

Summary

Not surprisingly, there were many similarities between the results of both surveys with

regard to the significant advantages of the family court model. Many positive responses were received concerning the improved management and client service. Networking community resources, development of new resources and providing a "user friendly" atmosphere with easy public accessibility is one of the model's goals which appears to have been achieved comprehensively. Efficiency of docket flow and cost effectiveness also received high percentages of positive responses. These factors continue to provide fiscal incentive for communities to create family courts. The disadvantages were harder to identify, but a few commonly noted are that the procedures are sometimes more complex than those utilized previously. Yet, some responses acknowledged this but added that the end result was still improved. Another disadvantage was that the perception of the family court as an inferior court really had not been positively impacted as was anticipated. Others commented that sometimes dispositions were delayed too often and that the family preservation philosophy should be modified when necessary for the best interest of the child. Overall the results were inspiring and have provided further support for the continuing creation and development of the family court model.

CHAPTER V

CONCLUSION

The problems of the domestic and juvenile legal systems extend far beyond those related to the fragmented and inconsistent process of recent vintage. It is apparent that legal matters are inherently complex when they involve human behavior. To say that the implementation of the family court model nation-wide is an easy solution would be grossly inaccurate. Even if the policy of the family court model was providing the very best service to the clients, the family still may not succeed. There are far too many outside factors (poverty, deprivation, corruption) which will defeat the family regardless of the help offered. However, the research presented herein has shown, in many respects, that the unification of these legal systems has provided a vehicle for positive change to take place.

Over the past decade, family law matters have steadily increased in numbers, surpassing anticipated levels. Justice systems nation-wide have struggled to provide just and enforceable resolutions for these youth and their families. In the process of reform, numerous philosophical questions have been revisited, and from these, programs, new methods and techniques have sprung to life.

The family court provides a "holistic" approach to resolution. Case management and processing has been greatly improved with new standards set, which are monitored and modified as needed. Families are provided with a variety of services, greatly expanded through the coordination and networking of resources. Carefully selected and trained judges, utilizing rotation

and other stress relief methods are sensitized to family court issues and better equipped to process cases of family law. Attorneys nation-wide have noted tremendous strides made toward providing adequate legal representation for the litigants of the family court.

"With careful planning and preparation, including full participation and involvement of judges, staff, and interested and affected persons in all branches of government and the community, a family court of high quality is fully attainable in all court systems."¹¹⁸ The establishment of family courts, research has shown, can be difficult. The political climate, resistance to change, and economic considerations hinder the process. Nevertheless, the movement itself creates a heightened awareness for the need for change. Those justice systems unable to establish family courts may benefit by implementing some of the principles adopted by the model.¹¹⁹

The American Bar Association, as well as data provided by the surveys conducted in 1987 and 1995, have shown that ethical issues have received more adequate attention within this new court model. The teamwork approach works better toward balancing more justly the values of the client's autonomy with the needs of the state, while providing a less adversarial environment.

Civic participation is invoked by the adoption of state constitutional amendments or state laws creating the courts to providing social services by trained community volunteers. Committees, comprised of court personnel, related agency representatives and community leaders, are utilized to shape policies relating to family court operations.

According to the survey results, the ethical issues of family preservation, rehabilitation and quality justice are relevant issues which are well-served in this new system. Most respondents feel strongly that the system has improved the delivery and quality of services.

¹¹⁸Robert Page, "Family Courts: An Effective Judicial Approach," 47.

¹¹⁹Ibid.

Policy Recommendations For Future Family Courts

The literature clearly supports the utilization of the family court model. The major concern is whether this system can provide better quality services to a diverse and pluralistic society without bias or self-interested goals misdirecting the model's intent.

Overall, the family court principles are plausible. As the model continues to gain recognition individual states must embark on feasibility studies to explore in-depth the advantages and disadvantages of court reorganization. The implementation of a family court is an enormous project, requiring proportionate funding. It demands long term commitment through cooperative teamwork to achieve desired results. It must also not go without saying that the public must be educated on the family court and actively involved in the creation and development of the family court. This will bring about the beginning of the user friendly atmosphere, one of the goals of the model.

Each system, while sharing basic principles, can be somewhat tailored to further meet the needs of the prospective community. Nevertheless, much can be learned from the research available to avoid problems previously encountered. The areas that have encountered problems will be discussed next. In addition, suggestions regarding training and programs will be offered.

If the jurisdiction utilizes the "one judge/one family" concept this must be closely monitored to ensure that individuals' rights are not compromised. Evidence supports rotation as an effective tool in combating "burnout" and should be employed in all family courts.¹²⁰ Nevertheless, this method will also require close monitoring to guarantee that the frequency of the rotation does not hinder the judicial process or communication between attorneys, agencies, and support staff. Sensitivity and family law training should be mandatory for all judges on an annual

¹²⁰Hunter Hurst, "Judicial Rotation," 13-20.

basis. Furthermore, the need for quality leadership is essential.

A highly trained and qualified court administrator or director is necessary to enhance cohesiveness between the judiciary, staff, and related areas. If the teamwork approach can not be achieved, a major part of the family court's principles will be compromised. In discussing problem areas with the various family courts nation-wide one commonality among many was that an absence of strong guidance from the chief judicial member resulted in a detrimental deficiency of coherence. If the judiciary can not agree on certain parameters and set into motion a plan that administration and staff can participate in, many of the improvements with the new system will be hindered. Dialogue between community leaders, judiciary, and court administrators should be open and commenced on a regular basis. A method which would provide these parties with client feedback should be established. Members of the judiciary and the administration should take an active part in public relations by continuously providing the community with information about the operations of the family court.

Training staff and providing programs for the clients are two important functions of the family court model. In researching this court model it has been brought to my attention that perhaps both staff and clients could benefit from courses focusing on the moral development of children. Experts in child development, religious leaders, politicians, and numerous others who work with children are noting the deterioration of our childrens' inner morality. Moral growth and development is a gradual process. Traditionally the parents and other family members play the largest roles in developing acceptable morals and values. Religion and organizations like Boy Scouts, Girl Scouts, and 4-H Clubs also support proper development. Children also learn morals from simple fairy tales. In our fast paced society membership in religion and other extra-curriculum organizations is decreasing. Parents often fail to take the time to teach these quality lessons. Courses on this subject matter would provide a unique, innovative and positive approach

to the character development of our clients.

Reforming the juvenile and domestic court systems must be ranked with high priority. Improvements on the family court model are being pursued with each new venture. The research has shown that this system is one worth being explored by all the United States.

APPENDIX I QUESTIONNAIRE

GENERAL INSTRUCTIONS: Either a pen or pencil may be used to complete this questionnaire. Most of the questions may be answered by simply placing an "x" in the appropriate box. You may write in additional comments whenever you wish to do so.

- Please mark the appropriate field representing your occupation.

Judicial	Court Administrator	Attorney	Social Services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- How many judicial and quasi judicial positions are there in your family court?

- How many domestic, juvenile, and U.R.E.S.A. filings does your family court experience in a year?

- Do you agree that the consolidation of all family matters has saved time and money.

Yes No
- If you answered yes to question number 4, please indicate whether the savings appeared to be specific to the states, counties or clients.

- The family court model provides more efficient case management from the time of initial contact until resolution?

Strongly Agree Agree Disagree

7. Are the clients better served by the more uniform procedures, greater expertise, and wider range of remedies made available by the consolidation? If so, why?
-
-
-
8. Are the procedures more simpler or more complex than those of the pre-family court era?
 Simpler More Complex Same
9. Are the intervals between court dates shorter than before?
 Yes No
10. Have you found the time from filing to resolution of a case has changed?
 Shorter Longer Same
11. The family court model has promoted a leadership within the family law court that has set attainable goals and guided staff toward providing better services to the public?
 Strongly Agree Agree Disagree
12. The family court model has promoted equality status for the judiciary among other jurisdictions?
 Strongly Agree Agree Disagree
13. The specific family law training encouraged by the family court model has provided helpful insight into handling the diverse and volatile cases of the family court, thus improving decisional quality?
 Strongly Agree Agree Disagree
14. The comprehensive approach of the family court model has eliminated separate and unrelated proceedings occurring with one family?
 Strongly Agree Agree Disagree
15. The family court model has reduced the number of successive appeals?
 Strongly Agree Agree Disagree

16. Does the family court model for which you are employed currently utilize judicial rotation?

Yes No

a. If yes: Do you agree that rotation encourages equality between juvenile and family jurisdictions?

Strongly Agree Agree Disagree

b. If yes: Do you agree that rotation is an effective tool to reduce "burn-out"?

Strongly Agree Agree Disagree

c. If yes: Do you agree that rotation is an effective tool for managing judicial resources:

Strongly Agree Agree Disagree

d. If yes: Do you agree the benefits of rotation exceed the limitations?

Strongly Agree Agree Disagree

17. Has the family court model impacted the controversy between parental rights versus state's rights? In what ways?

18. The family court model provides less adversarial methods for dispute resolution than the prior court system?

Strongly Agree Agree Disagree

19. The family court model provides easy access for all users more so than with the prior court system?

Strongly Agree Agree Disagree

20. The family court model has promoted an improvement in the utilization of community services and public resources?

Strongly Agree Agree Disagree

21. Has the new system impacted the efficiency and the effectiveness (quality) of dispositions? In what way(s)?

22. Family preservation is an underlying principle of the family court. Should this philosophy be continued or be modified? If so, why? In what way(s)?

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