

# IV. The Role of the Juvenile Court Judge

The most important person in the juvenile court is the juvenile court judge.<sup>172</sup> The descriptions of the different systems reveal the unique role of the juvenile court judge, a role that includes many non-traditional functions. The role of the juvenile court judge combines judicial, administrative, collaborative and advocacy components.

The most traditional role of the juvenile court judge is to decide the legal issues in each of the described categories of cases. The judge must determine issues such as whether certain facts are true, whether a child should be removed from a parent, what types of services should be offered to the family and whether the child should be returned to the family and the community or placed permanently in another setting.

Clearly these are critical decisions, not only for the family before the court, but also for society. Given the importance of the family in the United States, such determinations have profound implications for the manner in which families will survive. Juvenile court judges are the gatekeepers for systems which incarcerate society's youth and place society's children in foster care. Their decisions provide a measure of our society's confidence in the viability of the family.

Moreover, the attitude of the juvenile court judge will significantly influence the manner in which others view children before the court. An exchange in the Manhattan Family Court reflects one way in which the court can have an impact upon the care of children. The father's attorney commented on the conditions in the home for

seventeen adopted children (urine smell, limited food, poor lighting, no bed sheets).

It may not be the best of care out in Nassau County, but the children are surviving. They're doing okay.

The judge responded: I don't want the children to survive. I want them to thrive.<sup>173</sup>

Juvenile court judges' decisions also set standards within the community and in the systems connected to the court. The juvenile court judge who removes a child for selling drugs, who refuses to hear a truancy petition because it is not important enough or who returns a child to her family in spite of drug abuse by one of the family members is setting standards which may have a significant impact on how police, probation, social services and other service providers respond to similar cases in the future. Unless an appellate court overturns these decisions, the standards set in the juvenile court will remain as the community's standards for these types of cases.

As an integral part of the decision-making process, the judge must make certain that the parties appearing before the court receive the legal and constitutional rights to which they are entitled. These rights include notice of the legal proceedings, the right to have counsel, and counsel at state expense in many situations,<sup>174</sup> the right to a hearing, to confront and cross examine witnesses, the right to remain silent and the right to a timely hearing on the truth of the allegations. In many cases the court must make certain that families have been provided with services before formal

<sup>172</sup>But within the juvenile court itself the judge, regardless of ability, holds the highest status. The judge is the ultimate decision-maker. The coterie of probation, social service, legal and clerical attendants rivet their eyes and ears on his nonverbal language and his utterances." Rubin, H. Ted, *Juvenile Justice: Policy, Practice and Law*, *op. cit.* footnote 45, at p. 351. "From this it should be clear that the judges, and particularly the chief judge, occupy the crucial formal decision-making positions with regard both to individual cases and their disposition, and to procedural, administrative, and program policy." *Judging Delinquents* by Robert Emerson, AJdine Publishing Company, Chicago (1969) 13.

<sup>173</sup>Dugger, C.W., "Care Ordered for Children in Abuse Cases," *The New York Times*, 29 May 1991, section B, p. 1.

<sup>174</sup>Children in delinquency cases are entitled to counsel at state expense. *In re Gauh*, *op. cit.* footnote 3. Parents in those proceedings are entitled to have counsel, but normally not at state expense. In addition there is usually a prosecutor who brings the petition before the juvenile court. Most states have the same rules for status offense cases. In dependency matters, the parents usually have the right to counsel at state expense. The child will have a guardian ad litem, who may be an attorney, a volunteer, or both. In addition there will usually be an attorney who brings the legal action on behalf of the state.

legal action was initiated. With regard to many of these rights, it is the duty of the judge to determine in court whether the party understands the right and wishes to exercise or waive it.

The role of the juvenile court judge includes ensuring that the systems which detect, investigate, resolve and bring cases to court are working efficiently and fairly and that adequate resources exist to respond to the caseloads. For example, the juvenile court judge must ensure that there are enough judicial officers to complete the work of the court.<sup>175</sup> Juvenile courts in many jurisdictions are understaffed and overworked.<sup>176</sup> Within the judiciary it is often difficult to persuade those judicial officers with administrative responsibility that the juvenile court must have sufficient judicial resources to manage the caseloads.<sup>177</sup> Sometimes this lack of judicial resources exists throughout the judiciary,<sup>178</sup> but more frequently the juvenile court receives fewer positions because it is perceived as less important.<sup>179</sup> The problem has been exacerbated with the marked increase in dependency cases over the past five years.<sup>180</sup> In the wake of the higher child abuse and neglect reports, dependency caseloads have risen several-fold. Many juvenile court judges have been struggling with local governments to secure adequate judicial resources to manage the new demands upon the juvenile courts.

Judicial officers cannot function without adequate staff and space. Juvenile courts often find themselves with inadequate staff to meet the legal mandates set by the legislature.<sup>181</sup> The juvenile court judge must work with other branches of government to make certain each is available for the court.

Judges do not work in a vacuum. They learn of the situation facing children and their families from the legal proceedings, the reports from social service agencies, probation departments and from the parties and their attorneys. The quality of a judge's decision about children and their families is directly related to the quality of information the judge receives. Our legal system is built upon a process in which attorneys for the parties are given the duty to present evidence to the court and to test any evidence presented from other sources. From the different perspectives of the parties, the court is able to determine what happened and what should be done.

An important role for the juvenile court judge is to make certain that there are adequate numbers of attorneys of satisfactory quality to complete the work of the court.<sup>182</sup> The juvenile court judge must work with the funding authorities to supply these attorneys and to ensure they are trained. Dependency cases are particularly expensive for the government, as attorneys and guardians ad litem<sup>183</sup> may represent the state or petitioning party, the child and each parent if there is a conflict of interest. Compared to civil cases, in which the government supplies no attorneys, the juvenile court is an expensive operation.

The role of the juvenile court judge as the provider of due process and the role as fiscal manager may be in conflict in one or more of these areas. Providing free attorneys for accused delinquents has never been politically popular, and funders demand to know why every accused delinquent child needs to have an attorney. It is no wonder that some juvenile court judges do not appoint counsel for children in every case<sup>184</sup> or are

<sup>175</sup> "Judicial Authority and Responsibility: 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions," National Council of Juvenile and Family Court Judges, Reno (1989) at p. 7: "Juvenile and family courts must have an adequate number of qualified judicial officers and other court personnel available to assure the optimum handling of each individual case."

<sup>176</sup> The present system permits overloading of non-jury calendars. Because the family (juvenile) courts are non-jury courts, there is almost no 3 unit to the number of non-jury matters than might be assigned to those courts." Senate Task Force on Family Relations Court, Final Report, Sacramento (1990), pp. 8-10. Also see *In re Ashley AL*, *op. cit.* footnote 145.

<sup>177</sup> *Ibid*, at p. 4.

<sup>178</sup> Lucas, Malcolm M., "Is Inadequate Funding Threatening Our System of Justice?" *Judicature* 74.6 (Apr-May 1991) 292.

<sup>179</sup> Senate Task Force on Family Relations Court, Final Report, *op. cit.* footnote 176, at p. 4, and see Section V. A. *infra* on the "Structure of the Court System."

<sup>180</sup> Gomby and Shiono, *The Future of Children*, *op. cit.* footnote 103.

<sup>181</sup> Senate Task Force on Family Relations Court, Final Report, *op. cit.* footnote 176, at p. 2 and *in re Ashley K.*, *op. cit.* footnote 145, in which the Appellate Court noted: "All other considerations aside, and there are many, humaneness and plain common sense make it imperative that there be proper judicial case management in child custody cases in Cook County, and that there be a sufficient number of judges to cope with the number of cases in the system" at p. 17.

<sup>182</sup> The court should "establish a training program for attorneys representing parents and children and require attorneys who are appointed by the court to attend this program." *Making Reasonable Efforts*, *op. cit.* footnote 161, at p. 62. And see McCullough, *op. cit.* footnote 152, at p. 59.

<sup>183</sup> Since the passage of the Child Abuse Prevention and Treatment Act of 1974 (P.L. 93-247) as a condition of states receiving federal funds, the juvenile court must appoint a guardian ad litem to represent a child in child abuse or neglect cases that result in a judicial proceeding. 42 U.S.C., Paragraph 5103 (b)(2)(G)(1976). For a summary of the ways in which each state has responded to the federal mandate see National Study of Guardian ad Litem Representation, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services, by CSR, Inc., Washington, D.C. (1990).

<sup>184</sup> See Feld, Barry, "The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Differences They Make," 79 *J.Crim.L. & Criminology*, *op. cit.* footnote 114, pp. 1185-1346, and Schwartz, *op. cit.* footnote 66 at pp. 40-51.

perceived as favoring waiver of that right.<sup>185</sup>

Similarly, in dependency cases, if the government represents both the petitioner and the child, or if one attorney represents both parents, it would save the cost of an attorney, but it may mean that the remaining attorney has conflicting positions to represent to the court. Juvenile court judges understandably have taken different sides of this debate.<sup>186</sup>

The juvenile court also has the responsibility of setting the standards by which the juvenile system will be governed. In this way the court provides leadership both to the community and to all participants in the juvenile court system.<sup>187</sup> Cases which do not reach the court but which are resolved by police, probation, social workers or the prosecutor also come under the purview of the juvenile court judge. Only the most serious cases should reach the juvenile court. The majority of cases should be resolved fairly and efficiently by other agencies. It is the role of the juvenile court judge to ensure that this process is implicitly fair to all parties.<sup>188</sup>

The presiding judge of the juvenile court shall initiate meetings and cooperate with the probation department, welfare department,

prosecuting attorney, law enforcement, and other persons and agencies performing an intake function to establish and maintain a fair and efficient intake program designed to promote swift and objective evaluation of the circumstances of any referral and to pursue an appropriate course of action.<sup>189</sup>

The juvenile court judge must know how cases which do not reach the juvenile court are being resolved. What types of alternative dispute resolution techniques are being employed and by whom? What standards do police, probation and prosecution utilize and under what authority? Some may argue that such comprehensive knowledge is unnecessary. Upon reflection, however, it becomes clear that the public holds the juvenile court judge accountable for the failings in a system over which he or she presides.<sup>190</sup>

After the court has made its dispositional orders, it must also monitor the progress of the child, the family and the supervising agency to make certain that each one carries out the terms of its orders.<sup>191</sup> This is no easy task. For the court to monitor services effectively, the judge must become knowledgeable about the services available in the community as well as services which should be

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<sup>185</sup> See Schwartz, *op. cit.* footnote 66, at pp. 152-158; Feld, Barry C, "The Juvenile Court Meets the Principal of the Office: Legislative Changes in Juvenile Waiver Statutes," *Journal of Criminal Law and Criminology* 78.3, *op. cit.* footnote 39, at pp. 471-533.

Rubin agrees with Schwartz in asserting that a child in a delinquency proceeding should have an unwaivable right to an attorney. Rubin, *op. cit.* footnote 45, at p. 403.

The author prefers rigorous questioning of the child to the unwaivable right to counsel suggested by Schwartz and Rubin. In Santa Clara County the juvenile court judges have an elaborate *voir dire* which stresses the importance of the legal proceedings and the need for counsel. Only if the child can give intelligent responses to the court's inquiry will a waiver be accepted. Often it is the parent advising the child that an attorney is unnecessary and in that situation the court must be prepared to engage the parents in the waiver discussion. More than 95% of the children in delinquency proceedings are represented by attorneys in this county.

Of course, if the jurisdiction has no resources to employ counsel, the judge may be less willing to engage in this type of *voir dire*. The judge will first have to devise a strategy on how to secure sufficient attorneys for the juvenile court. See the suggestions in footnote 127 and Resources discussion in Part V, *supra*.

<sup>186</sup> Different jurisdictions handle this representation in different ways. In some an attorney is appointed to represent the dependent child in every case (Santa Clara County and San Mateo County in California are examples). In other jurisdictions an attorney is appointed to represent the child on a case-by-case basis. This seems to be the minimal requirement of independent representation as stated by the appellate court in the case of *In re Patricia E.* (1985) 175 Cal.App.3d 1. Also see *Making Reasonable Efforts*, *op. cit.*, footnote 161, at pp. 31-32.

<sup>187</sup> "Toward Juvenile Justice" by Mark Harrison Moore, in *From Children to Citizens*, *op. cit.* footnote 7, at p. 177.

<sup>188</sup> "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," *op. cit.* footnote 76, at pp. 4-7 and 25-28. In some states the juvenile court has the obligation to respond to the needs of children and order both legal intervention and services. Thus, when a local social services department was unwilling to file dependency proceedings to protect a child living in a harmful environment, the judge ordered the agency to file a petition. See *People in the Interest of R. E.*, 729 P.2d 1032 (Colo.App.1986) and *In the Interest of H.*, 770 P.2d 1355 (Colo. App. 1989). In California, a juvenile court judge dismissed a dependency petition after evidence showed a child had been abused in the family home, but stated he was unsure as to the person responsible for the abuse. The Court of Appeals reversed the trial court and ruled that the juvenile court must take jurisdiction of a child under those circumstances. *In re Christina T.*, 154 Cal.App.3d 650, 229 Cal.Rptr.247 (1986). See "The Court: A Child's Last Hope for Protection" by Sue Pacbota, *The Rocky Mountain Child Advocate* 1.2 (June/July 1991) at pp. 4-5.

<sup>189</sup> "Rule 1404(a) Juvenile Court Rules, West's California Juvenile Laws and Court Rules (1991).

<sup>190</sup> See *Deprived Children: A Judicial Response*, *op. cit.* footnote 144, at p. 10. "The public reasonably expects the judiciary is, Drought to be, ultimately accountable for what happens to abused or neglected children who are reported to or handled by governmental agencies."

<sup>191</sup> Jones, Judge William G., "The Special Responsibilities of Juvenile Court Judges," *The Rocky Mountain Child Advocate* 1.2 (June/July 1991)3.

available.<sup>192</sup> Review hearings provide one vehicle for the court to assess the situation from month to month. While in all types of juvenile cases reviews are a sound judicial policy, in dependency matters the legislature has mandated judges to review regularly the status of children in placement. This judicial review is the principal mechanism ensuring reunification services are being provided and for preventing unnecessarily long placements and unnecessary movements of children from home to home, so-called foster care drift.

In some jurisdictions the juvenile court judge is the administrator of the juvenile probation department and court staff who work in the juvenile justice system.<sup>193</sup> This administrative oversight may include responsibility over court personnel including other judges, referees, attorneys, social investigators, clerical workers, support personnel, psychologists, psychiatrists and physicians. The role may also include supervision of the operation of foster homes, detention facilities,

the court clinic and aftercare facilities. The juvenile court judge may also have some responsibility for the management of financial services. This administrative role will necessarily take time from the judge's judicial duties. It may also expose the judge to liability for administrative errors such as overcrowding of the juvenile detention facility.<sup>194</sup> On the other hand, the juvenile court judge as administrator is ideally situated to coordinate services between the court and probation departments.<sup>195</sup>

Some critics have argued that this administrative role is inappropriate for the juvenile court judge.<sup>196</sup> Other commentators assert that probation services should be under juvenile court control. They point out that probation is an integral part of the judicial function in the juvenile court and that the juvenile court judge has an interest in maintaining a satisfactory level of service.<sup>197</sup> In some states the juvenile court has no administrative oversight of probation services, while in some

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<sup>192</sup> "Monitoring services" is itself a catch – all describing a number of important responsibilities. These have been summarized as requiring the juvenile judge to:

- (1) Know what child welfare and family preservation services are available in the community and the problems that can be addressed by these services;
- (2) Know which agencies and individuals are responsible for developing policies and providing services to children in the community; Understand child development and, in particular, the importance of attachment and bonding and the effects of separation on young children;
- (3) Encourage the child welfare agency to prevent unnecessary removal by using services to protect children instead of resorting to removal of the child from the home;
- (4) Encourage the development of cooperative agreements between law enforcement bodies and the child welfare agency so that law enforcement officers do not remove children from their homes without prior consultation and coordination with the agency; Be aware of the child welfare agency's performance in providing preventative and reunification services, as well as its rules and regulations on providing these services, and monitor the agency's compliance with the reasonable efforts requirement; Ensure that the child welfare agency is aware that the failure to make reasonable efforts will result in a failure to receive federal reimbursement;
- (5) Establish a training program for all attorneys representing parents and children and require attorneys who are appointed by the court to attend this program;
- (6) Be aware of local experts who can testify on the reasonableness and appropriateness of services provided to keep a child in the home and what harm, if any, a child will experience if removed from the home or continued in an out-of-home placement; and
- (7) Monitor the court's own record on compliance with the reasonable efforts requirement by monitoring court of appeals' affirmances or reversals of decisions on reasonable efforts. *Making Reasonable Efforts: Steps for Keeping Families Together*, The Edna McConnell Clark Foundation, *op. cit.* footnote 161, pp. 41-59.

<sup>193</sup> In 22 states and the District of Columbia probation services are administered either by the local juvenile court or by the state administrative office of the courts. In 14 states probation administration is divided between judicial and executive branches. In other states probation is administered either exclusively from the state, from county government or a split between county and state executive branch departments. See "Organization and Administration of Juvenile Services: Probation, Aftercare, and State Delinquent Institutions," Patricia McFall Torbet, Pittsburgh, National Center for Juvenile Justice (1990) at p. iv

<sup>194</sup> See *Doe v. County of Lake, Indiana* (1975) 399 F.Supp.553 and *Santiago v. City of Philadelphia* (1977) 435 F.Supp. 136, 146.

<sup>195</sup> See Rubin, *op. cit.* footnote 45, at pp. 358-359.

<sup>196</sup> "The Constitutionality of Juvenile Court Administration of Court Services" by David Gilman in *Major Issues in Juvenile Justice Information and Training*, Columbus, OH, Academy for Contemporary Problems, (1981) 465-474. "Courts vs Social Service Agencies: An Idea Carried to Its Illogical Extension" by Jack D. Foster, pp. 475-490. National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, D.C.: Government Printing Office, 1973), Standards 8.2, 10.1,16.4; Institute of Judicial Administration-American Bar Association, *Court Organization and Administration*, Standard 1.2; National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention*, Standard 19.2; National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice*, Standards 3.14, 4.1.

states the court has limited control over the selection and administration of probation services.<sup>198</sup> Ironically, as Joseph White points out,

[w]hichever structure the interested reader may consider . . . certain factors . . . have critical impact. These include the amount of money available for these services, the quality of the personnel with which the system is staffed, and the personal leadership of the judiciary in stimulating community interest and support. Each of these attributes is *a sine qua non* of good services, regardless of the formal administrative structure.<sup>199</sup>

Beyond the confines of the courtroom and the boundaries of the delinquency and dependency systems, the juvenile court judge has an even broader role: providing to the community information about how well the juvenile court is completing the tasks assigned to it.<sup>200</sup> The juvenile court judge both informs and advocates within the community on behalf of children and their families.<sup>201</sup> No other person has the position, perspective or the prestige to speak on behalf of the children and families whose problems are so serious that they must come before the juvenile court. Because of confidentiality laws which restrict the flow of information about most juvenile court cases, it is critical that the juvenile court judge ensure that information about the juvenile court system is made available to the public. Only in this

way will the public receive a balanced view of the work of the juvenile court and not rely solely on the spectacular headlines which appear at regular intervals.<sup>202</sup>

The court must be open to the public and engaged in a continuous dialogue with the public regarding children, parenting, the responsibility of the institutions surrounding children, the responsibilities of the public, and how the court acquits itself of its own responsibilities.<sup>203</sup>

This public role also includes commenting on and, if necessary, drafting legislation which the judge believes is necessary to complete the work of the juvenile court. It is remarkable that juvenile court legislation is often written without significant input from the juvenile court judiciary and that in some jurisdictions juvenile court judges are among the last to learn of legislative changes in their court system. Those states with Juvenile Court Judges Associations have had a much greater impact upon state legislation dealing with juvenile court than those states which have not.<sup>204</sup>

The juvenile court judge has a public role beyond providing information to the community. The judge must also take action to ensure that the necessary community resources are available so that the children and families which come before the court can be well-served.<sup>205</sup> This may be the most untraditional role for the juvenile court judge, but it may be the most important.<sup>206</sup>

<sup>197</sup> "The Juvenile Court's Administrative Responsibilities," by Holland M. Gary, pp. 337-342, and Rubin, *op. cit.* footnote 45, at pp. 35S-359.

<sup>198</sup> Torbet, *op. cit.* footnote 193, at pp. 2-13.

<sup>199</sup> White, Joseph L., "Major Issues in Juvenile Justice Information and Training: Services to Children in Juvenile Courts: The Judicial-Executive Controversy," Columbus, Ohio, Academy for Contemporary Problems (1981), cited in Torbet, *op. cit.* footnote 193, at p. i.

<sup>200</sup> "To protect the institution, to maintain a proper accountability relationship to the community and to the law, and to strengthen the overall capacity of the community to rear children, the judges of the juvenile court must be prepared to exercise leadership by explaining what the court stands for, why it is making the decisions it is making, and what these decisions imply for the conduct of others. This is how legal values acquire social force and standing." Moore, *op. cit.* footnote 7, at p. 181.

<sup>201</sup> "The juvenile court judge of the future will be something special. His skill as a jurist will be secondary to his ability to motivate the community behind juvenile causes." "The Juvenile Justice System: Vision for the Future" by Seymour Gelber, *Juvenile and Family Court Journal* (1990), *op. cit.* footnote 105, pp. 15-18, at p. 18.

<sup>202</sup> "As Mother Kicked Her Son, Protectors Observed Privacy" by Celia W. Dugger, *The New York Times* 10 Feb. 1992, at p. A1 and A16; "Child Deaths Reveal Failings of System" by Celia W. Dugger, *The New York Times* 23 Jan. 1992.

<sup>203</sup> Hartmann, *op. cit.* footnote 2 at p. 390.

<sup>204</sup> Perhaps the most outstanding example of a juvenile court judges association in the United States is the Juvenile Court Judges' Commission in the Commonwealth of Pennsylvania. Established by the Pennsylvania Legislature in 1959, its members are nominated by the Chief Justice of the Pennsylvania Supreme Court and appointed by the Governor for three-year terms. The Commission is responsible for:

- (1) Advising juvenile courts concerning the proper care and maintenance of delinquent children;
- (2) Establishing standards governing the administrative practices and judicial procedures used in juvenile courts;
- (3) Establishing personnel practices and employment standards used in probation offices;
- (4) Collecting, compiling and publishing juvenile court statistics; and
- (5) Administering a Grant-In-Aid program to improve county juvenile probation services.

The Commission also serves as the liaison between the juvenile courts and the Legislature to ensure passage of legislation that is in the best interest of all children coming within the jurisdiction of the court. It provides a monthly newsletter, an annual report and numerous other publications and offers training for judges and probation staff throughout the state.

All significant legislation relating to children who come before the juvenile court in Pennsylvania is either drafted, suggested or supported by the Commission. For example refer to the testimony of Hon. R. Stanton WetBnck, Jr., and James E. Anderson before the Joint State Government Commission, Task Force of Services to Children, September 11, 1990. The legislative program was recognized by the National Council of Juvenile and Family Court Judges in 1987 as being the nation's most outstanding program.

For further information contact the Juvenile Court Judges' Commission, P.O. Box 3222, Harrisburg, PA 17105-3222.

What should the judge do when drug counseling is ordered and no drug counseling exists in the community? What should the judge do when a child could be safely returned home if reasonable services were available for the family, but no such services exist? Should the juvenile court judge simply rule on the case before the court and remain indifferent or inactive with regards to the results after the court order has been made?

The clear message from legislators and judges alike is to take action in order to address the deficiencies within the various juvenile court systems.

Judges should take an active part in the formation of a community-wide, multi-disciplinary "Constituency for Children" to promote and unify private and public sector efforts to focus attention and resources on meeting the needs of deprived children who have no effective voice of their own.<sup>207</sup>

Juvenile court judges have heeded these calls to organize within their own communities. They convene meetings of private and public sector leaders, multi-disciplinary task forces and community-based organizations and provide the information and the leadership to join in concerted efforts to preserve and strengthen families.

Their effectiveness has been noteworthy.<sup>208</sup> In 1978 David Soukoup, a King County, Washington

juvenile court judge, asked volunteers within his community to assist abused and neglected children as they went through the dependency court process. His initiative started the Court Appointed Special Advocate Program (CASA), a nationwide endeavor which now has hundreds of programs and over 28,000 volunteers.<sup>209</sup> Other judges have been noteworthy for their leadership in initiating change within their court systems.<sup>210</sup>

In Jefferson Parish, Gretna, Louisiana, Judge Thomas P. McGee used his position as chief judge of the juvenile court to *organize* within his community on behalf of the children and families who appear in his court. Under his leadership the juvenile court was able to develop a system to detect learning disabilities in children who appeared before the juvenile court and ensure that each was properly educated. He has helped other juvenile court judges and communities organize effective responses for learning disabled children. His successes in his own court and nationally are based upon his belief in judges becoming catalysts for reform.<sup>211</sup>

A Nevada Juvenile Court judge, Judge Charles McGee, was instrumental in creating the Children's Cabinet. A private, non-profit organization, the Children's Cabinet is intended to "fill the gaps" between existing services to children in Nevada and lead in the identification of new programs and resources for families. In its first five years of existence, through the development of new

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<sup>205</sup> "Juvenile and family court judges should play a leadership role in working with key people from all three branches of government, law enforcement, public health, medical, drug treatment service providers, social service workers, and the private sector to develop a comprehensive continuum of family-focused, multi-disciplinary drug treatment and family strengthening services." *Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases*, *op. cit.* footnote 86 at p. 4.

<sup>206</sup> "He can't go out on the street and compete with the Salvation Army. But he can appoint a strong citizens' committee, composed of community leaders interested in youth, as an Advisory Council. He can regularly attend its meetings and invite its members individually to attend court hearings, to visit existing facilities — both state and local — to examine some case histories (both successful and unsuccessful); and he can suggest to them important community goals. Perhaps some static will crackle, perhaps a little unpleasant gas will escape to assault the community's olfactory nerve — and all to the good. What is there to fear? Many of us juvenile court judges have 'resources' that couldn't be worse." "The Juvenile Court Examines Itself" by Judge William S. Fort, *NPPA Journal* 5, 404-413, at p. 411.

<sup>207</sup> *Deprived Children*, *op. cit.* footnote 144, at p. 12. "Juvenile and family court judges should play a leadership role in working with key people from all three branches of government, law enforcement, public health, medical, drug treatment providers, social service workers, and the private sector to develop a comprehensive continuum of family-focused, multi-disciplinary drug treatment and family strengthening services." *Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases*, *op. cit.* footnote 86, at p. 4.

<sup>208</sup> Yet many juvenile judges rise to the challenge and do remarkable jobs. Procedural safeguards and due process rights for juveniles are scrupulously observed in their courts. These judges always are seeking better means of detention and reserve the use of correctional institutions as a last resort. They are very committed, work long hours, and sometimes pass up promotions to more highly paid judgeships with greater prestige. The result is that these judges usually change the quality of juvenile justice in their communities." Clemens Bartollas, *Juvenile Delinquency*, MacMillan, New York (1985) -156.

<sup>209</sup> See *Advocating for the Child in Protection Proceedings* by Donald N. Duquette, Lexington Books, Lexington MA (1990) 1-11. For more information on the National CASA Association, write to: National CASA Association, 2722 Eastlake Avenue East, Suite 220, Seattle, Washington 98102.

<sup>210</sup> For example see "Family Court Reform in Six Pennsylvania Counties: Profiles of Judges as Reform Activists," Mistrofski, Jennifer, *Family and Conciliation Courts Review* 29.2 (Apr. 1991) 129-149. "Judge Ernestine Gray throws the book at young offenders — and then expects them to read it" by Sylvia Whitman, *Student Lawyer* (Apr. 1987) 12-13. For different examples of juvenile court judges, their backgrounds and accomplishments see *Behind the Black Robes: Juvenile Court Judges and the Court*, by Rubin, H. Ted, Beverly Hills, Sage University of Social Research (1985).

<sup>211</sup> "Preventing Juvenile Crime: What a Judge Can Do" by Judge Thomas P. McGee, *The Judges' Journal* 24 (1986), at pp. 20-23 and 51-52. Also see *Learning Disabilities and the Juvenile Justice System*, by John B. Sikorsky, M.D. and Judge Thomas P. McGee, National Council of Juvenile and Family Court Judges, Reno (1986).

## Judge Leonard P. Edwards

programs this unique public-private venture has served thousands of families.

Among its many programs the cabinet has developed the Truancy Center, the School Early Intervention Program, the Homeless Youth Project and Northern Nevada's first Family preservation program. While volunteers are a critical component in all of its efforts, the Cabinet has sponsored some programs which are managed and staffed exclusively by volunteers. In 1989 the Cabinet published "Nevada's Children: Our Most Precious Resource?", a collection of statistics and information about Nevada's children. Its efforts have added greatly to the lives of children and families in Northern Nevada.<sup>212</sup>

In 1953 in Oakland County, Michigan, Chief Judge Eugene Arthur Moore convened a small group of citizens and community leaders to develop a community-based prevention program. By 1984 there were 26 locally-based youth assistance programs in Oakland County. In 1989 more than 47,000 county residents voluntarily participated in Youth Assistance Primary Prevention programs. The program has been so successful it received the Kendall I. Lingle Community Resources Award from the National Council of Juvenile and Family Court Judges in 1991.<sup>213</sup>

In 1985 in San Bernardino County, California, Juvenile Court Presiding Judge Patrick Morris convened a county-wide meeting of private and public sector persons interested in working on behalf of children. The result was the creation of the Children's Network, now in its seventh year of coordinating agencies, professionals, businesses and citizens and developing resources on behalf of children.<sup>214</sup> Many other examples exist in juvenile courts throughout the country.<sup>215</sup>

Perhaps the best formal expression of the full role of the juvenile court judge was recently adopted by the California Judicial Council. In Rule 24 the Judicial Council wrote that juvenile court judges are encouraged to:

- (1) Provide active leadership within the community in determining the needs and obtaining and developing resources and services for at-risk children and families. At-risk children include delinquent, dependent and status offenders.
- (2) Investigate and determine the availability of specific prevention, intervention and treatment services in the community for at-risk children and their families.
- (3) Exercise their authority by statute or rule to review, order and enforce the delivery of specific services and treatment for children at risk and their families.
- (4) Exercise a leadership role in the development and maintenance of permanent programs of interagency cooperation and coordination among the court and the various public agencies that serve at-risk children and their families.
- (5) Take an active part in the formation of a community-wide network to promote and unify private and public sector efforts to focus attention and resources for at-risk children and their families.
- (6) Maintain close liaison with school authorities and encourage coordination of policies and programs.
- (7) Educate the community and its institutions through every available means including the media concerning the role of the juvenile court in meeting the complex needs of at-risk children and their families.
- (8) Evaluate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.
- (9) Encourage the development of community services and resources to assist homeless, truant, runaway and incorrigible children.

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<sup>212</sup> For further information about the Children's Cabinet, contact Judge Charles McGee or Executive Director Sheila Leslie at The Children's Cabinet, 1090 So. Rock Blvd., Reno, Nevada, 89502, (702) 785-4000.

<sup>213</sup> For further information contact Chief Judge Eugene Arthur Moore, Probate Court, County of Oakland, 1200 N. Telegraph Road, Pontiac, Michigan 48341-1043.

<sup>214</sup> For more information about the Children's Network write: Children's Network, County Government Center, 2nd Floor, 3S5 North Arrowhead Avenue, San Bernardino, California 92415-0121, (714) 387-8966.

<sup>215</sup> For example. Kids in Common, Santa Clara County, California (write c/o Supervisor Dianne McKenna, Board of Supervisors, 70 West Hedding Street, San Jose, California 95110).

- (10) Be familiar with all detention facilities, placements and institutions used by the court.
- (11) Act in all instances consistently with the public safety and welfare.<sup>216</sup>

Other commentators support this description.<sup>217</sup>

All of these activities may be necessary if the juvenile court judge is going to make it possible for the juvenile court to be an effective institution. Given the nontraditional aspect of many of these tasks, there are numerous challenges facing the judiciary both to educate and socialize juvenile court judges with regard to their distinctive role.

<sup>216</sup> Standards of Judicial Administration Recommended by the Judicial Council, Rule 24, Juvenile Matters, West (1991). No! all states have identified the role of the juvenile court judge as broadly as California. In some the juvenile court judge may feel constrained by ethical considerations to refrain from some of these activities. Nevertheless, the California Rule is the trend throughout the United States, as the following statements indicate: "I am extremely impressed by the 'Appendix to California Rules of Court Division I: Standards of Judicial Administration' and think they should be given wide dissemination among juvenile and family court judges. . . . If these rules could be adopted everywhere, they would go along way to resolving the conflicts now experienced, and toward improving the administration of juvenile and family justice." Mark Harrison Moore, Review of "Resolving the Ethical, Moral and Social Mandates of the Juvenile and Family Court," Memo to Hunter Hurst, Pittsburgh, National Center for Juvenile Justice (1990).

<sup>217</sup> Judges must assert community leadership for prevention and treatment of substance abuse among juveniles and their families." *Drugs*

-- *The American Family in Crisis*, NQFCJ, Reno, NY (1989), at p. 25. Judges must provide leadership within the community in determining needs and developing resources and services for deprived children and families. Judges must encourage cooperation and coordination among the courts and various public and private agencies with responsibilities for deprived children. Juvenile and family courts must maintain close liaison and encourage coordination of policies with school authorities. Judges should take an active part in the formation of a community-wide, multi-disciplinary "Constituency for Children" to promote and unify private and public sector efforts to focus attention and resources on meeting the needs of deprived children who have no effective voice of their own. *Recommendations 1, 3, 5, and 7, Deprived Children: A Judicial Response, op. cit.* footnote 144.

# V. Fulfilling the Expectations For the Juvenile Court Judge

How is the juvenile court judge going to accomplish all that has been outlined? What will be necessary for the juvenile judge to realize the goals set forth by the legislature?

The answers to these questions are complex and involve factors relating to the judiciary as an institution, the structure of the court system, the selection of judges and the way in which judges are given and remain on judicial assignments, as well as clarification of the purposes of juvenile court law.

The successful juvenile court judge must be competent, interested, work within a judicial system that has clear goals and that gives sufficient status to the juvenile court, have adequate resources to complete the work of the court, and have sufficient training and tenure to understand and implement the unique tasks the job demands.<sup>218</sup>

## A. Structure of the Court System

For the juvenile court judge to be in a position to accomplish all that the legislature has set out, the juvenile court must be recognized as an important, if not the most important, part of the part judicial system.

Juvenile and family courts, to be effective, must have the same stature as general jurisdiction courts.<sup>219</sup>

The relationship of the juvenile court to the courts of general jurisdiction differs throughout the United States. In some jurisdictions, the juvenile court is one division of the court of general jurisdiction. In others, the juvenile court is a separate court of equal status to the court of general jurisdiction. In still others, the juvenile court is a part of an inferior trial court.<sup>220</sup>

<sup>218</sup>The author recognizes that this description appears difficult to attain. Experience has proven, however, that many such individuals exist. The author has met hundreds of judges across the country who fit the "competent," "interested" and "sufficient training" characteristics. While more such judges need to be identified, the remaining factors of "status" and "resources" must also be addressed. One organization, the National Council of Juvenile and Family Court Judges, has a great number of such judges among its members. They are drawn to that organization because of the support, training and technical assistance it offers to juvenile and family court judges throughout the country. In its Articles of Incorporation its purposes include:

- (a) To improve the standards, practices and effectiveness of the juvenile courts and other courts exercising jurisdiction over families and children;
- (b) To inform or otherwise assist persons and agencies, including governmental agencies, which deal with or affect juvenile courts and other courts exercising jurisdiction over families and children;
- (c) To educate persons serving in or otherwise connected with juvenile courts and other courts exercising jurisdiction over families and children and other interested members of the public in developments and approved principles relating to such courts; and
- (d) To engage in educational and research activities in furtherance of the foregoing objectives.

The National Council has published numerous books outlining the policies which should be adopted to best serve children and families in the United States and how juvenile and family court judges can take action to ensure these policies are implemented. The National Council's leadership in policy development and technical assistance has resulted in improvements to juvenile court systems throughout the country.

For example, in 1991 the National Council of Juvenile and Family Court Judges Permanent Families for Children Project was designated a model program by the office of Juvenile Justice and Delinquency Prevention. Recognized as an "exemplary delinquency prevention program" the award reflected the more than ten years of work by juvenile and family court judges nationwide to serve more effectively the abused and neglected children appearing in their courts. "NCJFCJ Wins National Recognition for Child Abuse and Neglect Project," *Juvenile and Family Court Newsletter* 21.3 (Nov. 1991) at p. 1.

Some of the Council's most influential publications include "Deprived Children: A Judicial Response," NCJFCJ, Reno (1988) (*op. cit.* footnote 144); "Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases," NCJFCJ, Reno (1992) (*op. cit.* footnote 86); "The Juvenile Court and Serious Offenders: 38 Recommendations," NCJFCJ, Reno (Summer 1984) (*op. cit.* footnote 135); "Drugs — The American Family in Crisis: A Judicial Response, 39 Recommendations," NCJFCJ, Reno (1989); "Judicial Authority and Responsibility: IS Recommendation on Issues in Delinquency and Abuse/Neglect Dispositions," NCJFCJ, Reno (Jan. 1989); "Minority Youth in the Juvenile Justice System: A Judicial Response," NCJFCJ, Reno (1990); "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," NCJFCJ, Reno (1989) (*op. cit.* footnote 76).

For further information about this organization contact Dean Louis W. McHardy, National Council of Juvenile and Family Court Judges, P.O. Box S970, Reno, Nevada S9507.

<sup>219</sup> *Deprived Children*, *op. cit.* footnote 144, Recommendation S, p. 13.

<sup>220</sup> Rubin, *op. cit.* footnote 17, describes the many different court systems in the United States and how legal issues relating to the same family may be handled by different courts within the same jurisdiction.

For the juvenile court to accomplish the ambitious legal and social goals set out by the legislature, it must have at least equal status with the courts of general jurisdiction in each state.<sup>221</sup> The juvenile court judges must have equal status with judges on other judicial assignments. Only in this way will judges be encouraged to remain in the juvenile court and will the juvenile court have a strong voice both in the community and in the court system where it is competing for scarce resources.<sup>222</sup>

Equal status means equal pay. Unfortunately, in some jurisdictions juvenile court judges receive less pay than other trial judges because the juvenile court is a lesser trial court.<sup>223</sup>

An example of the problem of lower status involves the juvenile court's utilization of lesser judicial officers to do the work of the court. In many jurisdictions throughout the United States, the court system assigns the work of the juvenile court to referees, masters, commissioners and other judicial officers. Hiring these judicial officers is necessary, it seems, because judges cannot or do not want to handle all the emotional and tiring work in the juvenile court. Moreover, the government saves money by hiring lesser-paid judicial officers."<sup>224</sup>

Good justification exists for the use of these judicial officers. The court can hire persons who have an interest and a talent for working with children and families. If these officers do not perform well, the court can take action to replace

them. Overtime, these judicial officers can and do develop expertise in all areas of juvenile law.

On the other hand, to the extent that these judicial officers are utilized for the work of the juvenile court, many (including judges, attorneys and the public) conclude that the work of the juvenile court is of lesser importance than the work performed by judges. If attorneys disagree with a ruling of one of these officers, the law provides that a judge review the findings.<sup>225</sup> More importantly, these judicial officers lack political power in the community. If there are problems in developing resources, in ordering agencies to comply with orders, in getting things to happen outside of the courtroom, these judicial officers have less power to accomplish the task. The power of the juvenile court is necessarily diminished by having lesser judicial officers perform the work of the juvenile court.<sup>226</sup>

## B. Attracting Competent Judges

One of the greatest challenges facing the juvenile court is attracting competent jurists to serve as juvenile court judges.<sup>227</sup> There are a number of reasons why the juvenile court has not been able to attract talented, competent judges on a consistent basis.<sup>228</sup>

First, the substance of the work done by a juvenile court judge has not been considered to be legal. From the creation of the juvenile court in

<sup>221</sup> The Judicial Council and judiciary of California should undertake efforts to raise the status of all family relations matters within the judiciary.

In California and the nation, matters involving children and families suffer a similar fate — low status. This appears to be true in the judicial, as well as in other social institutions.

In a practical vein, the importance of juvenile and family law are reflected in the allocation of resources to these vital functions. Currently, civil and criminal proceedings take a disproportionate amount of resources, leaving children and families in understaffed courtrooms with little time to deal with vital matters affecting their entire future. Other human relations matters are buried in calendars in other courts and heard between the "real" business of the court "California Child Victim Witness Judicial Advisory Committee Final Report," California Attorney General's Office, Sacramento, CA (1988)45.

<sup>222</sup> The history of the Arkansas juvenile court offers an example of the tragedies which can flow from a poorly structured juvenile court system. Burdened with an outdated and underfunded juvenile court system, Arkansas citizens were unable to enjoy the benefits of the juvenile court, an effective and equitable juvenile court system. Not until advocacy groups combined to persuade the Arkansas Supreme Court 10 declare the juvenile court system illegal was the juvenile court able to have an adequate structure to begin its work. (*Walker v. Department of Human Services*, 722 S.W.2d 558 [Arkansas, 1987].) For a history of this case see Steeping *Stones*, ed. Sheryl Dicker, New York, The Foundation For Child Development (1990) at pp. 197-218.

<sup>223</sup> Equal status also means an appellate structure that is similar to that of general trial courts. When the juvenile court decision can be reviewed by a trial court, the importance of the work of the juvenile court is reduced in everyone's eyes. See Rubin, *op. cit.* footnote 45, at p. 350.

<sup>224</sup> The study of salaries found referees received an average of 67% of judges salaries. H. Ted Rubin, "Between Recommendations and Orders: The Limbo Status of Juvenile Court Referees," *Crime and Delinquency* 27 (July 1981)317.

<sup>225</sup> See Alabama Juvenile Code sections 5-104; Utah Code Ann. section 78-3a-14; Colorado Rev. Stat. Ann. section 19-1-110; California Welfare and Institutions Code section 252.

<sup>226</sup> If referees are needed to shore up the shortage of judges, why not use them in civil or probate courts to handle procedural matters and other matters that do not affect the lives of children and families. We profess the importance of the juvenile court, so why not assign it sufficient judicial resources? See generally Scharr, *op. cit.* footnote 66 at p. 163.

<sup>227</sup> Competency includes both interest and ability. A competent judge has legal skills and a sensitivity to the power and intensity of the juvenile court law. In addition the competent juvenile court judge must understand the role that the position demands, the role described in section IV.

<sup>228</sup> The scarcity of qualified judges has been a problem in the past. A 1963 study showed that only 71% of the juvenile court judges surveyed had law degrees. Of those judges who were full time, 72% spent a quarter or less of their time on juvenile matters. Thus a child's case sometimes rested on the decision of a judge who may not have had an appropriate legal background or devoted much time to the case. McCune, S. and Skoler, D.S. "Juvenile Court Judges in the United States: Part 1," *Crime and Delinquency* 11 at pp. 121-131. In speaking of the quality of judges on the New York Family Court, Charles Schinitzky is quoted as saying, "They're phocaj hacks. They come up by the clubhouse route. They're lawyers, but not distinguished lawyers. They used to be somebody's secretary." Upon the appointment to the Family Court by Mayor Beame of a number of candidates referred to as "abominations," Schinitzky said, "It shows the kind of regard in which this court is held. It has no prestige at all. Nobody cares." Found in *Child Savers* by Peter S. Prescott, Knopf, New York (1981) at p. 68.

Illinois in 1899 through the Supreme Court decision in the case of *In re Gault*, the juvenile court judge was not seen as a person with legal training. The judge did not need to have any legal training, since there were so few legal rights considered as a part of the juvenile court process. Indeed, the juvenile court was created more as a social institution with legal trimmings. The law was perceived as unnecessary to the problems facing at-risk youth. Only in the past twenty years have most states moved in the direction of requiring juvenile court judges to be lawyers.<sup>229</sup>

Second, and closely related to the first reason, is the fact that the juvenile court often occupies low status in the legal community.

The unfortunate tradition continues with the assignment of newly appointed judges, assistant prosecutors, public defenders and probation officers to the Family Part. They are led to believe that they can be 'promoted' to Civil or Criminal once they have 'learned the ropes' in the Family Part.<sup>230</sup>

The juvenile court is perceived of as a social and not a legal court, a court in which the lawyer's legal tools are useless. The low status is also related to the fact that there is very little money to be made in juvenile court. Delinquent, abused and neglected children and their families are usually poor. The courts rule on custody and protection issues, not money issues, and those lawyers who do appear in juvenile court are usually employed by the state or county at lower salaries than lawyers in the private sector.<sup>231</sup>

Third, few judges come to the bench with a background or an interest in juvenile court law. This is generally not a problem in those jurisdictions in which the juvenile court judge is directly elected or selected for that job—only in those courts in which the juvenile court judge is but one assignment of many, and the judicial administration chooses who will serve in that position and for how long. One cannot expect a newly appointed

civil practitioner or prosecutor to accept a juvenile court assignment with enthusiasm.<sup>232</sup>

Juvenile law is not taught as a part of the core curriculum in most law schools. Only in the past ten years has any course in juvenile law been offered at all. In the law schools it is perceived as an exotic course, one which will not lead to employment.<sup>233</sup>

Few appointed judges have had experience in the juvenile court. Even those who were employed in a public law office as a district attorney or public defender viewed any juvenile court assignment as training for the "more serious" work of the office, felony prosecutions. For private practitioners, juvenile court work was something one did as a favor for a client or referred out to another lawyer.

Fourth, the location and operation of the juvenile court is often isolated from the center of court activities within a particular jurisdiction.<sup>234</sup> Because of the co-location of many juvenile courts with detention facilities for minors, probation department headquarters or social services offices, the courts are often separated from the main courthouse. Judicial quarters at these sites are usually far below the standards of the civil and criminal courts. Poor courtrooms and isolation from one's colleagues lead many judges to want to remain in a juvenile court assignment only as long as necessary. Often the newest judge is given that assignment, but only until the next appointment is made.<sup>235</sup>

The isolation includes not only one's judicial colleagues, but also the mainstream of the local bar association and other members of the legal community. Many a juvenile court judge has had a colleague or a member of the bar ask, "When are you coming back downtown?" or "Haven't you had enough of kiddie court? We miss you down here." Until there is sufficient attractiveness to the juvenile court judge's position, the court will be unable to fill that position with adequate numbers of qualified personnel.

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<sup>229</sup> See Stale Court Caseload Statistics Annual Report, National Center for State Courts, Williamsburg, Virginia (1989)259-261 and 198-20S.

<sup>230</sup> "Pathfinders Committee Report," 125 *New Jersey Law Journal* 1-4-90, pp. 41-52, at p. 41. See also Rubin, *op. cit.* footnote 45, at p. 350.

<sup>231</sup> See generally *Deprived Children*, *op. cit.* footnote 144, at p. 15 and Schwartz, *op. cit.* footnote 66, at pp. 162-3.

<sup>232</sup> One solution was recently proposed in the Senate Task Force Report on Family Relations Court, *op. cit.* 176, at p. 29. "In making judicial appointments, the Governor should consider the need for and the importance of appointing attorneys with domestic relations, probate and juvenile law experience. The Governor, in making appointments to the Superior Court, should appoint a sufficient number of persons who express a will in guess to spend an appropriate portion of their judicial career in a family court setting." See also "Recommendations for a Model Family Court: A Report from the National Family Court Symposium" b> S. Kalz and J. Kuhn, National Council of Juvenile and Family Court Judges, Reno, NV (May 1991) 4-7.

<sup>233</sup> "We did a survey of law schools not too long ago and an astounding number of them don't even offer a course, and none of them require a course. Those that do offer a course don't offer a course that enables anyone to understand other than limited procedural aspects of the matter." E. Hunter Hurst, "Rotation vs. Specialization of Judges: An Interview with Honorable Don LTidrick, Iowa District Court Judge (Retired)" in *Juvenile and Family Court Newsletter* 21.1 (Mar. 1991) at p. 11.

<sup>234</sup> "Pathfinders Committee Report," *op. cit.* footnote 230, at p. 42.

<sup>235</sup> *Ibid* at p. 41.

### **C. Retaining Competent Judges**

Attracting juvenile court judges is only one part of the problem. Retention is another. For the juvenile court judge to be effective, the juvenile court assignment must be for a substantial period of time. This seems to be a widely recognized principle.<sup>256</sup>

Supervising judges and judicial officers in the Family Relations Division . . . should serve for substantial periods of time.

Judicial Recommendation 14  
California Child Victim Witness  
Judicial Advisory Committee, October 1988

Judicial assignments should . . . be for a substantial number of years.

Recommendation 8  
Deprived Children: A Judicial Response  
73 Recommendations

Judges should have long-term assignment to this complex court.

The Juvenile Court  
And Serious Offenders  
38 Recommendations

The presiding judge of the superior court should assign judges to the juvenile court to serve for a minimum of three years.

Section 24  
Juvenile Court Matters  
Appendix to California Rules of Court  
Standards of Judicial Administration, 1989

In those states in which the juvenile court judge is elected or appointed to that position, such admonitions have no relevance. These principles

only become necessary in those jurisdictions in which rotation from assignment to assignment is a part of the judicial structure.<sup>237</sup>

Why should a juvenile court judge remain in that position for a substantial period of time? The answer to this question reflects the very differences between the role of the juvenile court judge and the more traditional trial judge.

First, it takes time for a judge to develop the necessary knowledge and skills demanded in the juvenile court. Beyond the law, the judge must be trained in theories of human development, family dynamics, and available community resources.

Second, juvenile court cases, and particularly those involving abused and neglected children, take a long time to complete. A dependency case in which a child has been removed from parental control may be in the courts for hearings for eighteen months before a permanent plan is set for that child. Thereafter, the child's case may appear before the court for years, either to complete the permanent plan or to review the status of a long-term placement. It seems preferable to have judges remain on assignment to be able to hear cases from beginning to completion.

Third, with the possible exception of the presiding judge of all of the trial courts, no judicial role requires more administrative work than that of the juvenile court judge. To review the duties and responsibilities outlined in Section IV is to understand why the juvenile court judge must remain in the position for a substantial number of years in order to be effective.

To rotate the juvenile court judge on a frequent basis also will likely result in less effective judicial administration. Agencies

<sup>236</sup> It seems imperative, therefore, that the assignment to the family court be an ongoing assignment for the tenure of that judge." National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention Standards 8.4 Commentary*.

Rubin, *op. cit.* footnote 45, at pp. 366 and 387; but also see p. 407.

"State Supreme Courts should create incentives for judges to remain on family court assignment for minimum period of four years." Recommendations for a Model Family Court: A Report from the National Family Court Symposium, *op. cit.* footnote 232, at p. 165.

<sup>237</sup> A strong contrary view is held by Professor Schwartz *op. cit.* footnote 66, pp. 161-164 and the American Bar Association in the Juvenile Justice Standards Projects. *Standards Relating to Court Organization and Administration*, Cambridge MA, Ballinger Press(1980), Standard 2.1C. See also: American Bar Association Commission on Standards of Judicial Administration, *Standards Relating to Trial Courts* (Chicago, American Bar Association, 1976) Standard 2.35; and National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice*, Standard 3.122.

These commentators believe a short term for the juvenile court judge is necessary to avoid empire building. The danger they see is that the presiding juvenile court judge who stays too long will be too powerful in the juvenile court system, which will lead to a "court that may be operated in a paternalistic manner with the legal safeguards of due process substantially ignored." American Bar Association at pp. 19-20.

This reason is a classic example of throwing out the baby with the bath water. There are dangers in any system in which one person remains in a position of power and authority for a substantial period of time. That is a risk one takes, however, to accomplish the more important goal of providing sufficient time for a presiding judge to understand the complex juvenile system and fulfill the varied roles that have been outlined. To insist on a one or two year rotation would be to deny the juvenile court judge the opportunity to fulfill the role of the off ice. It would instead lead to an unmanaged judiciary court. For judicial opinions on the question of rotating juvenile and family court judges see "Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary" by Hunter Hurst, *Juvenile & Family Court Journal* 42J (1991) at pp. 13-21.

servicing the court will recognize that there will be no consistent judicial authority supervising their policies and procedures. Such rotation can result in abrogation of the judicial administrative function.<sup>238</sup>

When the judges are rotated, no one even knows who the juvenile court judge is, so you've lost the community bellwether.<sup>239</sup>

The administrative responsibilities can only be effectively carried out by someone who spends enough time in juvenile court to understand not only the nature of the case before the court, but also the nature of those agencies and persons reporting to the court. The experience of juvenile court judges throughout the country is that the expertise necessary can come only from years on the job. The lowest number suggested is three years; many argue for five or more.

One significant problem limiting the time a judicial officer can be effective in the juvenile court is burnout.<sup>240</sup> Juvenile court work is demanding. As Judge Alexander wrote,

I can bear personal witness to the fact that in almost every city of the country the juvenile court judge is the most over-worked and harassed of all judges. ... In only seventeen states can he look forward to a modest pension upon his retirement. ... His court as well as his children are more often than not housed in dark, dingy, dilapidated, dirty and inadequate quarters.<sup>241</sup>

Dealing with troubled children and families day after day takes its toll on the judge. In addition, the long non-jury calendars facing juvenile court judges require that they do more judicial work than

their counterparts in the civil and criminal assignments.<sup>242</sup> Some judges report that the stress of the job, with its many demands, combined with the emotional work within the courtroom, has led them to burn out emotionally and be unable to continue working with the same energy and dedication. In jurisdictions in which rotation is possible, a change in assignments can provide relief. For the elected juvenile court judge, the resolution of this problem is more complex.

Effective retention policies must include selection of judges to juvenile court who are interested and experienced. Judges selected must be provided orientation, training and continuing education. They must be given judicial quarters of sufficient quality that the Effective retention policies must include assignment is not perceived as "roughing it." In this manner the juvenile court will be able to attract and retain competent judges for substantial periods of time.

#### **D. The Unified Family Court**

The demands of the juvenile court judge's job lead many to believe that a minimum term is necessary in order to understand the position and begin to become effective. The stresses inherent in the job persuade others to argue that the term must be short enough to avoid burnout. The fear of empire building or that an ineffective and uncommitted judge may remain in the position for a long period of time leads still others to suggest that the term should be short.

One response may offer a solution for all of these concerns. It is the unified family court. This

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<sup>238</sup> Rubin, *op. cit.* footnote 45, at p. 366.

"We all came to the conclusion that we need community involvement to get the public to realize that something must be done in these areas with children and families. We pointed out in our recommendation that, unless you have a judge who has been in the juvenile division long enough to know these issues (drug and alcohol abuse) and who could speak with authority for the juvenile division, the communities pay no attention to him." Judge Ninian Edwards, found in Hurst, *op. cit.* footnote 233, at p. 16.

<sup>239</sup> Hurst, *op. cit.* footnote 233, at p. 10.

<sup>240</sup> "Senate Task Force on Family Relations Court: Final Report," *op. cit.* 176, at pp. 29-30. See also "Recommendations for a Model Family Court: A Report from the National Family Court Symposium," *op. cit.* footnote 232, at pp. 4-6.

<sup>241</sup> Judge Paul Alexander, "Speaking as one judge to another," *National Probation Association Yearbook*, 1944. New York, National Probation Association (1944), at p. 3S.

<sup>242</sup> *Ibid.*, at pp. 29-30. "A judge now is able to devote an average of ten minutes to each child's case . . . by 1995 judges will be allowed only five minutes to determine a child's fate." "Perspective of a Juvenile Court Judge" by Judge Paul Boland, *The Future of Children*, Center for the Future of Children 1.1 (Spr. 1991) 100-104, at p. 101. Judge Alexander wrote of the pressures that juvenile court judges were under. "When he can give one hour to three cases, and ought to give three hours to one case, somebody is going to suffer." He estimated that a juvenile court judge worked double or triple the hours worked by judges in other courts. *Op. cit.* footnote 226.

court can be created by restructuring the trial court so that the court has integrated jurisdiction over all legal problems that involve members of a family.<sup>243</sup> In practice, a unified family court brings together under one court administration all juvenile, domestic relations, paternity, emancipation, domestic violence, adoptions, guardianships, termination of parental rights, and child support enforcement matters. In some courts the jurisdiction extends to criminal and civil matters involving family members.<sup>244</sup>

The concept is not new. Judge Alexander of Toledo, Ohio urged the concept in his writings in the 1940s. Several states and jurisdictions within states have created and maintained unified family courts for years. Delaware, Rhode Island, Hawaii, New Jersey and Washington, D.C. are the most notable examples. Other jurisdictions are considering development of a unified family court.<sup>245</sup>

While all of these courts refer to themselves as unified family courts, no two are the same. There are differences in types of cases which fall under the jurisdiction of each court, in the selection, training and rotation of judicial officers and in the size of the courts. Nevertheless, each is able to point to the same strengths. Those strengths include:

1. The consolidation of all family-related legal matters into one division of the trial court for maximized coordination within the court system.<sup>246</sup>
2. The development of a team of interested and competent judges willing to serve in the unified family court for substantial periods of time.
3. Increased sensitivity to the needs of the child and family by having one judge hear all legal matters and having one probation

officer or social worker assigned to the case.

4. Improved access to services by all children and families which come before the court. Unlike traditional court systems, the unified family court is more prepared to provide the services needed for a particular family regardless of the legal category.<sup>247</sup>

In addition the unified family court builds on the recognition that the problems identified by a delinquency, dependency or status offense petition spring from a common basis, the family, and that the intervention strategies utilized in each type of problem may be similar, if not identical.<sup>248</sup>

The unified family court offers answers to each of the problems posed by critics of the juvenile court. To those who insist that judges remain for an extended time so that they can learn the complexities of the position of juvenile court judge, the unified family court permits a judge to remain in that position for years. To those who are concerned about isolation and judicial burnout, the unified family court offers a system in which a team of committed judicial officers can exchange positions and watch out for one another. To those who complain that the juvenile court judge may be uninterested in and incapable of handling the work, the unified family court provides that same team of interested and able judges, ready to work together to ensure that all of the work of the court is dealt with effectively.<sup>249</sup>

The critical component of the unified family court is its ability to attract and maintain a team of judges who have chosen to work in that court for a substantial period of their judicial life. Their close working relationship with other members of the court, coupled with their self-selection, means

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<sup>243</sup> See "Recommendations for a Model Family Court: A Report from the National Family Court Symposium," *op. cit.* footnote 232, at p. 165.

<sup>244</sup> Rubin, *op. cit.*, footnote 17.

<sup>245</sup> In November 1990, the people of the state of Nevada passed a constitutional amendment approving of the creation of a Family Court in that state. Subsequently funding has been approved by the state legislature. See Final Report of the Nevada Family Court Task Force, NCJFCJ, Reno, 1991. Florida, Virginia, California, and Kentucky all have pilot family court projects underway. Maine and New Hampshire have created task forces to examine the feasibility of such a court. On September 12, 1991, the Florida Supreme Court approved the recommendation of the Commission on Family Courts to create a family law division in each Florida judicial circuit. The Supreme Court noted that such a division "will provide a better means for resolution of family issues." (*in re Report of the Commission on Family Courts*, No. 77, 623 (FL 12 Sept. 1991)).

<sup>246</sup> On the complex problems facing court systems which are not unified, see Edwards, L., "The Relationship of Juvenile and Family Courts in Child Abuse Cases," *University of Santa Clara Law Review* 27:2 (Spring 1987) 201-278.

<sup>247</sup> Services and resources available to only one court department should be available to all family (juvenile) courts." Senate Task Force on Family Relations, *op. cit.* footnote 176, at pp. 13-15.

<sup>248</sup> Gelber, *op. cit.* footnote 105, at p. 15. And see Judge Robert Page, "The Role of the Judge in Family Court," a paper delivered at a National Council of Juvenile and Family Court Judges Conference in October 1990.

<sup>249</sup> See Geoff Gallas, Gary L. Albrect and H.Ted Rubin, "A Comparative Study of Family Courts and Juvenile Courts: The Effect of Organizational Structures, Environments, Administration and Decision-Making on Process and Outcome," (Denver: Institute for Court Management, unpublished manuscript, 1977) cited in Rubin, *op. cit.*, footnote 45, at p. 378.

that the court can look to many, if not all, of its judicial officers to accomplish the unique tasks described above for the juvenile court judge.

Too much stress cannot be placed on the benefits of launching a family court with the optimal characteristics. In my experience each step towards the attainment of one of these has a synergistic effect on the attainment of all, and the failure to move forward with one can defeat the fulfillment of the other.<sup>150</sup>

#### E. Purpose of the Juvenile Court

In order to understand the goals and direction of the juvenile court, the purposes of the juvenile law must be clearly stated.<sup>251</sup> The juvenile court judge, the agencies which serve the court and the community must understand what the mission of the juvenile court is. The purposes should include society's legitimate goals on behalf of its children. Those purposes include ensuring that children are raised to become productive citizens, that they are protected from abuse and neglect, that they are educated, that they are corrected and rehabilitated if they violate the law, and that society is protected from their delinquent behavior. An equally important purpose is to preserve and strengthen families, so that they can raise their children without state interference.

There are unavoidable tensions within these purposes. For an abused or neglected child the goals of protection and family preservation may be

in conflict. Maintaining or returning a child to the home in which abuse occurred involves risks of reabuse. For the delinquent child rehabilitation and societal protection may be in conflict.

The existence of these tensions does not make the purpose clause useless. It reminds us of the challenges facing the juvenile court system in dealing with the complex problems surrounding rearing children in our society. Moreover, it provides a common solution and a strategy for many of the cases involving each of the different types of behavior discussed in this paper. That solution is family preservation.

Simply stated, we have not turned to the family with sufficient commitment for the solution to the problems which come before our juvenile courts. The family offers our best opportunity for providing the care, control, supervision and accountability for children on a day-to-day basis. As a society our first response on behalf of at-risk children should be to strengthen the family.<sup>2</sup> Out-of-home care may be necessary in some cases, but we have greatly over-utilized placement as a solution to problems facing children and families.

Fortunately, effective and economical family preservation strategies have been and are being developed which address all of the situations described in this paper.<sup>253</sup> Developed first for dependency cases, family preservation<sup>254</sup> has been shown to be effective in delinquency matters also.<sup>255</sup> It has always been the preferred strategy in status offense situations.

<sup>250</sup> Statement by Chief Judge William Gordon of the Delaware Family Court cited in "The Family Court" oral presentation before Judge Robert W. Page at National Judicial College, Reno, Nevada (1985/86).

<sup>251</sup> "... (A) juvenile system which is built upon public reaction to occasional outrageous acts is bound to be episodic, shallow, unevenly coercive, probably unfair, and unresponsive to the overall needs of society for its children." Hartmann, *op. cit.* footnote 2 at p. 38".

<sup>252</sup> "Protecting Vulnerable Children and Their Families," Chapter *Wot Beyond Rhetoric: A New American Agenda for Children and Families*, *op. cit.* footnote 2, at pp. 280-309.

<sup>253</sup> Cole, Elizabeth, and Duva, Joy. *Family Preservation: An Orientation for Administrators and Practitioners*. Washington, D.C.: Child Welfare League of America (1990); Edna McConnell Clark Foundation. *Keeping Families Together: Facts on Family Preservation Services*. New York; Schorl, Lisbeth. *Reaching Our Reach: Breaking the Cycle of Disadvantage*. New York: Doubleday (1988), especially pp. 140-178; Wells, Kathleen and Biegel, David E., *Family Preservation Services: Research and Evaluation*. Newbury Park: Sage Publications (1991); Whittaker, James K., et al., *Reaching High Risk Families: Intensive Family Preservation in Human Services*. Hawthorne, N.Y.: Aldine de Gruyter (1990); Yuan, Ying-Ying T. and Rivest, MKbele. *Preserving Families: Evaluation Resources for Practitioners and Policymakers*. Newbury Park: Sage Publications (1990); Yuan, Ying-Ying T., et al. *Evaluation of AB 1562 In-Home Care Demonstration Projects: Final Report*. Sacramento: Walter R. McDonald & Associates, Inc. (1990); "Recognizing and Realizing the Potential of Family Preservation" by Douglas Nelson, paper presented to the Edna McConnell Clark Foundation. Grantees Conference, April 1-3, 1988, The Center for the Study of Social Policy, Washington, D.C. (1988); "Intervention in Homes is Helping to Rescue Troubled Families," by Jon Nordheimer, *New York Times* 11 Apr. 1991, at p. B1; "New York Examines Detroit Model," by Celia Dugger, *the New York Times* 21 July 1991, at p. 9; "Family Preservation," *Families and Children*, Santa Clara County Social Services Agency, San Jose, CA, S (May 1991) at 2-6.

<sup>254</sup> "Intensive family preservation services (IFPS) are characterized by highly intensive services, generally delivered in the client's home over a brief period of time. The primary goals of intensive family preservation services are: (1) to protect children, (2) to maintain and strengthen family bonds, (3) to stabilize the crisis situation, (4) to increase the family's skills and competencies, (5) to facilitate the family's use of a variety of formal and informal helping resources, and (6) to prevent unnecessary out-of-home placement of children. Elizabeth Tracey, David Haapala and Peter Pecora, *Intensive Family Preservation Services: An Instructional Sourcebook*, Cleveland, Case Western (1991).

<sup>255</sup> "Indeed, what seems clear now is that if the court is to be successful even with respect to the narrow goal of controlling juvenile delinquency in a moderately inexpensive and humane way, it must find ways of strengthening families and engaging the other institutions in the community in its efforts." "Toward Juvenile Justice" by Mark Harrison Moore, in *Children to Citizens: The Mandate for Juvenile Justice*, *op. cit.* footnote 7, at pp. 177.

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Family preservation services can revolutionize the way we think about helping children and their families. These services operate in new ways: through immediate response, and short-term, intensive work aimed at meeting goals set by the family. When you add on the holistic nature of family preservation — helped with transportation as well as counseling, for example, housekeeping along with anger management — the potential is awesome. Could this be the successful and replicable example of the integration of services that has been so elusive?<sup>256</sup>

In other words, strengthening and empowering families may prove to be the most effective strategy for the juvenile court system, regardless of the type of case before it. Before a child is removed from the family, or as soon after removal as possible, the wisest social policy is the preservation of the family so that it can accomplish the state's goals. In most cases the family has the greatest incentive to maintain its integrity, but it often lacks the skills or resources to accomplish the task. The state can provide support to strengthen the family and empower it to provide adequate care and control for its children. In those cases in which the danger to the child or to the community is great and the family is unable to provide the necessary care and control of the child, substitute care will, of course, be necessary.

## F. Resources

... funding does remain our most miserable failing.<sup>257</sup>

Establishing the juvenile court as a respected part of the legal community and staffing it with interested and able judicial officers for substantial periods of time will take the court a long way, but in order to succeed there must be adequate resources to support the court and the children and families who appear before it.<sup>258</sup>

First, there must be the resources to support and preserve those institutions (families, schools, community based organizations) which provide the necessary care, control and nurturing to prevent state intervention on behalf of at-risk children.<sup>259</sup>

Second, there must be adequate resources for the court system. This includes a sufficient number of judges,<sup>260</sup> staff<sup>261</sup> and attorneys to do the work of the court. Third, there must be enough persons to support the systems that detect, investigate, monitor, and provide services for juvenile court cases.<sup>262</sup> Fourth, there must be adequate resources to provide an effective response to the problems facing the children and families coming before the court. These resources include what is necessary to respond to the problems facing the child and family, whether they be labeled delinquent, dependent or status offenses.<sup>263</sup> Without them the juvenile court is likely to become the "abysmal failure" described by the Illinois Appellate Court.<sup>264</sup>

<sup>256</sup> Peter Forsythe, Director, Program for Children, Edna McConnell Clark Foundation.

<sup>257</sup> Gladstone, *op. cit.* footnote 12.

<sup>258</sup> One of the long-standing Congressional findings is that "understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help" for juvenile offenders. Section 101(a)(2), 42 U.S.C. section 560 l(a)(2). "The juvenile court cannot intervene effectively when the social services and treatment resources it depends on he in tatters." "A limited Role for the Legal System in Responding to Maternal Substance Abuse During Pregnancy" by John E. B. Myers, *Notre Dame Journal of Law, Ethics & Public Policy*, at p. 781. "One reason for the failure of the juvenile courts has been the community's continuing unwillingness to provide resources—the people and facilities and concern — necessary to permit them to realize their potential and prevent them from taking on some of the undesirable features typical of lower criminal courts in this country." "The Administration of Juvenile Justice — The Juvenile Court and Related Methods of Delinquency Control." The President's Commission on Law Enforcement and Administration of Justice, *Juvenile Delinquency, and Youth Crime*. Washington, D.C. U.S. Government Printing Office (1969) at p. 7.

<sup>259</sup> "Investing in America's Future", Chapter 13 of *Beyond Rhetoric*, *op. cit.* footnote 2, at pp. 368-390.

<sup>260</sup> "The Family Part needs more judges. Family Part judges need more time to handle the cases that come before them... The workload of Family Part judges should be comparable to that of their counterpart in the Criminal and Civil Divisions." *Op. cit.* footnote 232, at p. 42.

<sup>261</sup> "Staff are the most important resource of the court; therefore, activities which promote professional development of court and juvenile justice system personnel are critical to maintaining quality programs and services and should be supported." "38 Recommendations," *Juvenile & Family Court Journal* 35 2 (198->). *op. cit.* footnote 135, p. 21.

<sup>262</sup> The National Commission on Children Recommends that individual adults, communities, and the public and private sectors take aggressive steps to ensure that all young people have access to a broad array of support in their communities to promote healthy adolescent development and help them avoid high-risk behavior — including school dropout, premature sexual activity, juvenile delinquency, crime, violence, and alcohol and drug abuse — that jeopardize their futures. "Final Report of the National Commission on Children," *op. cit.* footnote 2, at p. 233.

<sup>263</sup> "For the family court to realize its full potential it must have all necessary resources. These include additional qualified, sensitive and well-trained judges and staff, and the necessary auxiliary programs; e.g., custody, visitation, mediation, matrimonial settlement panel programs, juvenile resource centers." "Pathfinders Committee Report," *op. cit.* footnote 230, at p. 41.

<sup>^</sup>The Cook County juvenile court offers an example of the severe shortages in the resources necessary to complete the work of the court. In August of 1990 the juvenile court was responsible for more than 22,000 abused and neglected children. As that time there were 18 judicial officers hearing these cases, 35 deputy public guardians representing these children, and public defenders representing parents with caseloads of 600 per deputy. *Ashley K.*, *op. cit.* footnote 145.

We have learned about the large numbers of children and families in the United States who are below the poverty level.<sup>265</sup> Some may become discouraged and believe that the juvenile court faces impossible tasks when dealing with such social problems. With the proper perspective, however, the goals of the juvenile court can be accomplished.

The juvenile court is not charged with removing poverty from society. The legislature mandates that the juvenile court take action on behalf of certain children and families who are found to fall into statutory categories. Juvenile court judges must follow the law. Their first official act is to take an oath of office swearing to uphold the laws of the United States and of their particular jurisdiction. Juvenile court judges take that oath very seriously.

We should expect to hear from our juvenile court judges when they have been given insufficient resources to complete their assignment. We should expect them to speak loudly when they cannot fulfill their oath of office. When the community learns that the important tasks given to the juvenile court are poorly funded, there will be an opportunity for public support to influence

legislative and executive decisions about these resources. It is a strategy which has been tried successfully in several communities<sup>266</sup> and, as juvenile court judges understand the position in which they have been placed, will be tried in many others.

The law in some jurisdictions permits the juvenile court judge to mandate the funding of necessary resources.<sup>267</sup> This power enables the juvenile court to demand the financial support necessary to complete its work,

The court, by statutory authority, must be able to order the development of new resources, where evidence shows such to be both reasonable and necessary.<sup>268</sup>

Appellate courts have often restricted the juvenile court's efforts to order such resources.<sup>269</sup> They reason that the court is in a poor position to understand the budgetary constraints that the legislative and executive branches are working with. Whether a juvenile court should be able to mandate services in order to ensure that orders are carried out is a difficult problem, but one that goes to the heart of the juvenile court's ability to accomplish the work assigned to it by the legislature. The standard suggested above that the court be able to

<sup>265</sup> The following facts about American children have been collected by the Children's Defense Fund in their 1991 report:

American children's health and development is threatened by a lack of health insurance and lack of access to health care. More than 12 million children and more than 14 million women of child bearing age have no health insurance.

Our nation's improvement in the rates of early prenatal care, low-birth weight births, and infant mortality has sloped down dramatically or stopped. Immunization rates actually have declined. The United States has slipped to nineteenth in the world in preventing infant deaths, behind such nations as Spain, Ireland, Hong Kong and Singapore.

One-half of preschool-age children today have mothers employed outside the home, a figure which will rise to 70% by 2000. Head Start serves fewer than one in six eligible children.

Our schools are failing. Many of them are simply not good enough to prepare our children for the demands of the twenty-first century. One-half million children drop out of school in the United States each year. Poor teenagers are three times more likely than other teens to drop out and are four times more likely to have below-average basic skills.

Between 1979 and 1986 there was a 60% increase in the reported cases in which children were endangered by abuse or neglect. In 1986, 22 million children were reported abused, neglected, or both.

The fastest growing segment of the homeless population in America is families with children. Every night an estimated 100,000 children go to sleep homeless.

The U.S. teen pregnancy rate is twice as high as that of other industrialized countries. Two in every five American girls get pregnant and one in every five American girls bears a child before the age of 20. The vast majority are not married.

Many sources of public help, especially at the national level, have shrunk. Low-income housing assistance is down 70% since 1980; federal help for elementary and secondary education is down 22.4% from 1979; the AFDC grant for subsistence in a median state has fallen by 37% since 1970; and the main federal program to place doctors in underserved areas of the country has lost more than 90% of its doctors.

See generally *Child Poverty in America*, Children's Defense Fund, Washington, D.C. (1991). See also *Five Million Children: A Statistical Profile of our Poorest Young Citizens*, National Center for Children in Poverty, New York, Columbia University (1990) at pp. 13-15 and *Preserving African American Families*, NABSW, Detroit, (1991).

In spite of the current tragic conditions for children, we must be reminded that children may be faring better today than ever before in the history of mankind, it reads the accounts in *The History of Childhood*, ed. Lloyd de Mause, New York, Peter Bedrick Books (1968), it becomes evident that we have made progress, even though much more needs to be accomplished.

<sup>266</sup> In Marion County in 1991 the Presiding Judge of the Juvenile Court and the City-County Council have been struggling over budget cuts and services for children. The City-County Council decided that \$ 178,000 would be adequate to provide for services to run away children, while Judge Payne concluded that 5158,000 would be necessary. City-County Council members called it "budget overspending," while Judge Payne said the issue is "whether the community is committed to providing the services required of it by state law." "Judge, Council at Odds Again," *The Indianapolis News* 1 Aug. 1991, section B., p. 1; "Juvenile Court Judge Upheld in Clash with Child Welfare Agency," by Terry Truong, "Youth Law News," *Journal of the National Center for Youth Law*, San Francisco (July-August 1991) 19-20, citing *Department of Human Services v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (Ark. 1991).

<sup>267</sup> *In re M.M.*, 697 S.W.2d 205 (Mo.App.1985); *In re Parker*, 310 A2d 414 (1973); *Arkansas Department of Human Services v. Clark*, 802 S.W.2d 461 (Ark. 1991).

<sup>268</sup> "Judicial Authority and Responsibility: 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions," NCJFCJ, Reno (Jan. 1989), *op. cit.* footnote 218, at p. 15.

<sup>269</sup> *School Board of Seminole County v. Leffler*, 372 So.2d 481 (Fla. App. 1985); *Matter of Jackson*, 352 S.E.2d 449 (N.C.App. 1987); *Matter of J.*, 431 A2d 587 (D.C.App. 1981); *Gary H. v. Hegstrom*, 831 F.2d 1430 (9th Cir. 1987); *In the Interest of J.M.N.*, 464 N.W.2d 811 (Neb.1991).

order the development of new resources where evidence shows such to be both reasonable and necessary seems sufficiently limited to protect against a judge improperly upsetting the delicate balance between the budgetary process and judicial orders for resources. It is a method which will ensure that the legislative mandates are in fact carried out by the juvenile court.

# VI. Conclusion

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Can the juvenile court fulfill its mandate? Can the juvenile court judge complete the tasks assigned by the legislature? Many have said no, that the juvenile court is a failed institution, an experiment that did not work. Judge William Gladstone states "Sadly, there is no longer an expectation in juvenile justice."<sup>270</sup> Professors Wolfgang, Feld and Ainsworth write that it is time to abolish the juvenile court.<sup>271</sup>

On the other hand, it appears that the juvenile court is the best institution available to hold society responsible for raising its children to adulthood.<sup>272</sup> The success of the juvenile court will depend on its ability to address the factors identified in this paper. Internally it means that the juvenile court must have the status of other courts, the judges must have the status of other judges serving the legal system, and they must be selected based on interest and ability. The juvenile court judges must serve for substantial periods of time or in a unified family court, so they can fulfill the complex roles both in and out of the court.

Externally, the juvenile court must ensure that the juvenile system is working effectively. If all cases were to be brought before the court—every delinquent, status offending or dependent child—the court would be overwhelmed and would surely

fail. In order for the juvenile court to succeed the system must be able to resolve a majority of cases effectively and satisfactorily long before they reach the courtroom. The system must provide appropriate sanctions and services at different junctures depending on the seriousness of the case. In addition, there must be an array of dispute resolution options available to the children and families who might otherwise come before the court. As Judge Robert Page has stated,

I have a dream of a [family] court where the smallest room, and the least utilized, is the courtroom; where the parties have attempted to get through all the other rooms first, where the courtroom is not the preferred room to resolve disputes.<sup>275</sup>

In order for such a system to be in place, the juvenile court judge must take an active leadership role in its formation, coordination and maintenance.<sup>274</sup>

Assuming that the juvenile court is able to establish itself within each community as the important social and legal institution the legislature has declared it to be, and assuming that the juvenile court is led by dedicated and talented juvenile court judges, the work of the court has just begun.

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<sup>270</sup>Gladstone, *op. cit.* footnote 12.

<sup>271</sup>Wolfgang, *op. cit.* footnote 118; Feld, *op. cit.* footnote 37; Ainsworth, *op. cit.* footnote 32.

<sup>272</sup>"I believe that a reconstituted juvenile court could best exercise the leadership necessary to hold society and its institutions responsible for seeing that children are empowered to attain full citizenship." Hartmann, *op. cit.* footnote 2, at p. 390.

<sup>273</sup> Statement by Judge Robert W. Page at the First Key Issues Faculty Consortium Meeting, Teaneck, N.J., May 27, 1988, cited in "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," NCJFCJ, Reno (1989), *op. cit.* footnote 76, at p. 3. "... non-adversarial problem solving techniques employed outside the legal system hold the greatest promise for weaning the juvenile court from its growing dependence on litigation. ... to shift the emphasis toward non adversarial methods of decision-making, and to reserve litigation for cases that are not amenable to less formal and, from the consumer's perspective, less frightening, threatening, and stigmatizing proceedings." "A Limited Role for the Legal System in Responding to Maternal Substance Abuse During Pregnancy" by John E. B. Mycis. *Notre Dame Journal of Law, Ethics & Public Policy*, *op. cit.* footnote 258, at p. 777.

<sup>274</sup> "The court has the role of holding these institutions responsible for fulfilling their mandate, and of making quick response to institutional failures regarding children. If it is to fulfill this role, it will be necessary to develop accountability measures for these institutions and to find ways of initiating action when necessary." Hartmann, *op. cit.* footnote 2, at page 391.

To address the problems encompassed by the jurisdiction of the juvenile court, we as a society will have to improve our commitment to children and families. It is no easy task to provide the organization and authority so that delinquent youths understand the wrongs they have done and are redirected toward more positive goals, so that truants are persuaded to and assisted in the completion of their education, so that abusive and neglectful parents are educated about proper child rearing or so that children without adequate parents are given a permanent home. Our institutions will have to share the goal of assisting children become productive members of society. Partnerships and cooperative relationships will have to be developed among all who have responsibilities towards children.

Our juvenile courts and the systems in which they work cannot complete these tasks alone. We will have to persuade law enforcement that they are an important part of the solution, that they can offer effective interventions for many of the cases they encounter.<sup>275</sup> We will have to persuade community-based organizations that they are also part of the solution and that they must be prepared to cooperate with agencies to work with children and their families. We will have to persuade corporations and businesses that they are a part of the solution -- that they can offer resources, energy and expertise to families and children who might otherwise come within the juvenile court jurisdiction. We will have to persuade the schools that they are also a part of the solution because there is so much they can offer to these children and their families.

All Americans must work together if we are to succeed.<sup>276</sup> Private citizens, businesses and communities cannot safely assume that government will provide adequate solutions to these problems.<sup>277</sup> No person, no agency, no court can manage these problems alone. Only through the creation of a working coalition of schools, law enforcement, agencies, community based organizations, corporations and businesses and the courts can we be effective in accomplishing the goals of the juvenile law.

There is reason for some optimism. The tasks of the juvenile court and the juvenile court judge -- protecting children, preserving families, rehabilitating youth, protecting the community and holding children and families accountable for their behavior -- are supported by the community at large.<sup>278</sup> Voters have affirmed their commitment to children.<sup>279</sup> Volunteers offer countless time and energy to assist children and families.<sup>30</sup> The task for the juvenile court is to rally the support, to harness this energy, and to offer opportunities for our goodwill and love towards children to be expressed.

The optimism is also based upon the discovery and utilization of more effective techniques and strategies for intervening in the lives of children and families. No one has expressed this better than Lisbeth Schoor.

But the prospects of even the most vulnerable children can be changed. Even for the children growing up in neighborhoods where poverty, social dislocation, and other deterrents to healthy development are concentrated, there is reason

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<sup>275</sup>An example of the ways in which working partnerships can be developed between the law enforcement, the courts, social services, public health, and medical services is contained in the Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases. Recognizing that the sharp increase of babies born exposed to drugs (between 375,000 to 739,200 a year) presents grave threats to the success of our next generation, this publication outlines both recommended public policy and the roles and responsibilities of the different agencies which deal with the babies, their mothers, and families. Since each of these cases in theory has the potential of coming before the juvenile court, the protocol describes an oversight role for the court (the recognizing that most cases should be resolved by interventions short of formal court proceedings. "Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases," *op. cit.* footnote 86.

<sup>276</sup>"The law is not equal to the whole task of social control. Delinquency presents a problem far too complex to be dealt with by a single method. Hence in this field cooperation is peculiarly called for and is called for in a very wide field. If a socialized criminal justice is to achieve all that it may, we must be thinking about more than cooperation of judge and probation officer and social worker. These must cooperate, or at least be prepared to cooperate with the community organizer, the social engineer, the progressive educator, the social coordinator, the health officer, the clergyman, and the public spirited promoter of legislation." Pound, Dean Roscoe, "The Juvenile Court and the Law." *Year Book*, 1944, National Probation Association (1945) 1-22.

<sup>277</sup>"Together, let us bring preventive government, wise enough to invest in children as well as infrastructure, determined to shift from the remedial to the preventive. . ." From the Inaugural Address by Governor Pete Wilson, Sacramento, CA, January 7, 1991.

<sup>278</sup>"The times are changing, perhaps more rapidly than might be imagined. [People not only want to help children generally, they \*ant particular!) to help the children who are living in poverty. . . Politicians who ignore these pleadings from the American people do so at their own peril. It is a plaintive and poignant demand that simply will not go away." Louis Harris Poll, 1986, reported in *Within Our Reach: Breaking the Cycle of Disadvantage* by Lisbeth B. Schoor, Anchor Press, New York (1988) 294.

~"S.F. Voters Approve Kids Amendment", *San Francisco Chronicle*, 6 Nov. 1991.

<sup>30</sup>"As Social Need Rises, So Does Volunteerism" by J. Peder Zane. *The New York Times NATIONAL* 6 Jan. 1992, at p. A1 and A12; "Paying to Train Volunteers to Work with the Neediest" by J. Peder Zane, *The New York Times NATIONAL* 6 Jan. 1992, at p. A12. And see text regarding the CAS A movement at footnote 209.

to hope that much of the gravest and most lasting harm can indeed be prevented.<sup>281</sup>

It lies within our reach, before the end of the twentieth century, dramatically to improve the early lives of several million American children growing up at grave risk. We can substantially improve the odds that they will become healthy, sturdy, and productive adults, participants in a twenty-first century America whose aspirations they will share.<sup>28:</sup>

Preserving families, protecting children, controlling delinquency and providing guidance and intervention on behalf of tomorrow's citizens are essential to our country's continued viability. The legislature has directed the juvenile court and

the juvenile court judge to **Judge Leonard P. Edwards** respond to the most serious problems encountered by children and families. Juvenile court judges can provide leadership in the organization of the court systems and the community around the needs of children and families. The success of these ambitious endeavors will ultimately depend on our ability to ensure that the juvenile court is equipped to complete its tasks and that society and its institutions are prepared to assist in the goal of rearing its children.

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