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REFORM OF THE FAMILY DIVISION OF THE DISTRICT OF COLUMBIA SUPERIOR COURT—IMPROVING SERVICES TO FAMILIES AND CHILDREN

HEARING

BEFORE THE

SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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REFORM OF THE FAMILY DIVISION OF THE DISTRICT OF COLUMBIA SUPERIOR COURT—IMPROVING SERVICES TO FAMILIES AND CHILDREN

TUESDAY, JUNE 26, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 12:07 p.m., in room 2154, Rayburn House Office Building, Hon. Constance A. Morella (chairman of the subcommittee) presiding.

Present: Representatives Morella, Norton, and Davis.

Staff present: Russell Smith, staff director; Heea Vazirani-Fales, counsel; Robert White, communications director; Matthew Batt, clerk; Jon Bouker, minority counsel; and Jean Gosa, minority assistant clerk.

Mrs. MORELLA. Good morning. It is a pleasure to welcome you to the District of Columbia Subcommittee's hearing on the reform of the family division of the District of Columbia Superior Court, improving services to families and children.

I think we can all agree that children are our Nation's most important and valuable asset. Our witnesses today are here because of their commitment to the children in our Nation's Capital. I want to thank them for their dedication and for sharing their experiences and suggestions with us.

I recognize that each witness will present his or her evaluation of the present situation from his or her own frame of reference. This subcommittee will evaluate the testimony and the information during the question and answer exchange in order to formulate final legislation.

Mr. DeLay will be joining us very soon. In fact, that was why we started our hearing at noon, so you could postpone your lunch, and when he comes I will recognize him to speak.

Mr. Davis will be joining us and, of course, we have our ranking member, Congresswoman Eleanor Holmes Norton, and I want to thank them for the dedicated work on this draft legislation.

I particularly want to welcome Mr. DeLay when he arrives, the majority whip, who has been very instrumental in keeping our focus on the issue and has used his offices to bring together all participants to craft the discussion draft on the Family Court.

Indeed, we are privileged today to have Chief Justice Rufus King, chief judge of the D.C. Superior Court; the Honorable Kathy Pat-

terson, who is the Chair of the Committee on the Judiciary of the D.C. City Council; Olivia Golden, who is the director of Child and Family Services Agency; Judith Meltzer from the Center for the Study of Social Policy; the Honorable F. Scott McCown, the civil district court, Travis County, TX; Sister Josephine Murphy of St. Ann's Infant and Maternity Home; Stephen Harlan, chairman of the board, Council for Court Excellence; Margaret McKinney, family law section of the District of Columbia Bar; and Tommy Wells, executive director, the Consortium for Child Welfare. So you can see we have a very prominent, distinguished group of people who will be testifying before us today.

I thought I'd give an opening statement by reminding us of the fact that on the morning of January 6, 2000, doctors at Children's Hospital declared 23-month-old Brianna Blackman dead, the victim of severe head injuries. According to the grand jury that handed out 10 indictments against her mother and godmother, the girl's death was the culmination of 2 weeks of what can only be described as torture. Brianna was allegedly beaten with a belt, repeatedly punched, ultimately had her hands cuffed and her head smashed against a hard surface.

Since that tragic day, a sweet, smiling Brianna Blackman has occasionally gazed at us from the front pages of the newspaper, a poignant reminder of the fatal shortcomings in the District of Columbia's child welfare system.

Miscommunication among city agencies, lawyers, and judges continues to be a problem. A heavy case load for judges and case workers—the family division disposed of less than half of its cases last year, for example—is another obstacle. The present structure of the family division, where judges rotate in and out every year or two, is not productive. And today we are going to do our part to look at this system and to try to reform it.

As is often the case in the Nation's Capital, responsibility is bifurcated. Congress has funding responsibility for the courts, while the city has control over the Child and Family Services Agency and other parts of the child welfare network.

I know Mayor Williams and the Council take these issues very seriously and are working to improve the city's side of the equation, and we have a lady here, Olivia Golden, who is CFSA's new director, who will tell us about how those efforts are proceeding.

Today's hearing, of course, will focus on our efforts in Congress to strengthen the performance of the District's Family Court Division. As some of you may know, my husband and I have raised nine children, including the six children of my late sister. My nieces and nephews ranged from 9 to 15 years of age when their mother died, but they were fortunate and we were fortunate in that we have a supportive, loving family and they had one they could turn to, so therefore I understand the importance of safety, security, and stability in a child's life.

The 11,000 children served each year by the Child and Family Services Agency and the 1,500 or so whose abuse and neglect cases end up in the Family Division aren't as lucky. These are children with parents who are addicted to drugs or mentally ill, children who in some cases suffer physical or sexual abuse to a degree far worse than most of us can even imagine. And for many of these

children the case workers and the court system are their last resort.

We, as a society, have an obligation to lend a helping hand. The reforms that we will discuss today embodied in the District of Columbia Family Court Act of 2001, developed by Majority Whip DeLay, Congresswoman Norton, Congressman Davis, and myself, effect positive and needed change in the way the court system handles the fortunes of our most vulnerable residents.

When he arrives, our first witness, Tom DeLay, will discuss why the legislation is before us, but I thought I would highlight a few of the important provisions.

Under our plan, the work of judges would be supported by judge magistrates, who would handle many aspects of cases. And, by the use of alternative dispute resolution and mediation, we would bring in a special master to help reduce the backlog. Nearly 4,500 abuse and neglect cases were pending as of December 31st. The court would adhere to the "one family/one judge" approach, because families really come before the court just once, and we want our judges to be familiar with every aspect of a child's case.

We are also hopeful that the judges who serve on the family bench want to be there, who see family court as an opportunity and not an assignment.

And, probably most importantly, judges would sit on the Family Court for fixed terms of at least 3 years, and they would continue to receive training while sitting on the bench. Formalized training in family matters is important, but there's no substitute for on-the-job experience judges acquire while presiding over these complicated cases.

In short, these changes represent the first major overhaul of the District of Columbia's Family Division in three decades. No longer will we have a 1970's court structure to contend with the burgeoning 21st century problems, and no longer will Congress tolerate a court system that too often fails its most desperate citizens.

I am now pleased to recognize for an opening statement the ranking member of this subcommittee, Congresswoman Eleanor Holmes Norton.

[The prepared statement of Hon. Constance A. Morella follows:]

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8TH DISTRICT, MARYLAND

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CHAIRWOMAN CONSTANCE A. MORELLA

HOUSE OVERSIGHT SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

"THE REFORM OF THE FAMILY DIVISION OF THE DISTRICT OF COLUMBIA SUPERIOR COURT: IMPROVING SERVICES TO FAMILY AND CHILDREN"

JUNE 26, 2001

On the morning of January 6th, 2000, doctors at Children's Hospital declared 23-month-old Brianna Blackmond dead, the victim of severe head injuries. According to the grand jury that handed out 10 indictments against her mother and godmother, the girl's death was the culmination of two weeks of what can only be described as torture: Brianna was allegedly beaten with a belt, repeatedly punched, and ultimately had her hands cuffed and her head smashed against a hard surface.

Since that tragic day, a sweet, smiling Brianna Blackmond has occasionally gazed at us from the front pages of the newspaper – a poignant reminder of the fatal shortcomings in the District of Columbia's child welfare system.

Miscommunication among city agencies, lawyers and judges continues to be a problem. A heavy caseload for judges and case workers-- the Family Division disposed of less than half its cases last year, for example – is another obstacle. The present structure of the Family Division, where judges rotate in and out every year or two, is not productive.

Today we are going to do our part to reform this system.

As is often the case in the nation's capital, responsibility is bifurcated. Congress has funding responsibility for the courts, while the city has control over the Child and Family Services Agency and other parts of the child welfare network. I know Mayor Williams and the Council take these issues very seriously and are working to improve the city's side of the equation – and we will hear later from Olivia Golden, who is CFSA's new director, about how those efforts are proceeding. Today's hearing, of course,

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will focus on our efforts in Congress to strengthen the performance of the District's Family Court Division.

As some of you know, my husband and I raised nine children, including six of my late sister's. My nieces and nephews ranged from 9 to 15 when their mother died, but despite those trying circumstances, they were fortunate in the sense that they had a supportive, loving family to turn to. I know well the importance of safety, security and stability in a child's life.

The 11,000 children served each year by the Child and Family Services Agency, and the 1,500 or so whose abuse and neglect cases end up in the Family Division, aren't as lucky.

These are children with parents who are addicted to drugs or mentally ill, children who in some cases suffer physical or sexual abuse to a degree far worse than most of us can probably ever imagine.

For many of these children, the case workers and the court system are their last resort. We as a society have an obligation to lend a helping hand.

The reforms we will discuss today – embodied in The District of Columbia Family Court Act of 2001 developed by Majority Whip Delay, Congresswoman Norton, Congressman Davis and myself – affect positive and needed change in the way the court system handles the fortunes of our most vulnerable residents

Our first witness, the Honorable Tom DeLay, will discuss why the legislation is before us, but I wanted to highlight a few of its most important provisions. Under our plan, the work of judges would be supported by judge-magistrates, who would handle many aspects of cases, and by the use of alternate dispute resolution and mediation. We would bring in a Special Master to help reduce the backlog – nearly 4,500 abuse and neglect cases were pending as of December 31. The court would adhere to the "One Family, One Judge" approach because families rarely come before the court just once, and we want our judges to be familiar with every aspect of a child's case. We also are hopeful that judges who serve on the Family Bench *want* to be there – who see Family Court as an opportunity, not an assignment.

And, probably most importantly, judges would sit on the Family Court for fixed terms of at least three years, and they would continue to receive training while sitting on the bench. Formalized training in family matters is important – but there is no substitute for the on-the-job experience judges acquire while presiding over these complicated cases.

In short, these changes represent the first major overhaul of the District of Columbia's Family Division in three decades. No longer will we have a 1970s court structure to contend with burgeoning 21st Century problems, and no longer will Congress tolerate a court system that too often fails its most desperate citizens.

Ms. NORTON. Thank you very much, Representative Morella.

Our Chair, Congresswoman Connie Morella, has our thanks for initiating this hearing on the first overhaul of our Family Court since 1970, when it was upgraded to be a part of the Superior Court of the District of Columbia. The old Family Court, then called "Juvenile Court," was a stand-alone court that had become a place apart—in effect, a ghetto court—to which the city's most troubled children and families were sent away from the "real judicial system."

Out of sight left children and families out of mind until the Juvenile Court was abolished as hopelessly ineffective and poorly funded.

All agree that the Family Division has proved to be a vast improvement over the Juvenile Court, despite the increasing number of abused and neglected children, troubled juveniles, and families in crisis. However, no institution should go a full 30 years without a close examination of its strengths and weaknesses. The Family Division needs examination and revision after a generation to be able to continue to meet its difficult mission. The Division increasingly is taxed by intractable societal problems and, in addition, must depend on an outside agency, the District's Child and Family Services Agency, which until recently had been adjudged so dysfunctional that it was taken over by the Federal courts and placed in a receivership.

The need to update the Family Division might not have been a priority were it not for the tragic death of the infant Brianna Blackman, who was allowed to return to her troubled mother without a hearing after it was alleged that lawyers representing all the parties, social workers, and the guardians ad litem all certified that the child should be returned.

My staff and I commenced a detailed investigation of best practices of Family Courts and Family Divisions here and around the country in preparation for writing a bill. Of course, the City Council, which is far more familiar with the children and families of the city than we in Congress, is best qualified to write a bill, but Congress withheld jurisdiction over D.C. courts from the city even after the Home Rule Act was enacted in 1973.

Majority Whip Tom DeLay, who has shown an admirable interest in our children and the court, also began to write a bill. Soon we joined and worked closely and collegially together to produce a single bill which we then sent to the city.

I appreciate the time and personal effort Mr. DeLay put into the bill, including lengthy meetings with judges and members of the bar, and particularly the excellent work of Cassie Bevan, senior policy advisor for Mr. DeLay, who worked closely with John Bouker, my counsel and legislative director.

May I say, as well, that I appreciate the strong support Mr. DeLay has given to our effort to return Child and Family Services to the District, and the Federal District Court has now ordered the agency returned to the District.

Despite many hours of work on this bill, I need to hear from city officials before I have confidence in our work, and I believe that this committee should not proceed without a resolution from the Council.

Our bill incorporates the best practices from successful, independent family courts and family courts that are integrated into general jurisdiction courts. These courts have in common an ample number of judges; magistrate judges; matters retained in specialized Family Court until resolution; one family/one judge; alternative and dispute resolution and mediation, often far better than formal adversarial proceedings in many family matters; and required regular training for judges and court personnel.

As important as our bill is, the major problem of children and families in the District is not the court, but the Child and Family Services Agency. The court needs more resources and it needs modernization. CFSA needs a complete makeover; yet, after 6 years in a Federal Court receivership, CFSA is returning to the District largely because the receivership failed, not because that agency has been revitalized.

No matter what we achieve with our bill, children and families are unlikely to notice much difference in their lives unless CFSA is fundamentally changed. Courts are the back end of the process when all else has failed, the last resort when people must be compelled to do what they are required to do.

Our bill assures that the city has a full-time staff liaison onsite at the court, but inevitably the court will be handicapped by the condition of the CFSA.

In the first years of the agency's return to the District, assuring that the CFSA and the new Family Court of the Superior Court are seamless in their response to our children and families is a formidable challenge for both the city and the court. Because the court has generally been well-run and responsive to children and families, I believe that, with new resources and both added and updated functions, the court can do the job. The city's challenge to both reform the CFSA and align the agency with the court is more formidable. However, the Mayor's careful work in management reform and accountability and the Council's diligent oversight encourages optimism.

I believe we have much to learn from today's witnesses, who have been on the ground with the children and families of the city, and with the issues the court tackles every day, and, of course, with the court, itself. I welcome each of these witnesses and thank them in advance for their preparation and their testimony.

Mrs. MORELLA. Thank you, Ms. Norton.

[The prepared statement of Hon. Eleanor Holmes Norton follows:]

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

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CIVIL SERVICE AND
AGENCY ORGANIZATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

Statement of Congresswoman Eleanor Holmes Norton
District of Columbia Subcommittee
Hearing on "The Reform of the Family Division of the District of Columbia Superior Court Improving Services to Families and Children"

June 26, 2001

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The need to update the Family Division might not have been a priority were it not for the tragic death of the infant, Brianna Blackmond, who was allowed to return to her troubled mother without a hearing after it was alleged that lawyers representing all the parties, the social workers, and the guardians ad litem all certified that the child should be returned. My staff and I commenced a detailed investigation of best practices of family courts and family divisions here and around the country in preparation for writing a bill. Of course, the City Council, which is far more familiar with the children and families of the city than we in Congress, is best qualified to write a bill, but Congress withheld jurisdiction over D.C. courts from the city, even after the Home Rule Act was enacted in 1973. Majority Whip Tom DeLay, who has shown an admirable interest in our children and the court also began to write a bill. Soon we joined and worked closely and collegially together to produce a single bill, which we then sent to the city. I appreciate the time and personal effort Mr. DeLay put into the bill, including lengthy meetings

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I believe we have much to learn from today's witnesses who have been on the ground with the children and family issues the court tackles every day and with the court itself. I welcome each of these witness and thank them in advance for their preparation and their testimony.

Mrs. MORELLA. We are now going to proceed with our second panel in the interest of time, and so I would ask Chief Judge Rufus King, the Honorable Kathy Patterson, Olivia Golden, Judith Meltzer, Judge F. Scott McCown to step forward.

Before you sit down, it is the policy of this committee and all its subcommittees to swear in those who will be testifying, so please raise your right hands.

[Witnesses sworn.]

Mrs. MORELLA. Thank you. The record will demonstrate an affirmative response.

We have been joined by Congressman Tom Davis, who was my predecessor as chair of this subcommittee and has, as I mentioned in my opening statement, been very much involved also in the deliberations to come up with the Family Division and the draft of the bill that we have before us.

Again in the interest of time our procedure is traditionally to allow each person who testifies about 5 minutes for the testimony, with the knowledge that the testimony in its entirety will be included in the record.

Incidentally, before I introduce Chief Judge King, let me ask Congressman Davis if he would like to make an opening statement.

Mr. DAVIS. I think what I would ask, I have a lengthy statement that I'd just ask unanimous consent to be put into the record so we can move ahead.

[The prepared statement of Hon. Thomas M. Davis follows:]

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INDEPENDENT

REPRESENTATIVE TOM DAVIS

OVERSIGHT HEARING ON THE DISTRICT OF COLUMBIA

"THE REFORM OF THE FAMILY DIVISION OF THE DISTRICT OF COLUMBIA SUPERIOR COURT: IMPROVING SERVICES TO FAMILIES AND CHILDREN"

OPENING STATEMENT

JUNE 26, 2001

Good afternoon. Thank you Congresswoman Connie Morella for your continued leadership as chair of the District of Columbia Subcommittee. I appreciate your calling this important hearing to discuss the reforms needed in the Family Division of the D.C. Superior Court. Thank you to my friend, Ranking Member Delegate Eleanor Holmes Norton, for your dedication to the city and your active involvement in this matter. I would also like to thank Congressman Tom DeLay for his tireless efforts as we strive to reform the Family Division and

improve services to the District's children and their families. I'd just like to add that I appreciate receiving the constructive comments provided to us by various community organizations and activists. In particular Chief Judge Rufus King, his colleagues, and staff have made invaluable contributions to our reform efforts.

The death of 23-month old Brianna Blackmond in January 2000, highlighted systemic problems facing child welfare in the District of Columbia. When I chaired this Subcommittee last year, we held two hearings to review the status of the Child and Family Services Administration while under receivership and to determine what action was necessary to prevent further tragedies. It was clear that reforming CFSA alone would be insufficient since it is one of several components in the entire child welfare system. Equally important to the safety and welfare of the children is the efficiency and effectiveness of the Court, which is called on regularly to make decisions regarding the well-being of children.

Upon closer examination of the court system we have found that poor communication between participants in the child welfare system, a weak organizational structure, and a lack of case management are serious problems plaguing the current Family Division. This has resulted in a backlog of 1,500

cases. Additionally, there are about 5,000 children who remain in the system beyond the maximum 12 months allowed under the Adoption and Safe Families Act.

Currently, the Court assigns 12 judges to the Family Division. While they are assigned for two years, the average judicial tenure is about one year. Needless to say, I am concerned that this high turnover rate is not in the best interest of the children. Additionally, all 59 judges serving in Superior Court oversee approximately 4,000 neglect and abuse cases. I think the families would be better served if their cases were retained in the Family Division until final disposition.

In addition, case management and tracking have been challenges throughout D.C. Superior Court. Currently, the Court uses multiple computer databases to track information regarding related cases. The new integrated computer system, the Integrated Justice Information System, will replace the burdensome and incompatible systems used now and promises to improve case management throughout the Court. The establishment of the new system seems to be progressing well. And I am pleased to learn that not only will the family cases will be the first entered in the new system, but now judges will have access to a

database that is compatible with the system recently installed by CFSA.

In order to address the problems plaguing D.C. Superior Court's Family Division, Chairwoman Morella, Congressman DeLay, Delegate Norton, and I have crafted legislation that dramatically overhauls its current management structure. The bill includes comprehensive reforms that all stakeholders agree are critical: longer judicial terms in the Family Court to ensure continuity; the requirement that judges volunteer for the position; and the requirement that the Family Court judges receive training in family law and related issues.

In an effort to strengthen communication between the various components of the child welfare system, the bill would require the mayor to appoint a social services liaison to help judges locate appropriate city services for families in crisis. In addition, the draft bill would require the mayor ensure that city agencies, including public schools, have representatives at the courthouse to provide information to the judges about available programs and services.

The draft bill provides more Family Court judges to handle family matters; encourages the use of alternative dispute resolution and mediation; and mandates

the "One Family, One Judge" standard in family cases. It also addresses case management and the elimination of the family case backlog through the use of magistrate judges and the selection of a special master.

My colleagues and I have worked hard to draft a bill that will provide the necessary reforms to the Family Division to ensure that it can fulfill its duty to the most vulnerable children in the District. However, we still have a few points to flesh out in the bill, the most important of which are the total number of judges and magistrate judges the Court thinks it would need, and of course, the length of tenure for judges assigned to the Family Court. I look forward to hearing from our witnesses who can assist us as we move closer to the final version of the bill.

Thank you.

Mrs. MORELLA. Without objection, so ordered, and thank you.

Chief Judge King?

STATEMENTS OF CHIEF JUDGE RUFUS KING III, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA; KATHY PATTERSON, CHAIRPERSON, COMMITTEE ON THE JUDICIARY, D.C. CITY COUNCIL; OLIVIA A. GOLDEN, DIRECTOR, CHILD AND FAMILY SERVICES AGENCY; JUDITH MELTZER, CENTER FOR THE STUDY OF SOCIAL POLICY; AND F. SCOTT MCCOWN, CHIEF DISTRICT JUDGE, TRAVIS COUNTY COURT HOUSE

Judge KING. Thank you, Madam Chairman, Congresswoman Norton, Congressman Davis, and members of the subcommittee. Thank you for calling this hearing to discuss proposals you have been working on regarding the Superior Court and the court's plan for reform of the Family Division. We share a commitment to safeguarding the safety and improving the quality of life of abused and neglected children.

I have submitted written testimony, with copies of the court's plan and the draft legislation, with the court's comments attached for inclusion in the written record. I will discuss briefly some of the principal issues and the court's position on them in these remarks.

At my request, the presiding judge—that's Judge Walton—and the deputy presiding judge, Judge Josey-Herring, both of whom are here today, along with a working group of hearing commissioners, staff in the Family Division, and other stakeholders, have produced a plan for reforming the Family Division. That plan is very similar to the legislation you are considering and reflects a very constructive dialog that you, Representative Norton, Representative DeLay, Senator DeWine, and others have afforded us.

In addition to reforms within the court, we have been strengthening our working relationships with the District of Columbia Child and Family Services Agency and Mayor Williams, as he assumes control of that agency. In particular, we have welcomed the appointment of Dr. Olivia Golden, and I appreciate her willingness to set regular working meetings with us to coordinate our respective efforts in behalf of children.

I would also like to express my appreciation for the constructive working relationship Chairman Linda Crop and Council Member Kathy Patterson of the City Council have accorded the court.

Turning to the reform measures discussed in Congress and the court's plan, a few principles are of primary importance to all of us working on these issues. I will address areas where there are differences in the interest of time, but with great appreciation for the many areas where we agree.

I, of course, appreciate the apparent consensus on allowing the Unified Family Court to remain a part of the Superior Court, the highest court of general jurisdiction in the District of Columbia, as is consistent with the position taken by the American Bar Association.

As to judicial terms in the Family Court, the court believes judges should serve 3 year, extendable terms in the Family Court. We need to attract qualified, dedicated judges, both current judges and lawyers who will be nominated to serve in the new Family Court. Three-year, extendable terms will allow us to do that, while

permitting the development of expertise and continuity of attention to cases, especially if the terms are staggered so that there is always a complement of experienced judges in the Family Division.

I also believe that the few true dedicated leaders who will make Family Court their career work will be more likely to emerge in the context of extendable terms than if forced to choose a lengthy initial term.

I am aware that different jurisdictions have chosen different approaches, but, after careful consultation with various stakeholders, we believe this is the correct one for the District of Columbia.

Flexibility—this issue is one that involves trust on both sides. We have common goals for the Family Court and generally share a common view of how it should operate, but to manage the court effectively any chief judge will need some flexibility to address changing circumstances in the community and in the court. Among other foreseeable contingencies when flexibility would be needed are the potential service of senior judges, occasions when judges experience illness or disability, and significant changes in the incoming cases, the mix of incoming cases.

As to magistrate judges, the draft legislation would set up two classes of limited jurisdiction judicial officer: the current hearing commissioners and the new magistrate judges within the Family Court.

In addition to the personnel issues that are involved in having two classes of judicial officers with similar, but not identical authority, this system would pose difficulties in managing different case loads in our court. We would urge the designation of a single category of magistrate judge with uniform powers.

Turning to the current case load, as we have discussed before, there are approximately 4,500 children currently in the system whose cases remain under review after 18 months or more. Let me tell you about some of them.

A child of 15 was recently hospitalized in another State after 5 years of sexual abuse in her adoptive home. She endured this without reporting it in order to protect her younger sister, who was not being abused.

A child who is self-mutilating and suicidal after years of abuse and neglect will need psychiatric treatment and hospitalization for years.

A boy whose mother burned him during a cocaine binge remains hospitalized with crippling physical and emotional injuries.

A teen has set fire to every foster home she has been placed in.

Another teen who keeps absconding from placements calls each time to tell the judge, who then talks her back into care and on to her much-needed medication.

We believe reassigning all of these cases of the existing cases would overwhelm the new Family Court and would disrupt the lives of some of the children involved. While some of the cases surely could go, and should go, to the Family Court and to the new judges, others should not, because they are near permanency or because of the relative effectiveness of the current assignment in addressing the child's needs.

We do fully agree with assigning all incoming cases within the Family Court, subject to very limited special circumstances.

Last, but, of course, not least, many of the reforms require additional resources. I realize that this is an authorizing, not appropriating, subcommittee, but I urge you to talk to your colleagues on the Appropriations Committee and let them know how urgent our need is. We can make, and are making, some of these changes without additional resources, and together we have developed a plan that will better serve the children of the District of Columbia, but to do most of it we need the funding for judicial officers and support staff, for courtrooms and other facilities, and for an integrated justice information system, so that we can better meet the goal of one family/one judge.

I re-emphasize the best reform will result from a collaboration that draws heavily on the interest and thought of those who will ultimately have to serve under whatever Family Court is finally enacted. Such a reform can best be achieved with a real effort to build trust among the Congress, the court, and the Child and Family Services Agency.

We hope that we can work to achieve a level of trust that will allow for sufficient flexibility in the final legislation, so that the Family Court can be operated according to best court management principles. Of course, Congress, acting both directly and through the annual budget process, will always retain the oversight role to ensure that reforms are effectively carried out.

Madam Chairwoman, Congresswoman Norton, and Congressman Davis, thank you for the opportunity to talk about the work of the court's Family Division and plans to improve it. I would be happy to answer any questions you have.

Mrs. MORELLA. Thank you, Chief Judge King, and thank you for your work all along the way in bringing us to this point and the improvements that you've already initiated, have put into operation.

[The prepared statement of Judge King follows:]

Statement of Rufus King, III
Chief Judge
Superior Court of the District of Columbia
To the Subcommittee on the District of Columbia
Committee on Government Reform
United States House of Representatives
June 26, 2001

Ms. Chairman, Congresswoman Norton, members of the Subcommittee: I am Rufus G. King, III, and I am appearing in my capacity as Chief Judge of the District of Columbia Superior Court.

Thank you for calling this very important hearing to discuss the District of Columbia Superior Court's plan for reform of the Family Division and proposals in Congress to enhance the safety and quality of life of abused and neglected children. I am aware that both the Chairwoman and Ranking Member have a special sensitivity to the matter we are about to discuss, and I welcome their interest. In addition, I have seen a May 21, 2001 discussion draft of legislation that you are considering introducing (attached), and while the Court has some concerns, which we have outlined in comments provided to you last month (also attached), we appreciate your interest in the Family Division and your commitment to our work with the District's children.

The Superior Court of the District of Columbia was established as a unified court by the District of Columbia Court Reform and Criminal Procedure Act of 1970. By statute, the Court has five operating divisions: Civil, Criminal, Family, Probate, and Tax. Several of the Court's divisions have received national recognition. The Civil Delay Reduction Project has served as a national and international model for expediting civil cases. The Court's Domestic Violence Unit, integrating family, civil, and criminal cases in one set of calendars, was named the 2000 winner of the Justice Potter Stewart Award by the Council for Court Excellence. The Family Division is recognized as a unified family court by the American Bar Association, and has been selected as a model family court by the National Council of Juvenile and Family Court Judges.

When I took office as Chief Judge last fall, I indicated that reform of the Family Division would be one of my highest priorities. Subsequently, I appointed Judge Walton presiding judge of the Family Division and Judge Josey-Herring deputy presiding judge and asked them to set up working groups consisting of members of

the bar, social workers and other stakeholders to examine the nationally accepted "best practices" for serving families, consult experts in the field, and develop recommendations. In what has turned out to be a coincidence of good timing, Chairwoman Morella, Congresswoman Norton, Congressman DeLay and others raised the issue of the Family Court reform in Congress. The scrutiny by Congress of our Family Division has prompted, accelerated and encouraged reform that will substantially benefit children in the District of Columbia. The purpose of my testimony today is to relate to you various aspects of the Family Division Reform Plan (attached) that arose from the working groups. The plan has also been presented to the Mayor and the City Council.

In the mid 1990's, neglected and abused children began entering the District of Columbia child welfare system in alarming numbers; three times higher than a decade earlier, despite a decline in the District's population. This disturbing trend seems to be continuing. In addition, in over 60% of cases now being filed, the child is over the age of seven, making adoption more difficult and the need for special services more pressing. Last year, 1,500 children's cases were filed, and this year a slight increase in new cases is expected. In addition, the Court has approximately 4,500 children whose cases require on-going review.

The magnitude of this caseload compelled the Court to take steps to address the problem comprehensively and promptly. Judge Walton, Judge Josey-Herring and I determined that some steps, which I will discuss shortly, could be taken immediately, within existing law and resources.

In addition to reforms within the Court, we have been strengthening our working relationships and the level of coordination with the District of Columbia Child and Family Services Agency and Mayor Williams, as he assumes control of that Agency and seeks to improve its performance. In particular, we have welcomed the appointment of Dr. Olivia Golden and have set regular working meetings with her to coordinate our respective activities in behalf of children.

Family Division Reform Plan

The Reform Plan takes a team management approach, which has proven highly successful in other jurisdictions. The teams will include professionals who will monitor the cases and expedite their progress through the Court. The Reform Plan emphasizes using alternative dispute resolution, where safe and appropriate, to place children in permanent homes within Adoption and Safe Families Act (ASFA)

time limits through a non-adversarial process. The Plan also stresses increasing accountability for results on the part of judicial officers.

Key elements of the Reform Plan include—

- **Family Court Within a Unified Superior Court.** Maintaining the family court as a division of a unified court optimizes the flow of vital information, covering children and families before different parts of the court, alleviates the judicial burnout that can affect a separate family court, eliminates the costs for duplicative administrative functions, and enhances the Court's ability to provide comprehensive services for the child and his or her family.

- **Judicial terms in the Family Court.** Renewable three year terms are essential to ensure that Family Court judges are and remain truly interested in family issues and want to dedicate significant time to children. Judges who wish to renew their terms may remain for many years. In the meantime, no one will hesitate to take the assignment out of fear of burnout during a longer rotation in the family division. The ABA stresses that no one model is best for all jurisdictions and we are aware that court systems in many states provide different terms. The three-year, extendable terms in our plan optimize increased specialization and appeal to lawyers considering service as a judge on the Family Court in the District of Columbia.

- **Training.** Enhanced training in abuse and neglect "best practices," case management, psychology of abuse and neglect and related areas will develop the specialized knowledge and up-to-date skills judges, magistrate judges, and staff must possess to make the best decisions for children.

- **Accountability.** Performance of the Family Division will be evaluated using nationally recognized standards for court operations and for attorney practices. The standards will be based upon leading court performance standards now in use throughout the nation.

- **Technology.** Critical to the success of the Reform Plan is the establishment of an automated Integrated Justice Information System (IJIS). An IJIS will provide comprehensive information on children and families, including, for example, a parent's (or household member's) pending criminal case, domestic violence allegations, and/or landlord-tenant disputes. It will also permit the Court to implement more effectively the "one family, one judge" concept (assigning all family cases involving a child and his or her family to the same

judge) by linking existing cases to new ones related to the same child or same family.

- **Child Protection Mediation.** When mediation is safe and appropriate, involving parents and other family members in mediating plans about their children's futures produces better results for the children. Parents are often more cooperative with parenting classes or rehabilitation efforts in a permanency plan that they have helped negotiate. Our preliminary mediation project has enjoyed a very high success rate, and the Council for Court Excellence is assisting with grant funds for a larger project.

- **Staff.** The team approach requires additional judges, magistrate judges, special masters, case managers, courtroom clerks, and other support staff with the expertise to work together to serve the best interests of children. For the plan to be implemented, there will also be capital expense required.

A copy of the current plan is attached. A preliminary cost estimate has been transmitted to the Subcommittee and the relevant appropriations subcommittee. It involves approximately $45 million at the outset, including $32 million in one-time renovations and equipment purchases and a continuing level of additional funding of $13 million and 74 personnel on an annual basis.

Immediate Steps

Unfortunately, as children age in the system, identifying a permanency option becomes more difficult. Accordingly, I have taken the following several steps, which can be accomplished within existing resources, to expedite the Court's Family Division Reform Plan:

- **Judicial Terms.** Effective at the end of the current assignment period in December, I am asking sitting Superior Court judges to volunteer for three-year terms in the Family Division, and they will be rotated into the Family Division.

- **Additional Calendar.** I have directed the creation of an additional neglect and abuse trial calendar to address the burgeoning caseloads. I have assigned Judge Lee Satterfield this calendar.

- **Training.** In May of this year, Superior Court judges attended two full days of training on child abuse and neglect law. Numerous experts participated,

addressing topics such as assessing risk of abusing parents, ASFA, and child development.

Family Division staff attended training on meeting ASFA standards and child protection and welfare.

Additional training at off-site conferences has been provided.

- **Technology.** The IJIS plan has taken into account the urgent needs of the Family Division and the Division will be on-line with IJIS in the first year of its implementation. We have provided our appropriators and authorizers with our planned Request for Proposals (RFP) and projected budget costs, including expected grant funds to support this project. Once funding is available, implementation can begin immediately.

- **Family Waiting Room.** I requested that space within the Courthouse be redesigned to provide a child-friendly area for waiting families and social worker conferences. That waiting room opened on June 1.

- **Attorney Practice Standards.** I have directed the revision and implementation of Attorney Practice Standards for abuse and neglect cases; the standards are under review by the Bar, and after their input has been addressed, they can be implemented within 90 days.

- **National Model Court Project.** I have secured technical assistance from the National Council of Juvenile and Family Court Judges Model Court Project for improving case management techniques, training, and strategic planning.

Most of the 4,500 children whose cases remain under review are those who the court has found difficult to place permanently. For actual examples: a child of 15 was recently hospitalized in another state after five years of sexual abuse in her adoptive home; a child, who is self mutilating and suicidal, will need hospitalization for years, and a child whose mother burned him during a cocaine binge remains hospitalized with crippling physical and emotional injuries. There are numerous other examples of children with special needs, HIV, and prenatal injury from exposure to drugs and alcohol. These circumstances cause injuries, both physical and psychological, that require longer treatment before a viable permanency plan can be established. I have requested a survey of all existing cases to determine how many of the approximately 4,500 children might be permanently placed within a reasonable time, up to a year.

The Court's Reform Plan calls for three teams of special masters to review all pending children's cases to try to identify and implement hitherto unrealized permanent placement options. Other jurisdictions that have reformed their family programs have been able to reduce pending caseloads by about half. We will strive to achieve similar results.

In the meantime, the sheer number of children who need attention and on-going review requires that they be assigned to more than just the judges assigned to the Family Division. However, in order to assure the most effective management and closure of these cases, children whose best interests would be served, and whose judges ask to retain the case, will be permitted to remain before the same judge. In addition, that judge will work and train with the original family division team, even though the judge has rotated out of the family division. The Court believes this arrangement will best meet the needs of those children with existing cases for whom a permanent home has not yet been found.

In summary, we believe the Reform Plan will enable the Court to better fulfill its role in safeguarding children and families. The plan will require a substantial increase in resources devoted to the Family Court to best provide the attention and supervision of services that all District of Columbia children and families need and deserve. Pending the availability of additional resources, the Court will proceed with improvements that can be implemented using existing funding and other resources.

Ms. Chairwoman, Congresswoman Norton, thank you for the opportunity to talk about the work of the Court's Family Division and plans to improve it. I would be happy to answer any questions you may have.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT REFORM PLAN
(May 9, 2001)

1. Unified Family Court

- Maintain and enhance separate, specialized Family Court as a division within unified Superior Court to: (1) respond to serious concerns recently expressed about tragedies affecting children, (2) achieve permanency for children expeditiously and (3) ensure cost efficiency by utilizing existing courtwide infrastructure and administrative staff

2. Assignments

- Assign judges who volunteer for service in the Family Court for three year, extendable terms
- Stagger terms to ensure continuity and expertise
- Appoint magistrate judges to serve four years, which is the duration of their term of office, and permit reappointment
- Fill judicial vacancies in Family Court immediately with volunteers from other divisions of the Court

3. Specialization

- Establish holistic, team-based approach to abuse and neglect cases to secure continuity of care and swift permanency placement: Form three case management teams within the Permanency Branch, each consisting of one judge and three magistrate judges with expertise in child welfare, and assisted by attorney advisors, a psychiatrist or child psychologist, law clerks, administrative personnel and special masters
- Provide space for an office within the Court staffed by representatives from District of Columbia agencies which provide needed services to abused and neglected children and their families
- Permanently assign all new abuse and neglect cases to the Family Court to enhance family case coordination, quality control and case scheduling
- Support and work with a coordinating council which brings together all child welfare stakeholders (including CASAs and bar members) on a regular basis to ensure open channels of communication and resolve issues regarding the delivery of services to the children and community

4. Magistrate Judges

- Appoint magistrate judges with expertise in family law and trained by court-appointed experts, to be responsible for initial hearings, assessing the needs of the children and families, and resolving cases assigned to them by the judges presiding over the teams
- Under the supervision of the judge, oversee the work of case management teams and ensure the delivery of court-ordered support services

5. 4,500 Cases Currently Under Review by Judges

- Return to the Family Court all cases not retained by judges for distribution to special case management teams during transition
- Divide cases under review into three groups for those judges who volunteer to retain their current cases during the transition. Review groups to be staffed with special masters and case coordinators to assist the judge in achieving ASFA compliance and permanency for the child
- Schedule reviews into specified time periods to accommodate CFSA social workers

6. Training

- Require quarterly training for all judges, magistrate judges and support professionals on abuse and neglect issues, including ASFA compliance, and additional specialized training for those assigned to the Family Court
- Enhance training for court-appointed guardians *ad litem* (GAL) and parents' attorneys by child welfare and trial practice experts

7. Child Protection Mediation

- Implement expanded child protection mediation among parents, the Office of the Corporation Counsel, the District's child welfare agency, the GAL and all other relevant parties and representatives, where safe and appropriate, to achieve early case resolution

8. System Accountability

- Increase management capability, accountability and reporting through enhanced access to data and case outcome information, and the adoption of appropriate standards for case resolution
- Implement integrated case management system to track and monitor cases involving family or household members across all court caseloads to permit judges and team members access to comprehensive information before making placement decisions

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT REFORM PLAN
(May 9, 2001)

Growing caseloads, new mandates applicable to courts through the passage of the landmark Adoptions and Safe Families Act (ASFA), and recent developments have made it incumbent on the Superior Court to improve the management, supervision and resolution of cases involving children and families in the District of Columbia. The Superior Court has developed a comprehensive plan for reform of child abuse and neglect cases.

Abuse and neglect case filings at Superior Court have risen steadily over the last two decades. On average, 1,500 cases are filed with the Court each year. Moreover, based on case filings since January 2001, the Court expects an increase of 15% this year in the abuse and neglect area. In addition, 4,500 cases are subject by law to review and represent a substantial workload of the Court.

This proposal provides an outline of the major components of the Superior Court's reform initiative. The Court is committed to achieving timely permanency for abused and neglected children. Reform, however, is a multi-year process that requires sustained commitment and adequate resources.[1] The Court looks forward to working with Congress and the District in implementing needed reforms for the welfare of children.

[1] According to a recent report of the Council for Court Excellence, successful family court reform efforts in Cincinnati, Ohio took 10 years and those in Chicago, Illinois have taken six years to-date.

1. Unified Family Court

- The existing Family Division will be redesignated as the Family Court, a division of the Superior Court. The Family Court will consist of the following branches: Child Abuse and Neglect/Permanency Branch ("hereinafter "Permanency Branch") (covering abuse and neglect, adoption and termination of parental rights (TPR) cases as well as the Counsel for Child Abuse and Neglect (CCAN) and a Family Drug Court); Domestic Relations Branch (addressing divorce and custody and including the Marriage Bureau); Juvenile Offender Branch (juvenile delinquency court and Juvenile Drug Court); Mental Health and Retardation Branch; and Paternity and Child Support Branch. A Presiding Judge, Deputy Presiding Judge and Director will oversee the Family Court for administrative purposes.

- The Permanency Branch will be organized into six (6) calendars: three (3) for abuse and neglect cases; one calendar for adoptions; one for TPR cases; and one calendar for permanent custody and guardianships for abused and neglected children (in order to allow these cases to be filed and resolved expeditiously, as required by law). A judge and team of magistrate judges[2] will be assigned to each calendar.

2. Assignment of Judges

- Judicial assignments to the Family Court will be a minimum of three years. This represents a substantial increase in the duration of a current assignment to the Superior Court's Family Division. Preference will be given to judges who volunteer for the assignment. Judges may volunteer to extend their service in the Family Court beyond their initial three-year assignment. As resources and support for judges in the Family Court are put into place, it is anticipated judges will volunteer to serve extended terms, thereby ensuring the involvement of those judges most committed to presiding over child welfare matters.

  The Chief Judge retains discretion to re-assign judges in and out of the Family Court when extenuating circumstances require and it is in the best interests of the children.

  The three-year assignment will be staggered to maintain a complement of experienced judges in the Family Court.

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[2] Currently, Court positions of this type are referred to as "Hearing Commissioners."

3. Specialization

- Abuse and neglect cases will be assigned to teams of judges, magistrate judges and other professionals. Each of the three teams in the Permanency Branch will consist of the following individuals with expertise in permanency case resolution: the judge, three (3) magistrate judges, a special master and a case coordinator.

- The teams will be further assisted by permanent attorney advisors and specialized law clerks (to maintain compliance with ASFA, the Interstate Compact on Placement of Children (ICPC) and other federal and local statutes), a psychiatrist or psychologist from the Superior Court's Child Guidance Clinic, and an appropriate number of administrative support personnel (e.g., law clerks, secretaries and other clerks). The team approach has been used in other jurisdictions as a best practice and has resulted in expedited case resolution, improved case monitoring and oversight, and improved communication with parties.

- Support professionals assigned to each team will be responsible for: (1) monitoring the progress of each abuse and neglect case towards permanent resolution; (2) serving as liaisons with CFSA social workers; (3) monitoring and verifying compliance with court orders; (4) reviewing all court actions for compliance with ASFA and other statutes; and (5) filing compliance reports in consultation with attorney advisors.

- When a judge's assignment in the Family Court is completed, he/she may volunteer to continue in the assignment. If the judge is reassigned outside of the Family Court, all cases assigned to him or her will remain in the Permanency Branch, except in an extraordinary circumstance as approved by the Chief Judge and consistent with ASFA. In each such case, the judge will remain part of the original case management team in the Permanency Branch.

4. Magistrate Judges

- Magistrate judges, with expertise in family law and appointed for four-year, renewable terms, will be responsible for intake of new cases and resolving cases assigned to them by the presiding judge of the team. Where agreements cannot be reached, trials will be conducted by the judge or magistrate judge, depending on the complexity of the case and other circumstances.[3] Magistrate judges

[3] Currently legislation governing the authority of hearing commissioners requires the consent of the parties before such an individual may try a case. The Court recommends that this be changed to allow magistrate judges to conduct trials of less complex neglect and abuse cases.

should have the power of contempt, which would give them the authority to enforce their own court orders.

- Under the supervision of the judge, magistrate judges will oversee the work of case management teams and ensure the delivery of court-ordered support services.

- Until permanency is achieved, the judge, magistrate judges and other members of the case management team will hold periodic case conferences at least quarterly.

5. 4,500 Cases Currently Under Review by Judges

- During the transition, the pending caseload will be screened to identify barriers to permanency and to develop a strategy and timeline for resolution. Three (3) special case management teams will be established, with each group having approximately the same number of cases. If a judge does not volunteer to retain review cases, they will be returned to the Permanency Branch and assigned to a case management team for resolution.

- Each case management team, consisting of a special master and case coordinator, will perform similar functions as are performed for the abuse and neglect teams working in the Permanency Branch. Each team will be assisted by two attorney advisors and appropriate support professionals. They will provide expert advice and support to judges by monitoring compliance with ASFA, other applicable laws and court orders.

6. Training

- The Court will expand training for judges, magistrate judges and case management personnel who will participate in Court-sponsored, in-service training on abuse and neglect issues at least quarterly, in order to stay abreast of the current state-of-knowledge in the field of child welfare, including neglect and abuse. Additionally, judges will be encouraged to remain updated in that field through professional reading, training at the National Judicial College and other relevant workshops. The assistance of expert trainers, such as individuals from the National Council of Juvenile and Family Court Judges, the ABA's Center for Children and the Law, and the National Model Court Project (of which the Superior Court has been selected as a member), will be sought to plan and facilitate the training. The Court will participate in joint training with CFSA workers, the Office of Corporation Counsel and managers.

Similarly, the Court will assume a leadership role in enhancing the court-appointed guardian *ad litem* (GAL) and parents' attorney training. Training will be required of all attorneys who practice in this area before the Family Court. It will be given by child welfare and trial practice experts, and experienced judges. The training will include substantive legal areas in the field of neglect and abuse as well as the law of evidence and other trial practice issues.

- If funding is available, payments to attorneys will be increased in order to retain competent counsel and prevent attrition in the CCAN Bar. In an effort to expand the pool of available attorneys, a recruitment effort will be undertaken, targeting attorneys with expertise in family law, particularly in the area of abuse and neglect. The Court will coordinate training programs with area law schools and legal clinics in the child abuse and neglect area. In addition, the Court will implement a requirement that all attorneys who wish to be appointed to a separate panel of GAL attorneys, must first have represented parents in a designated number of cases or must have completed specified training.

7. Coordination

- To ensure that information about services is readily available, the Court will provide space on site to be staffed by representatives from District of Columbia agencies that provide needed services to abused and neglected children and their families. This may include, at a minimum, representatives of the Office of Corporation Counsel, District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, Court Appointed Special Advocates (CASA), District of Columbia Commission on Mental Health, and the Addiction Prevention and Recovery Administration, or their equivalents.

- Where applicable, a judge or magistrate judge from the Superior Court's Domestic Violence Unit will be included on the abuse and neglect team in order to enhance the Family Court's multi-disciplinary approach to case resolution and to permit better coordination of cases involving a family unit.

- Coordination of case management will also occur with the Juvenile Offender Branch and a liaison will be developed between the team magistrate judge in the Permanency Branch and the Court's Social Services Division, (the District's juvenile probation department). The purpose is to coordinate all cases in which a child is before both the neglect and juvenile systems. This will allow the Family Court to choose among the alternatives in both systems.

- The Court will support and work with on a regular basis a coordinating council which brings together all child welfare stakeholders (including representatives of the Mayor's office, CFSA, CASA, and bar members). The Court will work to replicate the success of the District's existing Domestic Violence Coordinating Council and the Criminal Justice Coordinating Council.

8. Child Protection Mediation

- To encourage early settlement of dependency cases, the use of child protection mediation will be considered for use in all cases, where safe and appropriate. The process will include parents, the Office of the Corporation Counsel, the District's child welfare agency, the GAL and all other relevant parties and representatives.

9. System Accountability

- To foster informed and effective decisions concerning a child's welfare, the Court must have the ability to coordinate information concerning a child's status in the juvenile and neglect system with the criminal and mental health status of a parent or other person residing in the household or with any pending child support or domestic violence cases involving either the custodial or non-custodial parent. Such interfacing capacity does not currently exist at the Court and has been identified as a critical need in a recent extensive study of the Superior Court's infrastructure conducted by the National Center for State Courts.

  Accordingly, the Court will implement an integrated justice case management system (IJIS) to properly track and monitor family and other cases in which a family member may be involved in order to ensure that all decision-makers within the Court have access to comprehensive information to make decisions about placement, child safety and well-being.

  The needed integrated justice information system also would be capable of responding to requests for aggregate information for various quality assurance and management reports concerning caseloads and workflow.

- The Court will use the National Center for State Court's Trial Court Performance Standards (e.g., Access to Justice; Expedition and Timeliness; Equality, Fairness and Integrity; Independence and Accountability; and Public Trust and Confidence) to guide practice in the Family Court. The Court will also examine the use of time standards set forth in existing federal and local law and differentiated case management techniques to optimize case processing timeliness and effectiveness.

- The Court will establish a working Implementation Committee consisting of representatives from the Family Court, Office of the Corporation Counsel, CFSA, and the attorneys who represent parties in abuse and neglect cases. The Committee will be responsible for implementation and oversight of the Court's reforms initiatives.

10. Scheduling

- To improve calendaring practices and scheduling, the Court will work with CFSA to schedule review hearings on days and at times that will maximize social workers' time in the field and minimize their time in court.

11. Improved Facilities

- The Court is committed to allocating sufficient space to family matters and will request the funding necessary to do so. The Court seeks to establish a child-friendly waiting room for families and social workers, increase the number of courtrooms for family proceedings, and will seek to consolidate all family-related offices and functions to a centralized court location (including the Court's existing Child Care Center for litigants and witnesses, the Supervised Family Visitation Center and the Crime Victims Compensation Program).

12. Other Initiatives

- The Court will continue to seek funding, under the U.S. Department of Justice's Family Drug Court Planning Initiative and Grant Program, among other sources, to establish a Family Drug Court to address the substance abuse problems which are increasingly associated with parents and children involved in abuse and neglect cases, and which serve as a barrier to achieving permanency expeditiously for children.

13. Resources

- A preliminary analysis indicates that a full range of budget resources will be needed to institute these reforms. The additional resource needs of the Court are outlined in Attachment A.

COMMENTS OF THE D.C. SUPERIOR COURT
ON THE 5/21/01 DRAFT OF THE "D.C. FAMILY COURT ACT OF 2001"

PREFACE

The District of Columbia Superior Court appreciates the efforts of Congress to improve the lives of children in the District of Columbia. . The attention which has been focused on the Superior Court and the Child and Family Services Agency has prompted an extensive, coordinated effort to improve the services available from the Court and the agency to children and families. This draft legislation reflects that effort, and we appreciate the attention and input from Congress to make substantive improvements in court operations.

For the Court, there remain some significant concerns, which are identified in some detail by interlineations of the draft bill and accompanying comments. The Court believes that the Court's plan for revitalizing the Family Division will address most of the concerns of Congress and that through appropriations for needed resources and Congress's ongoing oversight responsibilities, those concerns can be resolved without the unusual step of casting internal reorganization in legislation rather than by rule. In brief, these concerns are as follows.

(1) Requiring judges to serve terms longer than three years would hamper the Court's ability to attract a sufficient number of judges willing to serve in the Family Court.

(2) Unless the initial number of additional judgeships necessary to complete the full complement of judges for the Family Court permanently increases the limit on the number of judges in D.C. Code §11-903, it may be difficult to maintain the needed judicial resources in the Family Court in the future. The increase should be at least the number of added calendars, and an addition above that number would enable the Court to recruit judges with an interest in Family Court on an ongoing basis.

(3) The proposal to transfer all children's cases from judges outside the family division into the Family Court without regard to individual children's situations would be harmful to the best interests of some of the children who have come to depend upon

consistent attention from a judge familiar with their situations where closure by return to the family of origin, adoption or permanent guardianship remains problematic.

(4) Requiring the Family Court to freeze the number of judges set in the bill's transition plan would hamper the Court's ability to address changing community needs and resultant caseloads.

(5) The bill should expressly link adequate appropriations for the personnel, space, equipment, software, and related costs of implementation to putting the legislation into effect, or many of the mandated changes would be fiscally and logistically impossible.

(6) The creation of separate "magistrate judges" with distinct authority and jurisdiction in Family Court while maintaining "hearing commissioners" in all other Superior Court divisions would result in significant personnel, public perception, and jurisdictional difficulties and confusion. It would also inhibit the Family Court's ability to respond to emergencies in its caseload by temporary use of hearing commissioners with experience and ability in Family law.

(7) Requiring assignment of a large number of existing from judges outside the Family Court, who are familiar with the children's situations, to magistrate judges newly appointed without benefit of the normal appointment procedures is not in the best interests of the children involved.

Having noted these concerns, the Court remains committed to working with Congress to shape a workable Family Court system that will advance the interests of the children and families of the District of Columbia.

Detailed comments on specific provisions of the bill follow:

1. **Page 2, line16.** This change would ensure the Court's authority to establish a permanency branch within the Family Court which has resources dedicated to resolving issues in child abuse and neglect, adoption, termination of parental rights, and custody cases. Other branches may need to be created within the Family Court to address changing needs within its jurisdiction.

2. **Page 5, line 9.** Prohibiting the number of judges assigned to the Family Court from ever going below the number established in the transition plan would cripple the Court's ability to adjust to emergencies or caseload fluctuations in other divisions of the Superior Court. In the case of retirement or incapacitation of one or more judges in the Family Court, the Superior Court would be in the impossible situation of choosing between reassigning someone from another division who might be needed elsewhere and might not be qualified for service in the Family Court, or violating the prohibition pending the appointment of a new Superior Court judge who does meet the criteria for Family Court. The Court must have the flexibility to shift judicial resources in the event of increasing caseloads resulting from new legislation, increased arrests, and other unanticipated changes (e.g., a drop in juvenile crime occurring at the same time as a rise in adult crime). A rigid structure that prohibits adjusting to the vicissitudes of the bench and the community would not be the best means for serving the community.

3. **Page 5, lines 22 and 25.** The use of the term "certify" to ensure that a judge will serve a full term in the Family Court and participate in training does not take into account the reality that future events (e.g., illness) may preclude such service. Use of the term "agree" would ensure that a judge assigned to the Family Division is making a commitment to serve the District's children and families for a full term as well as to participate in the training that will enable the judge to do so effectively.

4. **Page 6, line 6.** A required term of three years would ensure that judges in the Family Court commit to a substantial period of service, which would strengthen their expertise and familiarity in family issues without overly restricting the pool of experienced judges willing to serve in the Family Court. The provisions of the bill that permit judges to serve additional periods or their entire judicial term are best calculated to attract judges who are dedicated to making family law their life's work. We strongly believe that the work of the Family Court would best be supported by judges who come to extended service by choice. Requiring terms of longer than three years would also discourage many strong, new judicial appointees from agreeing to an extended term. Moreover, it would deprive the Court of the knowledge, skills and expertise of senior judges, who may have spent a

substantial part of their careers in the Family Court, but who would be precluded from service in the Family Court in the absence of an exception from this provision.

5. **Page 8, lines 6-10.** This change would incorporate all relevant and accepted best practices, and would allow for changes in best practice standards in the future. The Court believes that the specification of the best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges is more appropriately included in the report language accompanying the bill.

6. **Page 10, line 23.** It is important to the effective administration of justice in the District that the additional judgeships required to provide a full complement of Family Court judges be added to the total judgeships currently set forth in D.C. Code §11-903. Vital to the success of the Family Court is the willingness of judicial officers to commit to service for an extended period. After the initial terms of judges appointed under this section, judges serving outside the Family Court must be willing to commit to a three-year term in the Family Court. If there are not enough judges who agree to serve, new appointments must be made to maintain the needed judicial resources of the Family Court.

The "one-time" nature of the appointments under this section rests on the premise that the newly appointed judges assigned to the Family Court would eliminate the so-called "backlog" of cases that have been pending more than two years. This premise is problematic in two significant ways. First, many pending cases remain open because of factors other than lack of consistent, informed judicial attention (e.g., permanent placement cannot be achieved because of the age, physical or mental condition of the child). These cases may nevertheless be in compliance with the Adoption and Safe Families Act. Second, by requiring all family matters to be returned to the Family Court (Sec. 7(b)), the bill would place these cases in the hands of judges and magistrate judges who are not familiar with the history of the case. The result would be the addition of a learning curve to the time necessary to examine the cases for closure opportunities.

If necessary, judgeships could be left vacant after they are determined to be unnecessary. Permanently increasing the limit of judgeships under D.C. Code §11-903

would avoid the far more serious potential consequence of ending up with too few judges to address the ongoing needs of children and families.

7. **Page 13, line 4.** As drafted, this provision would require reassignment of all family cases outside the Family Court to Family Court judges, including domestic violence, domestic relations, and custody cases. It would preclude a judge who has, over the course of months or years, become intimately familiar with the problems affecting a child or family from retaining oversight of the case once the judge's Family Court assignment ends. It would also frustrate the laudable goal of "one family, one judge." As a result, judicial resources would be wasted and the quality of judicial decision making would suffer from the new judge's lack of familiarity with the case.

8. **Page 15, lines 4-8.** The Court has already completed a comprehensive needs-assessment and analysis for its integrated case tracking and management system and the Request For Proposal are pending review by Congress. On the other hand, the District is not yet at this stage. It is essential that the Court proceed as expeditiously as possible. At the same time, the Court would coordinate with the Mayor to ensure that its system is developed on a platform which is compatible with the District's, so that Family Court case information is accessible to appropriate offices of the District Government.

9. **Page 18, lines 6-10.** This change would incorporate all relevant and accepted best practices in the analysis of the time required to dispose of permanency actions, and would allow for changes in best practice standards in the future. The Court believes that the specification of the best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges is more appropriately included in the report language.

10. **Page 22, lines 21-22.** We note that the term "Canons of Judicial Ethics" now found in D.C. Code 11-1732(h)(2) and in this section is obsolete. The current governing rules are contained in the "Code of Judicial Conduct for the District of Columbia Courts."

11. **Page 23, line 2.** Unless Family Court magistrate judges are also given the authority to conduct proceedings in civil and criminal cases, the Court's ability to shift resources to respond to changing caseloads would be unnecessarily limited. In addition, Family Court magistrate judges with no authority to conduct civil and criminal proceedings would be precluded from addressing ancillary issues that may arise in Family Court cases. The goal of "one family, one judge" should encompass not only all members of a party's family and household, but also all matters that must be considered to achieve the best result. Unless magistrate judges have the authority to address the full range of issues affecting children and families, their interests cannot be as effectively served. For example, the Court's Domestic Violence Unit, a nationally recognized unit which uses an integrated approach for processing cases with a domestic violence component, may require magistrate judges to address in a single case issues of criminal assault or threats, civil protection orders, child custody, child and spousal support and visitation. Current hearing commissioners have played an integral role in the Unit, conducting criminal, civil and family proceedings in many of the cases. Eliminating or restricting full jurisdiction for these judicial officers would seriously compromise the effectiveness of the Unit.

12. **Page 23, line 21.** Limiting judicial review to a magistrate judge's final orders or judgments maintains current practice. Making clear that there is no judicial review of preliminary and interim orders (e.g., orders for psychiatric exams), would allow magistrate judges to effectively manage their caseloads and would spare judges a massive and needless calendar of reviewing procedural, non-final orders.

13. **Page 24, line 24 through page 25, line 16.** Like magistrate judges in the Family Court, hearing commissioners appointed under D.C. Code §11-1732 (redesignated as magistrate judges) should have the ability to address ancillary family matters and possess the same authority in all respects. The goal of "one family, one judge" would be served best if these judicial officers possess the authority to address family issues in the context of civil or criminal proceedings (e.g. issuing a civil protection order at the time of an arraignment in criminal court). Furthermore, unless these officers are authorized to enter final orders without the consent of the parties, as would be Family Court magistrate

judges, a hearing commissioner would be required to obtain consent to enter a final order in a civil or criminal matter, but not in its ancillary family matter. This would create an untenable situation.

While specialized training of magistrate judges in the Family Court would serve the best interests of the children and families before the Family Court, judicial officers having the same title and authority are essential to the Court's ability to effectively manage personnel and caseloads.

14. **Page 26.** This provision would require that the chief judge hastily appoint magistrate judges who may have no judicial experience to handle abuse and neglect cases many of which are old precisely because they contain issues that are complex and difficult to resolve. Some of these cases should be retained by the judges who have become familiar with the issues, facts, and parties, especially if their efforts can be assisted by improved staff support and training.

15. **Page 27, line 23.** In order for the Court to effectively fulfill its responsibility to conduct periodic reviews of child abuse and neglect cases in compliance with applicable law, court orders and best practices and to comply with the reporting requirements of D.C. Code § 11-1106 (as added by Sec. 4(a)), it is necessary that an auditing function be added to the special master's duties. Moreover, there should be enough auditors to effectively audit abuse and neglect cases in support of the Court's effort to close them.

16. **Page 28, line 19-25.** Unless the Court receives sufficient funding for salaries, space, technology and related costs, the objectives sought by this bill would not be realized. Additional judicial officers require courtrooms, chambers, staff and equipment. An integrated case management system must be developed to provide information needed to advance the goal of "one family, one judge". While some reforms to the existing Family Division can be implemented without substantial additional funding, many cannot.

17. **Page 29, lines 9-17.** This provision, like D.C. Code §11-1104(b) (as added by Sec. 4(a)), would preclude a judge who has left the Family Division from retaining a case with

which he or she has become intimately familiar. The reassignment of all family cases (including domestic violence, juvenile and domestic relations matters) to new judges in the Family Court would not always serve the best interests of the child.

Furthermore, the Court's integrated approach to issues involved in domestic violence cases would be in jeopardy if this provision is made applicable. The inability to address both civil and criminal issues affecting one family would make it difficult to maintain the Domestic Violence Unit in its present highly effective form.

Superior Court
Comments

[DRAFT]

MAY 21, 2001

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. DELAY (for himself, Ms. NORTON, Mrs. MORELLA, and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "District of Columbia
3 Family Court Act of 2001".

4 **SEC. 2. REDESIGNATION OF FAMILY DIVISION AS FAMILY**
5 **COURT OF THE SUPERIOR COURT.**

6 (a) IN GENERAL.—Section 11–902, District of Co-
7 lumbia Code, is amended to read as follows:

8 **"§ 11–902. Organization of the court.**

9 "(a) IN GENERAL.—The Superior Court shall consist
10 of the Family Court of the Superior Court and the fol-
11 lowing divisions of the Superior Court:

12 "(1) The Civil Division.

13 "(2) The Criminal Division.

14 "(3) The Probate Division.

15 "(4) The Tax Division.

16 "(b) BRANCHES.—The divisions of the Superior
17 Court may be divided into such branches as the Superior
18 Court may by rule prescribe.

Family Court and the

comment 1

19 "(c) DESIGNATION OF PRESIDING JUDGE OF FAMILY
20 COURT.—The chief judge of the Superior Court shall des-
21 ignate one of the judges assigned to the Family Court of
22 the Superior Court to serve as the presiding judge of the
23 Family Court of the Superior Court.

24 "(d) JURISDICTION DESCRIBED.—The Family Court
25 shall have exclusive jurisdiction over the actions, applica-

1 tions, determinations, adjudications, and proceedings de-
2 scribed in section 11–1101.".
3 (b) CONFORMING AMENDMENT TO CHAPTER 9.—
4 Section 11–906(b), District of Columbia Code, is amended
5 by inserting "the Family Court and" before "the various
6 divisions".
7 (c) CONFORMING AMENDMENTS TO CHAPTER 11.—
8 (1) The heading for chapter 11 of title 11, District of Co-
9 lumbia, is amended by striking "FAMILY DIVISION" and
10 inserting "FAMILY COURT".
11 (2) Section 11–1101, District of Columbia Code, is
12 amended by striking "Family Division" and inserting
13 "Family Court".
14 (3) The item relating to chapter 11 in the table of
15 chapters for title 11, District of Columbia, is amended by
16 striking "FAMILY DIVISION" and inserting "FAMILY
17 COURT".
18 (d) CONFORMING AMENDMENTS TO TITLE 16.—
19 (1) CALCULATION OF CHILD SUPPORT.—Sec-
20 tion 16–916.1(o)(6), District of Columbia Code, is
21 amended by striking "Family Division" and insert-
22 ing "Family Court of the Superior Court".
23 (2) EXPEDITED JUDICIAL HEARING OF CASES
24 BROUGHT BEFORE HEARING COMMISSIONERS.—Sec-
25 tion 16–924, District of Columbia Code, is amended

1 by striking "Family Division" each place it appears
2 in subsections (a) and (f) and inserting "Family
3 Court".
4 (3) GENERAL REFERENCES TO PRO-
5 CEEDINGS.—Chapter 23 of title 16, District of Co-
6 lumbia Code, is amended by inserting after section
7 16–2301 the following new section:
8 **"§ 16–2301.1. References deemed to refer to Family**
9 **Court of the Superior Court.**
10 "Upon the effective date of the District of Columbia
11 Family Court Act of 2001, any reference in this chapter
12 or any other Federal or District of Columbia law, Execu-
13 tive order, rule, regulation, delegation of authority, or any
14 document of or pertaining to the Family Division of the
15 Superior Court of the District of Columbia shall be
16 deemed to refer to the Family Court of the Superior Court
17 of the District of Columbia.".
18 (4) CLERICAL AMENDMENT.—The table of sec-
19 tions for subchapter I of chapter 23 of title 16, Dis-
20 trict of Columbia, is amended by inserting after the
21 item relating to section 16–2301 the following new
22 item:

"16–2301.1. References deemed to refer to Family Court of the Superior Court.".

1 **SEC. 3. APPOINTMENT AND ASSIGNMENT OF JUDGES; NUM-**
2 **BER AND QUALIFICATIONS.**
3 (a) NUMBER OF JUDGES FOR FAMILY COURT;
4 QUALIFICATIONS AND TERMS OF SERVICE.—Chapter 9 of
5 title 11, District of Columbia Code, is amended by insert-
6 ing after section 11–908 the following new section:
7 **"§ 11–908A. Special rules regarding assignment and**
8 **service of judges of Family Court.**
9 "(a) NUMBER OF JUDGES.—The number of judges
10 serving on the Family Court of the Superior Court ~~at any~~
11 ~~time~~ may not be less than the number of judges deter-
12 mined by the chief judge of the Superior Court to be need-
13 ed to serve on the Family Court under the transition plan
14 for the Family Court prepared and submitted to the Presi-
15 dent and Congress under section 3(b) of the District of
16 Columbia Family Court Act of 2001.
17 "(b) QUALIFICATIONS.—The chief judge may not as-
18 sign an individual to serve on the Family Court of the
19 Superior Court unless—
20 "(1) the individual has training or expertise in
21 family law;
22 "(2) the individual ~~certifies to the chief judge~~
23 ~~that the individual will~~ serve the full term of service;
24 and
25 "(3) the individual ~~certifies to the chief judge~~
26 ~~that the individual will~~ participate in the ongoing

Except for the period between the date a vacancy is created by the retirement resignation or removal of a Family Court judge and the date on appointment to fill such vacancy is made pursuant to Section 433 of the D.C. Home Rule Act,

Comment 2

agrees to

agrees to

Comment 3

1 training programs carried out for judges of the
2 Family Court under section 11–1104(c).
3 "(c) TERM OF SERVICE.—
4 "(1) IN GENERAL.—An individual assigned to
5 serve as a judge of the Family Court of the Superior
6 Court shall serve for a term of not fewer than [3 Comment 4
7 ~~or 5~~] years or (if fewer) the number of years re-
8 maining in the individual's term of service as a
9 judge of the Superior Court under section 431(c) of
10 the District of Columbia Home Rule Act.
11 "(2) ASSIGNMENT FOR ADDITIONAL SERVICE.—
12 After the term of service of a judge of the Family
13 Court (as described in paragraph (1)) expires, at the
14 judge's request the judge may be assigned for addi-
15 tional service on the Family Court for a period of
16 such duration (consistent with section 431(c) of the
17 District of Columbia Home Rule Act) as the chief
18 judge may provide.
19 "(3) PERMITTING SERVICE ON FAMILY COURT
20 FOR ENTIRE TERM.—At the request of the judge, a
21 judge may serve as a judge of the Family Court for
22 the judge's entire term of service as a judge of the
23 Superior Court under section 431(c) of the District
24 of Columbia Home Rule Act.

1 "(d) REASSIGNMENT TO OTHER DIVISIONS.—The
2 chief judge may reassign a judge of the Family Court to
3 another division of the Superior Court if the chief judge
4 determines that the retention of the judge in the Family
5 Court is inconsistent with the best interests of the individ-
6 uals and families who are served by the Family Court.".
7 (b) PLAN FOR FAMILY COURT TRANSITION.—Not
8 later than 90 days after the date of the enactment of this
9 Act, the chief judge of the Superior Court of the District
10 of Columbia shall prepare and submit to the President and
11 Congress a transition plan for the Family Court of the
12 Superior Court, and shall include in the plan the following:
13 (1) The chief judge's determination of the num-
14 ber of judges needed to serve on the Family Court.
15 (2) The chief judge's determination of the num-
16 ber of magistrate judges needed for appointment
17 under section 11–1732A, District of Columbia Code
18 (as added by section 5(a)).
19 (3) The chief judge's determination of the ap-
20 propriate functions of such magistrate judges, to-
21 gether with the compensation of and other personnel
22 matters pertaining to such magistrate judges.
23 (4) A proposal for the disposition of actions and
24 proceedings pending in the Family Division of the
25 Superior Court as of the date of the enactment of

1 this Act (together with actions and proceedings de-
2 scribed in section 11–1101, District of Columbia
3 Code, which were initiated in the Family Division
4 but remain pending in other Divisions of the Supe-
5 rior Court as of such date) in a manner consistent
6 with ~~applicable Federal and District of Columbia law~~
7 ~~and best practices, including (but not limited to)~~
8 ~~best practices developed by the American Bar Asso-~~
9 ~~ciation and the National Council of Juvenile and~~
10 ~~Family Court Judges~~.

nationally accepted best practices

Comment 5

11 (c) TRANSITION TO APPROPRIATE NUMBER OF
12 JUDGES.—
13 (1) ANALYSIS BY CHIEF JUDGE OF SUPERIOR
14 COURT.—The chief judge of the Superior Court of
15 the District of Columbia shall include in the transi-
16 tion plan prepared under subsection (b)—
17 (A) the chief judge's determination of the
18 number of individuals serving as judges of the
19 Superior Court who meet the qualifications for
20 judges of the Family Court of the Superior
21 Court under section 11–908A, District of Co-
22 lumbia Code (as added by subsection (a)); and
23 (B) if the chief judge determines that the
24 number of individuals described in subpara-
25 graph (A) is less than the number of individuals

(5) the chief judge's determination of the appropriation's necessary to implement the transition plan.

1 the chief judge is required to assign to the
2 Family Court under such section, a request
3 that the President appoint (in accordance with
4 section 433 of the District of Columbia Home
5 Rule Act) such additional number of individuals
6 to serve on the Superior Court who meet the
7 qualifications for judges of the Family Court
8 under such section as may be required to enable
9 the chief judge to make the required number of
10 assignments.
11 (2) ONE-TIME APPOINTMENT OF ADDITIONAL
12 JUDGES TO SUPERIOR COURT FOR SERVICE ON FAM-
13 ILY COURT.—If the President receives a request
14 from the chief judge of the Superior Court of the
15 District of Columbia under paragraph (1)(B), the
16 President (in accordance with section 433 of the
17 District of Columbia Home Rule Act) shall appoint
18 additional judges to the Superior Court who meet
19 the qualifications for judges of the Family Court in
20 a number equal to the number of additional appoint-
21 ments so requested by the chief judge, and each
22 judge so appointed shall be assigned by the chief
23 judge to serve on the Family Court of the Superior
24 Court.

1 (3) ROLE OF DISTRICT OF COLUMBIA JUDICIAL
2 NOMINATION COMMISSION.—For purposes of section
3 434(d)(1) of the District of Columbia Home Rule
4 Act, the submission of a request from the chief
5 judge of the Superior Court of the District of Co-
6 lumbia under paragraph (1)(B) shall be deemed to
7 create a number of vacancies in the position of judge
8 of the Superior Court equal to the number of addi-
9 tional appointments so requested by the chief judge.
10 In carrying out this paragraph, the District of Co-
11 lumbia Judicial Nomination Commission shall re-
12 cruit individuals for possible nomination and ap-
13 pointment to the Superior Court who meet the quali-
14 fications for judges of the Family Court of the Supe-
15 rior Court.
16 (4) ~~JUDGES APPOINTED UNDER ONE-TIME AP-~~
17 ~~POINTMENT PROCEDURES NOT TO COUNT AGAINST~~ INCREASE OF
18 LIMIT ON NUMBER OF SUPERIOR COURT JUDGES.—
19 Any judge who is appointed to the Superior Court
20 of the District of Columbia pursuant to the one-time
21 appointment procedures under this subsection for
22 assignment to the Family Court of the Superior
23 Court shall ~~not count against~~ the limit on the num- increase
24 ber of judges of the Superior Court under section Comment 6
25 11–903, District of Columbia Code. Any judge who

1 is appointed to the Superior Court under any proce-
2 dures other than the one-time appointment proce-
3 dures under this subsection shall count against such increased
4 limit, without regard to whether or not the judge is
5 appointed to replace a judge appointed under the
6 one-time appointment procedures under this sub-
7 section or is otherwise assigned to the Family Court
8 of the Superior Court.

9 (d) CONFORMING AMENDMENT.—The first sentence
10 of section 11–908(a), District of Columbia Code, is
11 amended by striking "The chief judge" and inserting
12 "Subject to section 11–908A, the chief judge".

13 (e) CLERICAL AMENDMENT.—The table of sections
14 for chapter 9 of title 11, District of Columbia Code, is
15 amended by inserting after the item relating to section
16 11–908 the following new item:

"11–908A. Special rules regarding assignment and service of judges of Family Court.".

17 **SEC. 4. IMPROVING ADMINISTRATION OF CASES AND PRO-**
18 **CEEDINGS IN FAMILY COURT.**

19 (a) IN GENERAL.—Chapter 11 of title 11, District
20 of Columbia, is amended by adding at the end the fol-
21 lowing new sections:

22 **"§ 11–1102. Use of alternative dispute resolution.**

23 "To the greatest extent practicable and safe, cases
24 and proceedings in the Family Court of the Superior

1 Court shall be resolved through alternative dispute resolu-
2 tion procedures, in accordance with such rules as the Su-
3 perior Court may promulgate.

4 **"§ 11–1103. Standards of practice for appointed coun-**
5 **sel.**

6 "The Superior Court shall establish standards of
7 practice for attorneys appointed as counsel in the Family
8 Court of the Superior Court.

9 **"§ 11–1104. Administration.**

10 "(a) 'ONE FAMILY, ONE JUDGE' REQUIREMENT FOR
11 CASES AND PROCEEDINGS.—To the greatest extent prac-
12 ticable, ~~and~~ feasible, and lawful if an individual who is a party to an
13 action or proceeding assigned to the Family Court has an
14 immediate family or household member who is a party to
15 another action or proceeding assigned to the Family
16 Court, the individual's action or proceeding shall be as-
17 signed to the same judge or magistrate judge to whom
18 the immediate family or household member's action or proceeding is as-
19 signed.

20 "(b) RETENTION OF JURISDICTION OVER CASES.— ABUSE AND NEGLECT
21 Any abuse or neglect action or proceeding assigned to the Family Court
22 of the Superior Court shall remain under the jurisdiction
23 of the Family Court until the action or proceeding is fi-
24 nally disposed. If the judge to whom the action or pro-
25 ceeding is assigned ceases to serve on the Family Court

1 prior to the final disposition of the action or proceeding,
2 the chief judge of the Superior Court shall ensure that
3 the matter or proceeding is reassigned to a judge serving
4 on the Family Court.

unless reassignment is inconsistent with the best interests of the individual or family. Comment?

5 "(c) TRAINING PROGRAM.—
6 "(1) IN GENERAL.—The presiding judge of the
7 Family Court, shall ensure that ~~carry out an ongoing program to~~
8 ~~provide training in family law and related matters~~
9 ~~for~~ judges of the Family Court and appropriate non-
10 judicial personnel, ~~and shall include in the program~~
11 ~~information and instruction regarding the following:~~
12 ~~"(A) Child development.~~
13 ~~"(B) Family dynamics.~~
14 ~~"(C) Relevant Federal and District of Co-~~
15 ~~lumbia laws.~~
16 ~~"(D) Permanency planning principles and~~
17 ~~practices.~~
18 ~~"(E) Recognizing the risk factors for child~~
19 ~~abuse.~~
20 ~~"(F) Any other matters the presiding~~
21 ~~judge considers appropriate.~~
22 "(2) USE OF CROSS-TRAINING.—The program
23 carried out under this section shall use the resources
24 of lawyers and legal professionals, social workers,

chief judge, in consultation with the

receive specialized training in family law and related matters to enable them to fulfill their responsibilities.

1 and experts in the field of child development and
2 other related fields.
3 "(d) ACCESSIBILITY OF MATERIALS, SERVICES, AND
4 PROCEEDINGS; PROMOTION OF 'FAMILY-FRIENDLY' EN-
5 VIRONMENT.—
6 "(1) IN GENERAL.—To the greatest extent
7 practicable, the chief judge of the Superior Court
8 shall ensure that the materials and services provided
9 by the Family Court are understandable and acces-
10 sible to the individuals and families served by the
11 Court, and that the Court carries out its duties in
12 a manner which reflects the special needs of families
13 with children.
14 "(2) LOCATION OF PROCEEDINGS.—To the
15 maximum extent feasible, safe, and practicable,
16 cases and proceedings in the Family Court shall be
17 conducted at locations readily accessible to the par-
18 ties involved.
19 "(e) INTEGRATED COMPUTERIZED CASE TRACKING
20 AND MANAGEMENT SYSTEM.—The Executive Officer of
21 the District of Columbia courts under section 11–1703
22 shall work with the chief judge of the Superior Court—
23 "(1) to ensure that all records and materials of
24 cases and proceedings in the Family Court are
25 stored and maintained in electronic format accessible

1 by computers for the use of judges, magistrate
2 judges, and nonjudicial personnel of the Family
3 Court, and for the use of other appropriate offices
4 of the District government; ~~in accordance with the~~
5 ~~plan for integrating computer systems prepared by~~
6 ~~the Mayor of the District of Columbia under section~~
7 ~~4(b) of the District of Columbia Family Court Act~~
8 ~~of 2001~~;

Comment ?

9 "(2) to establish and operate an electronic
10 tracking and management system for cases and pro-
11 ceedings in the Family Court for the use of judges
12 and nonjudicial personnel of the Family Court, using
13 the records and materials stored and maintained
14 pursuant to paragraph (1); and
15 "(3) to expand such system to cover all divi-
16 sions of the Superior Court as soon as practicable.
17 **"§ 11–1105. Social services and other related services.**
18 "(a) ON-SITE COORDINATION OF SERVICES AND IN-
19 FORMATION.—
20 "(1) IN GENERAL.—The Mayor of the District
21 of Columbia, in consultation with the chief judge of
22 the Superior Court, shall ensure that representatives
23 of the appropriate offices of the District government
24 which provide social services and other related serv-
25 ices to individuals and families served by the Family

1 Court (including the District of Columbia Public
2 Schools, the District of Columbia Housing Author-
3 ity, the Child and Family Services Agency, the Of-
4 fice of the Corporation Counsel, the Metropolitan
5 Police Department, the Department of Health, and
6 other offices determined by the Mayor) are available
7 on-site at the Family Court to coordinate the provi-
8 sion of such services and information regarding such
9 services to such individuals and families.
10 "(2) DUTIES OF HEADS OF OFFICES.—The
11 head of each office described in paragraph (1), in-
12 cluding the Superintendent of the District of Colum-
13 bia Public Schools and the Director of the District
14 of Columbia Housing Authority, shall provide the
15 Mayor with such information, assistance, and serv-
16 ices as the Mayor may require to carry out such
17 paragraph.
18 "(b) APPOINTMENT OF SOCIAL SERVICES LIAISON
19 WITH FAMILY COURT.—The Mayor of the District of Co-
20 lumbia shall appoint an individual to serve as a liaison
21 between the Family Court and the District government for
22 purposes of subsection (a) and for coordinating the deliv-
23 ery of services provided by the District government with
24 the activities of the Family Court and for providing infor-
25 mation to the judges, magistrate judges, and nonjudicial

1 personnel of the Court regarding the services available
2 from the District government to the individuals and fami-
3 lies served by the Court. The Mayor shall provide on an
4 ongoing basis information to the chief judge of the Supe-
5 rior Court regarding the services of the District govern-
6 ment which are available for the individuals and families
7 served by the Family Court.

8 **"§ 11–1106. Reports to Congress.**

9 "Not later than 90 days after the end of each cal-
10 endar year, the chief judge of the Superior Court shall
11 submit a report to Congress on the activities of the Family
12 Court during the year, and shall include in the report the
13 following:

to achieve permanency for abused and neglected children

14 "(1) The chief judge's assessment of the pro-
15 ductivity and success of the use of alternative dis-
16 pute resolution pursuant to section 11–1102.

17 "(2) Goals and timetables to improve the Fam-
18 ily Court's performance in the following year.

19 "(3) Information on the extent to which the
20 Court met deadlines and standards applicable under
21 Federal and District of Columbia law to the review
22 and disposition of actions and proceedings under the
23 Court's jurisdiction during the year.

24 "(4) Based on outcome measures derived
25 through the use of the information stored in elec-

1 tronic format under section 11–1104(d), an analysis
2 of the Court's efficiency and effectiveness in man-
3 aging its case load during the year, including an
4 analysis of the time required to dispose of actions
5 and proceedings among the various categories of the
6 Court's jurisdiction, as prescribed by ~~applicable law~~
7 ~~and best practices, including (but not limited to)~~
8 ~~best practices developed by the American Bar Asso-~~
9 ~~ciation and the National Council of Juvenile and~~
10 ~~Family Court Judges~~.

nationally accepted best practices

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11 "(5) If the Court failed to meet the deadlines,
12 standards, and outcome measures described in the
13 previous paragraphs, a proposed remedial action
14 plan to address the failure.".
15 (b) PLAN FOR INTEGRATING COMPUTER SYSTEMS.—
16 Not later than 6 months after the date of the enactment
17 of this Act, the Mayor of the District of Columbia shall
18 submit to the President and Congress a plan for inte-
19 grating the computer systems of the District government
20 with the computer systems of the Superior Court of the
21 District of Columbia so that the Family Court of the Su-
22 perior Court and the appropriate offices of the District
23 government which provide social services and other related
24 services to individuals and families served by the Family
25 Court of the Superior Court (including the District of Co-

1 lumbia Public Schools, the District of Columbia Housing
2 Authority, the Child and Family Services Agency, the Of-
3 fice of the Corporation Counsel, the Metropolitan Police
4 Department, the Department of Health, and other offices
5 determined by the Mayor) will be able to access and share
6 information on the individuals and families served by the
7 Family Court.

8 (c) CLERICAL AMENDMENT.—The table of sections
9 for chapter 11 of title 11, District of Columbia Code, is
10 amended by adding at the end the following new items:

"11–1102. Use of alternative dispute resolution.
"11–1103. Standards of practice for appointed counsel.
"11–1104. Administration.
"11–1105. Social services and other related services.
"11–1106. Reports to Congress.".

11 **SEC. 5. ESTABLISHMENT AND USE OF SEPARATE MAG-**
12 **ISTRATE JUDGES.**

13 (a) IN GENERAL.—Chapter 17 of title 11, District
14 of Columbia Code, is amended by inserting after section
15 11–1732 the following new section:

16 **"§ 11–1732A. Magistrate judges for Family Court of**
17 **the Superior Court.**

18 "(a) IN GENERAL.— With the approval of the Board
19 of Judges and subject to standards and procedures estab-
20 lished by the rules of the Superior Court, the chief judge
21 of the Superior Court may appoint magistrate judges, who
22 shall serve in the Family Court and perform the duties

1 enumerated in subsection (j) of this section and such other
2 functions incidental to these duties as are consistent with
3 the rules of the ~~Family~~ Court and the Constitution and Superior
4 laws of the United States and of the District of Columbia.
5 "(b) SELECTION.—Magistrate judges shall be se-
6 lected pursuant to standards and procedures adopted by
7 the Board of Judges. Such procedures shall contain provi-
8 sions for public notice of all vacancies in magistrate judge
9 positions and for the establishment by the Court of an
10 advisory merit selection panel, composed of lawyer and
11 nonlawyer residents of the District of Columbia who are
12 not employees of the District of Columbia Courts and ~~cer-~~ licensed
13 ~~tified~~ social workers specializing in child welfare matters
14 who are residents of the District and who are not employ-
15 ees of the District of Columbia Courts, to assist the Board
16 of Judges in identifying and recommending persons who
17 are best qualified to fill such positions.
18 "(c) QUALIFICATIONS.—No individual shall be ap-
19 pointed as a magistrate judge unless that individual—
20 "(1) is a citizen of the United States;
21 "(2) is an active member of the unified District
22 of Columbia Bar;
23 "(3) for the 5 years immediately preceding the
24 appointment has been engaged in the active practice
25 of law in the District, has been on the faculty of a

1 law school in the District, or has been employed as
2 a lawyer by the United States or District govern-
3 ment, or any combination thereof;
4 "(4) has not fewer than 3 years of training or
5 experience in ~~the practice of~~ family law; and
6 "(5) is a bona fide resident of the District of
7 Columbia and has maintained an actual place of
8 abode in the District for at least 90 days imme-
9 diately prior to appointment, and retains such resi-
10 dency during service as a magistrate.
11 "(d) TERM OF SERVICE.—Magistrate judges shall be
12 appointed for terms of 4 years and may be reappointed
13 for terms of 4 years. Those individuals serving as hearing
14 commissioners under section 11–1732 on the effective
15 date of this section who meet the qualifications described
16 in subsection (c)(4) may request to be appointed as mag-
17 istrate judges under this section.
18 "(e) CONTINUATION OF SERVICE.—Upon the expira-
19 tion of a magistrate judge's term, the magistrate judge
20 may continue to perform the duties of office until a suc-
21 cessor is appointed, or for 90 days after the date of the
22 expiration of the term, whichever is earlier.
23 "(f) MAXIMUM AGE FOR SERVICE.—No individual
24 may serve as a magistrate judge under this section after
25 having attained the age of 74.

1 "(g) SUSPENSION AND REMOVAL.—The Board of
2 Judges may suspend, involuntarily retire, or remove a
3 magistrate judge, during the term for which the mag-
4 istrate judge is appointed, only for incompetence, mis-
5 conduct, neglect of duty, or physical or mental disability.
6 Suspension, involuntary retirement, or removal requires
7 the concurrence of a majority of the judges in active serv-
8 ice. Before any order of suspension, involuntary retire-
9 ment, or removal shall be entered, a full specification of
10 the charges and the opportunity to be heard shall be fur-
11 nished to the magistrate judge pursuant to procedures es-
12 tablished by rules of the Superior Court.

13 "(h) TERMINATION OF POSITION.—If the Board of
14 Judges determines that a magistrate judge position is not
15 needed, the Board of Judges may terminate the position.

16 "(i) CODE OF CONDUCT.—(1) Magistrate judges may
17 not engage in the practice of law, or in any other business,
18 occupation, or employment inconsistent with the expedi-
19 tious, proper, and impartial performance of their duties
20 as officers of the court.

21 "(2) Magistrate judges shall abide by the Canons of Comment 10
22 Judicial Ethics.

23 "(j) FUNCTIONS.—A magistrate judge, when specifi-
24 cally designated by the ~~presiding judge of the Family~~ chief judge
25 ~~Court~~ of the Superior Court, and subject to the rules of

1 the Superior Court and the right of review under sub-
2 section (k), may perform the following functions:

The functions authorized under Sec. 11-1732(j) and Comment 11

3 "(1) Administer oaths and affirmations and
4 take acknowledgements.
5 "(2) Subject to the rules of the Superior Court
6 and applicable Federal and District of Columbia law,
7 conduct hearings, make findings and enter interim
8 and final orders or judgments in uncontested or con-
9 tested proceedings within the jurisdiction of the
10 Family Court of the Superior Court (as described in
11 section 11–1101), excluding jury trials and trials of
12 felony cases, as assigned by the presiding judge of
13 the Family Court.
14 "(3) Subject to the rules of the Superior Court,
15 enter an order punishing an individual for contempt,
16 except that no individual may be detained pursuant
17 to the authority of this paragraph for longer than
18 180 days.
19 "(k) REVIEW.—With respect to proceedings and
20 hearings under subsection (j), a review of the magistrate
21 judge's order or judgment, in whole or in part, may be

final Comment 12

22 made by a judge of the Family Court sua sponte and must
23 be made upon a motion of 1 of the parties made pursuant
24 to procedures established by rules of the Superior Court.
25 The reviewing judge shall conduct such proceedings as re-

1 quired by the rules of the Superior Court. An appeal to
2 the District of Columbia Court of Appeals may be made
3 only after a judge of the Family Court has reviewed the
4 order or judgment.

5 "(l) LOCATION OF PROCEEDINGS.—To the maximum
6 extent feasible, safe, and practicable, magistrate judges
7 shall conduct proceedings at locations readily accessible to
8 the parties involved.

9 "(m) TRAINING.—The Family Court of the Superior
10 Court shall ensure that all magistrate judges receive train-
11 ing to enable them to fulfill their responsibilities~~, including~~
12 ~~specialized training in family law and related matters~~.

Specialized in family law and related matters

13 "(n) RULES.—With the concurrence of the District
14 of Columbia Court of Appeals, the Board of Judges of the
15 Superior Court may promulgate rules, not inconsistent
16 with the terms of this section, which are necessary for the
17 fair and effective utilization of magistrate judges in the
18 Family Court of the Superior Court.

19 "(o) BOARD OF JUDGES.—For purposes of this sec-
20 tion, the term 'Board of Judges' means the judges of the
21 Superior Court of the District of Columbia. Any action
22 of the Board of Judges shall require a majority vote.".

23 (b) CONFORMING AMENDMENTS.—(1) Section 11–
24 1732, District of Columbia Code, is amended—

Comment 13

(A) by striking "hearing commissioner" each time it appears and inserting "magistrate judge";
(B) in paragraph (5) of subsection (j), by striking "and with the consent of the parties involved"; and

1 ~~(A) in subsection (a), by inserting after "who~~
2 ~~shall serve in the Superior Court" the following:~~
3 ~~"(other than in the Family Court of the Superior~~
4 ~~Court)";~~
5 ~~(B) in subsection (j), by striking paragraph (4)~~
6 ~~and redesignating paragraph (5) as paragraph (4);~~
7 ~~(C) in paragraph (4) of subsection (j) (as so re-~~
8 ~~designated), by striking "Civil, Criminal, and Family~~
9 ~~Divisions of the Superior Court" and inserting~~
10 ~~"Civil and Criminal Divisions of the Superior~~
11 ~~Court"; and~~
12 ~~(D) in subsection (k), by striking "(2), (3), (4),~~
13 ~~and (5)" and inserting "(2), (3), and (4)".~~
14 (2) Section 16–924, District of Columbia Code, is
15 amended by striking "hearing commissioner" each place
16 it appears and inserting "magistrate judges".
17 (c) CLERICAL AMENDMENT.—The table of sections
18 for subchapter II of chapter 17 of title 11, District of Co-
19 lumbia, is amended by inserting after the item relating
20 to section 11–1732 the following new item:

"11–1732A. Magistrate judges for Family Court of the Superior Court.".

21 (d) EFFECTIVE DATE.—
22 (1) IN GENERAL.—The amendments made by
23 this section shall take effect on the date of the en-
24 actment of this Act.

Add a new paragraph (6) to read as follows:

"(6) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

(3) Upon the effective date of this Act, any reference in any federal or District of Columbia law, order, rule or document of or pertaining to a hearing commissioner of the Superior Court of the District of Columbia shall be deemed to refer to a magistrate judge.

1 ~~(2) EXPEDITED INITIAL APPOINTMENTS.—~~ Comment 14

2 (A) IN GENERAL.—Not later than 30 days
3 after the date of the enactment of this Act, the
4 chief judge of the Superior Court of the District
5 of Columbia shall appoint not more than 5 indi-
6 viduals to serve as magistrate judges under sec-
7 tion 11–1732A, District of Columbia Code (as
8 added by subsection (a)).

9 (B) APPOINTMENTS MADE WITHOUT RE-
10 GARD TO SELECTION PANEL.—Section 11–
11 1732A(b), District of Columbia Code (as added
12 by subsection (a)) shall not apply with respect
13 to any magistrate judge appointed under this
14 paragraph.

15 (C) PRIORITY FOR CERTAIN ACTIONS AND
16 PROCEEDINGS.—The chief judge of the Supe-
17 rior Court and the presiding judge of the Fam-
18 ily Division of the Superior Court (acting joint-
19 ly) shall first assign and transfer to the mag-
20 istrate judges appointed under this paragraph
21 actions and proceedings described as follows:

22 (i) The action or proceeding involves
23 an allegation of abuse or neglect.

24 (ii) The action or proceeding was ini-
25 ~~tiated in the Family Division prior to the~~

1 ~~2-year period which ends on the date of~~
2 ~~the enactment of this Act.~~
3 ~~(iii) The judge to whom the action or~~
4 ~~proceeding is assigned as of the date of the~~
5 ~~enactment of this Act is not assigned to~~
6 ~~the Family Division.~~
7 (~~3~~ 2) SPECIAL REFERENCES DURING TRANSI-
8 TION.—During the period which begins on the date
9 of the enactment of this Act and ends on the effec-
10 tive date described in section 7, any reference to the
11 Family Court of the Superior Court of the District
12 of Columbia in any provision of law added or amend-
13 ed by this section shall be deemed to be a reference
14 to the Family Division of the Superior Court of the
15 District of Columbia.
16 **SEC. 6. APPOINTMENT OF SPECIAL MASTER TO DISPOSE OF**
17 **~~BACKLOG OF PENDING~~ CASES DURING TRAN-** POST-DISPOSITION
18 **SITION PERIOD.**
19 (a) IN GENERAL.—During the period which begins
20 on the date of the enactment of this Act and ends on the
21 effective date provided under section 7, a special master
22 appointed by the chief judge of the Superior Court of the
23 District of Columbia shall assist the Court in disposing Comment 15
24 of actions and proceedings which were initiated in the
25 Family Division of the Superior Court prior to the 2-year

1 period which ends on the date of the enactment of this
2 Act and which remain pending as of the date of the enact-
3 ment of this Act. ~~In providing such assistance, the special~~
4 ~~master may recommend that any such action or pro-~~
5 ~~ceeding be assigned to a magistrate judge appointed pur-~~
6 ~~suant to the expedited procedures described in section~~
7 ~~5(d)(2).~~

8 (b) DEADLINE FOR APPOINTMENT.—The chief judge
9 of the Superior Court of the District of Columbia shall
10 appoint the special master described in subsection (a) not
11 later than 6 months after the date of the enactment of
12 this Act.

13 ~~(c)~~ AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Superior Court
15 of the District of Columbia ~~for each of fiscal years 2002~~
16 ~~and 2003~~ such sums as may be necessary to carry out
17 ~~subsection (a)~~. this Act, including sums necessary to provide personnel, space, equipment, software and supplies.

SEC. 7

18 **SEC. ~~7~~ 8. EFFECTIVE DATE.**

19 (a) IN GENERAL.—The amendments made by sec-
20 tions ~~2,~~ 3, and 4 shall take effect—

21 (1) upon the expiration of the 2-year period
22 which begins on the date of the enactment of this
23 Act; or

(1) The amendments made by Section 2 shall take effect on the date of the enactment of this Act.
(2)

24 (2) ~~the first date occurring after the date of the~~
25 ~~enactment of this Act on which 10 individuals who~~
within 2 years of the date of availability of appropriations authorized under Section 7,
Whichever occurs later.

Comment/b

1 ~~meet the qualifications described in section 11-~~
2 908A, District of Columbia Code (as added by sec-
3 tion 3(a)) are available to be assigned by the chief
4 judge of the Superior Court of the District of Co-
5 lumbia to serve as associate judges of the Family
6 Court of the Superior Court (as certified by the
7 chief judge),
8 whichever occurs earlier.
9 (b) TRANSFER OF ACTIONS AND PROCEEDINGS.—
10 The chief judge of the Superior Court shall take such
11 steps as may be required to ensure that each action or
12 proceeding within the jurisdiction of the Family Court of
13 the Superior Court (as described in section 11–1101, Dis-
14 trict of Columbia Code, as amended by this Act) which
15 is pending as of the effective date described in subsection
16 (a) is transferred or otherwise assigned to the Family
17 ~~Court immediately upon such date.~~

Comment 17

Mrs. MORELLA. Now it is a pleasure to recognize Councilwoman Patterson.

Ms. PATTERSON. Thank you very much. Thank you, Congresswoman Morella, Ms. Norton, Mr. Davis, for the opportunity to——

Mrs. MORELLA. I think you need to put that closer.

Ms. PATTERSON. Thank you.

I'm Kathy Patterson, the ward three representative to the D.C. Council and the current chairperson of the Council's Committee on the Judiciary.

The Council shares your concern about how the court system deals with the problems faced by the city's most vulnerable residents, including children who have been abused or neglected. The Council as a body has not yet spoken on these issues. My testimony does, however, reflect my views and those of Chairman Cropp, who is chairing a legislative meeting right now.

I'm pleased to share this panel with Judge King. Under his leadership, the Superior Court has made good progress in addressing concerns raised by the General Accounting Office and others on this issue and on other management issues facing the court. I would respectfully ask the subcommittee to consider carefully the locally generated reform plan and the views of the elected leadership, the Mayor and the Council.

The Council is planning hearings in September on legislation that would vest control over the selection of local judges in the Mayor and the Council. The residents of this city deserve to have a voice in the selection of officials from all branches of government, and this principle is best furthered by permitting the Mayor and the Council to select the judges who will serve on local courts.

Principles of home rule would also suggest that, on issues related to the internal functioning of the Superior Court, Congress should pay particular attention to the local views. I, therefore, do appreciate this opportunity today.

I am very grateful for the progress made thus far on this issue under the leadership of Ms. Norton and others on this committee. Much of the initial legislative proposals proposed by Congressman DeLay and others have been strengthened after consultation with local authorities and with this committee, and now reflect a consensus on many issues on how best to implement and enhance Family Court to preside over these important cases.

The Council recognizes the need to recruit judicial candidates who are experienced and interested in family law to staff the Family Court Division of Superior Court. With a current vacancy on the Judicial Nominating Commission, the Council has an opportunity to assist in this effort by selecting for that commission someone who has a background in family law and can effectively evaluate the family law credentials of judicial applicants.

Along these lines, I believe that a term of 3 years rather than an alternative minimum of 5 years will best serve to attract qualified and dedicated judicial candidates to Family Court. The 3-year term is supported by respected groups such as the Council for Court Excellence, and strikes a good balance between ensuring continuity and experience of judges and staving off burnout.

Chairman Cropp and I support many of the other proposals that incorporate widely accepted best practices for effectively handling

Family Court operations. These include: enhanced training, modernization of the computer system to ensure better tracking, and an increased focus on the use of alternative dispute resolution.

We also join in concerns expressed by the Mayor's office and the Council for Court Excellence, as well as the court, that creating a three-tiered judicial system by establishing magistrate judges only in the Family Court Division of Superior Court may undermine the effective functioning of all divisions of the court.

The different titles and duties may preclude qualified Superior Court hearing commissioners from handling matters in Family Court as needed on an emergency basis, and may limit the opportunity of Family Court magistrates to rotate into Superior Court assignments.

We support the proposal to redesignate Superior Court hearing commissioners as magistrate judges to overcome this problem.

Some aspects of the proposed legislation may be contrary to the ability of the Superior Court to respond effectively and flexibly to challenges posed by unanticipated changes in the environment in the District. For example, the designation of a number of Family Court judges that is fixed at the time of the chief judge's transition plan could unnecessarily limit the ability of the court to respond to changing circumstances, and I would recommend continuing discussion on this point.

There are some special challenges that will occur during the transition period. I recognize the importance of ensuring that matters within the jurisdiction of the Family Court are handled by judges who are currently sitting in the Family Court, and also recognize the importance of expediting the review of the approximately 4,500 cases that have been pending and are still under review.

While in some circumstances there may be legitimate reasons for the lack of a final decision and the need for further court oversight, in other situations it is likely that some of these cases require no further action and simply need to be closed.

I support the proposals for immediate review of the abuse and neglect matters currently pending either by a special master or by several magistrates appointed on an expedited basis, as well as by the judges currently assigned to these cases, to determine how many of these cases need to remain open and whether they should be transferred to Family Court immediately or remain with the currently assigned judge.

We believe that the court's proposed restructuring into teams should minimize the turnover of participants in cases such as this, and that over time this would obviate the concern.

During a period of transition to the new structure, however, it may make sense to permit judges to maintain continuity in certain exceptional cases pending before them.

I do appreciate that some judges believe they have served as the only continuous supportive presence in the life of a troubled child. It may be the most viable practical solution over the short term, given the large number of pending cases which cannot realistically be transferred simultaneously for handling to the new Family Court staff.

Over time I agree that the strong presumption should be in force that family matters remain in Family Court and recommend that this be implemented through a much more narrow interpretation of the exceptional circumstances that permit retention of a case by a judge who leaves the Family Court.

In order for the improvements anticipated by the proposed reforms to be achieved, it is imperative that the Congress fully fund additions to personnel, technological requirements, and physical plant, and support our enhancements to the budgets for other D.C. agencies. The continued commitment of resources is essential to fulfilling the promise of reforms.

Finally, and to Ms. Norton's point about responsibilities at the local level, I would just note that, in my capacity as chairman of the committee with oversight responsibility for the Metropolitan Police Department, I will be chairing a hearing Thursday on the role and responsibilities of the Police Department in investigating child fatalities and child abuse and on the front end of preventing harm to children through community policing.

Thank you very much.

Mrs. MORELLA. Thank you, Councilwoman Patterson. I hope you will share with us the results of that meeting that you are going to be chairing. It's very important.

[The prepared statement of Ms. Patterson follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA
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Testimony of

Councilmember Kathy Patterson

Chairperson, Council Committee on the Judiciary

before the

House Government Reform Committee

Subcommittee on the District of Columbia

on

The Reform of the Family Division of the

District of Columbia Superior Court –

Improving Services to Families and Children

June 26, 2001

Thank you, Chairwoman Morella, for giving me this opportunity to address the Subcommittee on such an important issue for the District of Columbia. I am Kathy Patterson, the Ward 3 representative of the D.C. Council and the current Chairperson of the Council's Judiciary Committee. I share Congress' concern about how our court system deals with the problems faced by our city's most vulnerable residents -- children who have been abused and neglected -- and welcome this chance to share my thoughts on how the District of Columbia court system can improve handling these important cases involving the families and children who live in the District of Columbia. The Council as a body has not voiced a view on these issues; my testimony does, however, reflect the views of Chairman Linda Cropp as well as my own views.

I am proud to be sharing this panel with Rufus King, the Chief Judge of the District of Columbia Superior Court. He has demonstrated great dedication and creativity in addressing the challenges posed by the myriad of issues in abuse and neglect cases, as well as the other important aspects of the Court's operations. Since he became Chief Judge last year, Superior Court has made great strides in addressing concerns raised by GAO and others. I am confident that under Chief Judge King's leadership, the Family Division will be significantly strengthened and that the issues that led to this hearing and to the pending legislative proposal will be effectively addressed within Superior Court.

I urge this subcommittee to consider carefully and defer to the locally generated reform plan proposed by Judge King. The Council is planning hearings in September on legislation that would vest control over the selection of local judges in the Mayor and Council of the District of Columbia. The residents of this city deserve to have a voice in the selection of officials from all branches of government, and this principle is best furthered by permitting the Mayor and Council to select the judges who will serve on their local courts. Principles of home rule also suggest that, on issues related to the internal functioning of Superior Court, Congress should defer to the court leadership's best judgment about the operation and management of the local courts.

Much of the initial legislation that was proposed by Rep. DeLay and others has been revised after consultation with local authorities and Congresswoman Norton, and now reflects a consensus on many issues as to how best to implement an enhanced family court to preside over these important cases. As Chairperson of the Council's Judiciary Committee, I join in support of many of these changes to the current system that will be in the best interest of children and families in the District of Columbia.

First, we recognize the need to recruit judicial candidates who are experienced and interested in family law to staff the Family Court division of Superior Court. With the current vacancy on the Judicial Nomination Commission, the Council has an opportunity to assist in this effort by selecting for the Commission someone who has a background in family law and who can effectively evaluate the family law credentials of judicial applicants.

Along these lines, I believe that mandating a minimum term of three years (rather than the alternative of five years which has also been mentioned) will best serve to attract qualified and dedicated judicial candidates to Family Court. The three year term is supported by respected and knowledgeable groups such as the Council for Court Excellence, and strikes the proper balance between ensuring the continuity and experience of judges and staving off burnout by preserving the opportunity to rotate into another division.

Chairman Cropp and I support many of the other proposed sections of the bill and the court's own proposed reform plan which incorporate widely accepted best practices for effectively handling family court operations. These include enhanced training for family judges and supporting personnel, modernization of the computer system to ensure better tracking of multiple related cases, and an increased focus on the use of Alternative Dispute Resolution mechanisms where appropriate.

We also join in concerns expressed by Superior Court leadership, the Mayor's Office, and the Council for Court Excellence that creating a three-tiered judicial system by establishing Magistrate Judges only in the Family Court division of Superior Court may undermine the effective functioning of all divisions of the Court. The different titles and duties may preclude qualified Superior Court Hearing Commissioners from handling matters in Family Court as needed on an emergency basis, and may limit the opportunity of Family Court Magistrates to rotate into Superior Court assignments. We support the

proposal to redesignate Superior Court Hearing Commissioners as Magistrate Judges to overcome this problem.

Some aspects of the proposed legislation may be contrary to the ability of Superior Court to operate effectively and efficiently with sufficient flexibility to respond to challenges posed by unanticipated changes in the legal and social environment in the District of Columbia. For example, the designation of a number of Family Court judges that is fixed at the time of the Chief Judge's transition plan may unnecessarily limit the ability of the Court to respond to changing circumstances.

There are some special challenges that will occur during the transition period. I recognize the importance of ensuring that matters within the jurisdiction of the Family Court are handled by judges who are currently sitting in Family Court. This consolidation is not only important for maintaining efficiency within Family Court itself, but also will serve to enhance the efficiency of other Superior Court divisions. For instance, if a judge sitting in a criminal calendar has to handle a neglect proceeding, not only do the numerous participants (child, parents, attorneys, corporation counsel, social worker, and guardian ad litem) need to wait for the case to be called, but also litigants in other cases are excluded from the courtroom during most family proceedings, which can impair the overall efficiency of the courtroom.

We recognize the desire of many dedicated jurists to keep under their authority the family law cases that they have handled for a long period of time. I understand that

some judges believe that they have served as the only continuous, supportive presence in the life of a troubled child, who may have absent or abusive parents, no consistent foster care, and excessive turnover of social workers. Particularly in light of problems that previously existed with the staffing of cases, some judges may understandably be concerned that they have served a non-judicial but highly important role in the lives of some of the children who appeared before them and are thus reluctant to transfer such a case to another judge who is unknown to the child. While in an ideal world, other participants in the system would serve this function, it is important to recognize the reality of the situation currently faced by dedicated Superior Court judges and not sacrifice the needs of children in individual cases to further the goal of establishing the best theoretical model of court operations.

We believe that the court's proposed restructuring into teams should minimize the turnover in participants in such cases and thus, over time, obviate this concern the vast majority of the time. During the period of transition to the new family court structure, however, it may make sense to permit judges to maintain continuity in certain exceptional cases pending before them. This may be the most viable practical solution in the short term given the large number of pending cases which cannot realistically be transferred simultaneously for handling to the new Family Court judicial staff.

Over time, however, I agree that the strong presumption should be enforced that family matters remain in Family Court, and that the court management should discourage judges outside the Family Court from keeping family cases. This can be implemented

through a much more narrow interpretation of the exceptional circumstances that permit retention of a family case by a judge who leaves the Family Court assignment. Consistency in application can be achieved by the Chief Judge who would have the authority to review these requests.

I also recognize the importance of expediting the review of the approximately 4,500 cases that have been pending for a significant period of time and are still under review. While in some circumstances there may be legitimate reasons for the lack of a final decision and the need for further oversight by the court, in other situations it is likely that the cases require no further action and simply need to be closed. From conversations with other District officials, I know that the District is mindful of its obligations for timely decisionmaking under the Adoption and Safe Families Act and will do whatever is required to bring the District into compliance with the requirements of this important statute. I support the proposals for immediate review of the abuse and neglect matters currently pending, either by a Special Master or by several magistrates appointed on an expedited basis, as well as by the judges currently assigned to these cases, in order to determine how many of these cases need to remain open and whether they should be transferred to Family Court immediately or remain with the currently assigned judge.

In order for the improvements anticipated by the proposed reforms to be achieved, it is imperative that the Congress fully fund these additions to personnel, technological requirements, and physical plant, and support our enhancements to the budgets for other D.C. agencies which will have increased responsibilities, both now and in the future. The

continued commitment of resources is essential to fulfilling the promise of the reform proposals not only to comply with the mandates of the Adoption and Safe Families Act, but also to enhance the lives of the families and children in the District of Columbia who need our help.

Mrs. MORELLA. Welcome aboard, Dr. Golden. We are delighted to have you here today and to listen to your comments.

Ms. GOLDEN. Thank you very much. Good afternoon, Chairwoman Morella, Congresswoman Norton, and other members on the Subcommittee of the District of Columbia. My name is Olivia Golden, and I am the newly appointed director of the Child and Family Services Agency [CFSA]. I am most appreciative of this opportunity to testify on behalf of Mayor Williams. I would like to acknowledge the commitment of the subcommittee and of Congressman Delay to working with the District on this important legislative proposal, and I want to express special appreciation to Judge King and to Judge Walton for their commitment to working closely with us at CFSA.

The Mayor strongly supports the discussion draft legislation of May 21, 2001, because it represents an important step toward his key goal of support for the District's most vulnerable children. In order to keep children safe and enable children to life in loving, permanent families, all elements of the District's child welfare system—the CFSA, the Office of Corporation Counsel, the Metropolitan Police Department, nonprofit and community agencies, and the Superior Court—all must work together on behalf of children. The Superior Court is an integral part of this system at each stage of the child welfare process. It makes the initial determination regarding abuse and neglect, conducts review hearings, adjudicates adoption proceedings, and renders the ultimate decision about whether to return a child to the home; thus, the work of the court must be effectively and closely synchronized with the work of other participants in the child welfare system.

The discussion draft accomplishes this goal by including key steps to strengthen one part of the child welfare system, the Superior Court, in a way that supports the reform efforts in the other parts, as Representative Norton highlighted, creating an extraordinary opportunity to change the system, as a whole, in a way that benefits children.

We have this extraordinary opportunity today because the Williams administration, with the help of many people in this room, has addressed over the last 12 months some of the critical systemic deficits that have impeded the performance of the child welfare system. For example, because of the commitment of the Mayor and the Council and with the support of the Congress, CFSA is now funded at a level that should allow us to hire sufficient social workers over the coming months, and to meet other critical service needs. And under the Mayor's auspices, as Representative Norton highlighted, we were able to work cooperatively with the stakeholders in the child welfare class action to successfully transition out of Federal Court receivership.

We were also able to enact legislation that created CFSA for the first time as a unified, Cabinet-level agency with authority over both abuse and neglect.

Mayor Williams regained both operating and fiscal control over CFSA on June 16, 2001, which means I am now in my 9th day as director of the agency under the city.

The discussion draft represents an extremely important next step, building on these reforms to reform the entire child welfare

system, to support the best interests of children, and to promote child protection as well as the timely movement of cases toward permanency.

First, the draft addresses the challenge currently posed by the fact that approximately 1,200 Superior Court abuse and neglect hearings each month are dispersed among all 59 sitting judges, as well as a number of senior judges. This places enormous demands on both CFSA and corporation counsel staff, and has substantial operational implications for both agencies.

Second, the draft provides strategies and resources to address the timelines for handling abuse and neglect cases. According to court data, a significant number of the estimated 4,500 pending abuse and neglect cases in the Superior Court have now been processed within the timelines prescribed by the Adoption and Safe Families Act [ASFA]. The failure to process cases within ASFA timelines isn't in the best interest of the District's children. Delays in achieving permanency adversely affect our children, who need long-term stability in their lives, and may result in the imposition of monetary penalties on the District.

Although we strongly support the discussion draft, we believe it would benefit from several amendments. First, there may be exceptional circumstances that would justify an individual judge either retaining one of the cases that is currently under review or retaining a case after he or she leaves the Family Court.

This practice should be narrow and limited to the most extraordinary circumstances; specifically, when a case is nearing permanency and changing judges would both delay that goal and result in a violation of ASFA.

Second, the duration of judicial assignments in the Family Court should be set at a minimum of 3 years in order to promote continuity and to attract experienced jurists.

Third, as drafted, the bill limits magistrate judges to the Family Court and would preclude the current hearing commissioners from Family Court assignments.

And, fourth, we would like to emphasize the critical role of a sufficient appropriation to support the staffing and infrastructure costs required to realize the reform.

We look forward to working with you on the expedited enactment of the proposed legislation. I appreciate the opportunity to testify and look forward to your questions.

Thank you.

Mrs. MORELLA. Thank you very much. We appreciate the testimony.

[The prepared statement of Ms. Golden follows:]

Statement of
Olivia Golden, Director
Child and Family Services Agency
to the U.S. House of Representatives Committee on Government Reform,
District of Columbia Subcommittee, regarding
"The Reform of the Family Division of the District of Columbia Superior Court—
Improving Services to Families and Children,"

Tuesday, June 26, 2001

Good afternoon Chairwoman Morella, Congresswoman Norton, and other members of the Subcommittee on the District of Columbia. My name is Olivia Golden and I am the newly appointed director of the Child and Family Services Agency (CFSA). I assumed this position on June 16, 2001, in the wake of over six years of federal court receivership. I am most appreciative of this opportunity to testify on behalf of Mayor Williams.

I would like to acknowledge the commitment of the Subcommittee and Congressman DeLay to working with the District on this important legislative proposal. I also wish to recognize the Superior Court's dedication to improving and strengthening the administration of the court. I want to express special appreciation to Judge King and Judge Walton for their commitment to working closely with the Child and Family Services Agency to ensure that the whole child welfare system works as effectively as possible on behalf of children.

The Mayor strongly supports the discussion draft legislation of May 21, 2001, because it represents an important step toward his key goal of support for the District's most vulnerable children. In order to keep children safe and enable children to live in permanent families, all

elements of the District's child welfare system – the Child and Family Services Agency, the Office of Corporation Counsel (OCC), the Metropolitan Police Department (MPD), nonprofit and community agencies, and the Superior Court – must work together on behalf of children. The discussion draft includes key steps to strengthen one part of this child welfare system – the Superior Court - in a way that supports the reform efforts that are ongoing in the other parts, creating an extraordinary opportunity to change the system as a whole in a way that will benefit children.

The remainder of this testimony lays out more fully the operation of the child welfare system as a whole; the reasons that the proposed legislation would strengthen the effectiveness of that system on behalf of children; and the changes that the Mayor would suggest as the Subcommittee considers the discussion draft. We look forward to working with the Subcommittee and the Chief Judge to complete this significant reform process.

Child Welfare in the District of Columbia.

As you all are aware, CFSA is primarily responsible for child welfare and protection in the District of Columbia. With the legislation that created CFSA as a new Cabinet-level department, the District will have a unified system for abused and neglected children, beginning October 1, 2001. While the following data only reflects CFSA current responsibilities, I believe it provides a valuable snapshot of the scope of our children's needs. In FY 2000, 11,065 children were served by CFSA. Our Hotline received over 6000 calls during this same period. Approximately 2500 children were provided services through our kinship care program, which allowed children

to remain with relatives while the Agency worked with their parents to provide safe homes. Similarly, our Family Services Program provided services to 421 new families and 1156 new children during FY 2000. CFSA, through its collaboratives, provided preventative services to 767 families with 1823 children at risk. Perhaps most importantly, 329 children were adopted in FY 2000.

Against this background, we must recognize that the child welfare system represents the work of multiple public and private agencies whose functions are inextricably intertwined. The Superior Court is an integral part of this system, hearing evidence from social workers, families, and others at each stage of the child welfare process. The Court makes the initial determination regarding abuse or neglect, conducts the review hearings that occur during the pendancy of the case, adjudicates adoption proceedings, and renders the ultimate decision about whether to return a child to the home. Nearly 1200 abuse and/or neglect proceedings occur each month, of which roughly 900-1000 are review hearings.

Just to take one example, when a concerned neighbor calls the District's hotline to report that young children have been left home alone for hours, a Child and Family Services Agency intake worker goes out to assess the situation and determine whether the children may remain at home, with or without services, or whether they need to be placed with relatives or a foster family to protect their safety. If the children are removed from the home, that worker must appear in court the next day so that the court can make a determination as to whether there is probable cause to believe neglect occurred and the removal was required to protect the children. There are then several hearings before trial, a trial or stipulation, and, if neglect is found, various post–trial

hearings.[1] If the children are to have the opportunity to live in a permanent family, either by returning home or through adoption, further court decisions are necessary; if these decisions are to be made in a timely manner, as required by the Federal and District Adoption and Safe Families Acts, then the court hearings must reach clear decisions on a tight timetable about whether children can safely return home or whether they should move to adoption. Thus, in order to protect children's safety and to enable children to live with a loving, permanent family, the work of the Court must be closely and effectively synchronized with the work of other participants in the child welfare system.

We have an extraordinary opportunity today to improve the well being of the District's most vulnerable children by strengthening at the same time all the key elements of the District's child welfare system. This is because, during the past twelve months, the Williams Administration has addressed some of the critical systemic deficits that have impeded the performance of the child welfare system. For example:

- Because of the commitment of the Mayor and the Council and with the support of the Congress, CFSA is now funded at a level that should allow us to hire sufficient social workers over the coming months and enable us to meet other critical service needs – a dramatic change from the past history of the agency.
- Because of resource commitments by both CFSA and OCC, the District has already begun to hire additional attorneys to work with CFSA social workers, with the goals of ensuring that workers are always represented and providing the court with timely and clear information, filling a gap that has been repeatedly identified as a problem in the District's system.
- Legislation was enacted in April of this year establishing the post-receivership CFSA as a Cabinet-level agency with independent personnel, procurement and licensing authority. This legislation also requires the unification of the child abuse and neglect systems – mandating the end of a fractured service delivery model identified by the American Humane Society, among other recent reviewers, as a barrier in providing effective services to families.

[1] These include a dispositional hearing, a permanency planning hearing and regular review hearings.

- Under the Mayor's auspices, we were able to work cooperatively with the stakeholders in the child welfare class action, to successfully transition out of federal court receivership. Pursuant to a negotiated court order, Mayor Williams regained both operating and fiscal control over CFSA on June 16, 2001.

This demonstrable progress creates the extraordinary opportunity to now turn our attention to the other components of the child welfare system and work on all aspects of reform together.

How the Proposed Legislation Would Strengthen the System on Behalf of Children

The discussion draft provides for a Family Court within the Superior Court administrative structure with dedicated and appropriately credentialed judicial officers who will serve multi-year terms in this assignment. It prohibits the transfer of cases out of the Family Court. This structure promotes child protection as well as the timely movement of cases toward permanency – a goal at the heart of ASFA's mandate. Moreover, implementation of an electronic records, tracking and case management system;[2] alternative dispute resolution models; attorney practice standards; one family/one judge case assignment practices; training requirements; accessible services and materials; the expedited appointment of five Magistrate-Judges to handle backlogged cases,[3] and on-site access to and coordination of social services will ensure that the Family Court represents a state-of-the art approach to judicial administration.

[2] It is our understanding that the Superior Court wishes to develop the technology plan referenced in the discussion draft. Assuming appropriate coordination with the District's Office of the Chief Technology Officer (OCTO), we support the Court's proposal.

[3] We question the practicality of appointing five Magistrate-Judges to address the backlog within 30 days of enactment and would support a modest enlargement of that time period as long as it reflects the balance between the urgent need to expedite the resolution of older cases against the need to proceed with deliberation and care in these important initial appointments.

This legislative proposal represents an extremely important next step in reform of the entire child welfare system to support the best interests of children. First, it would address the challenge currently posed by the fact that the 1200 Superior Court hearings per month are dispersed amongst all 59 sitting judges, as well as a number of senior judges. This places enormous demands on both CFSA and OCC staff and has substantial operational and budget implications for both agencies. Second, it would provide strategies and resources to address the timelines for handling abuse and neglect cases. According to court data, there are currently an estimated 4500 pending abuse and/or neglect cases in the Superior Court and available data suggest that a significant number of these cases have not been processed within the timelines prescribed by the Adoption and Safe Families Act (ASFA). The failure to process cases within ASFA timelines is not in the best interests of the District's children. Delays in achieving permanency adversely affect our children who need long-term stability in their lives. Such delays may also compromise the District's ability to maximize federal revenue and may result in the imposition of monetary penalties. Any appreciable reduction in federal revenue threatens progress toward our most important mutual goal: a fully functional and robust child welfare system. It is these factors that provide the foundation for the Mayor's strong support for the May 21, 2001 discussion draft.

Although we strongly support the discussion draft, we believe it would benefit from several discrete amendments. **First**, there may be exceptional circumstances that would justify an individual judge either retaining one of the cases that is currently under review (i.e., the backlog) or retaining a case after s/he leaves the family court assignment. This practice should be limited to the most extraordinary circumstances, conditioned on approval and certification by the Chief

Judge, and based on appropriate documentation in the record which demonstrates that a case is nearing permanency and changing judges would both delay that goal and result in a violation of ASFA.[4] **Second**, the duration of judicial assignments in the Family Court should be set at a minimum of three years in order to promote continuity and permanency as well as to attract experienced jurists to the assignment. **Third**, as drafted, the bill limits Magistrate Judges to the Family Court and would operate to preclude the current Hearing Commissions from automatically transferring to Family Court assignments. The Hearing Commissioners represent a cadre of experienced judicial officers who should not be precluded from automatically transferring to these assignments. **Fourth**, the discussion draft does not contemplate an adequate appropriation to support the increased staffing and infrastructure costs engendered by the legislation. Adequate funding is essential to realizing the reform.[5]

This proposed legislation will facilitate further necessary reform in our child welfare system and we look forward to working with you on its expedited enactment. We would be pleased to share technical comments we have on the bill at your convenience. I look forward to responding to any questions or concerns you may have about the Mayor's position on this matter.

[4] This practice should be carefully monitored. The Chief Judge should be required to report on the cases that fall within the purview of this exception in the annual report to Congress that is mandated in the discussion draft.
[5] The District will also seek increased funding through its appropriation process in order to support the Mayoral obligations set out in the legislation.

Mrs. MORELLA. I know that the majority whip is here, Mr. DeLay.

Mr. DeLay, would you like to come up here?

Ms. Meltzer, do you mind if we hold off and hear from Mr. DeLay, and then we'll pick up with you and Judge McCown. I know he particularly wanted to be here for you, Judge McCown.

We have already given him a very elaborate introduction and have been awaiting his presence here, but it is really because his heart and soul has been put into this particular issue and he has commanded the various resources of his office and brought everybody together on it, so it is a pleasure to have you testify, Majority Whip DeLay.

STATEMENT OF HON. TOM DELAY, MAJORITY WHIP, U.S. HOUSE OF REPRESENTATIVES

Mr. DELAY. Thank you, Madam Chair. I really appreciate the committee's indulgence to my schedule. It just seems like every time I am called to do something, there's two other calls to do two other things. But I do appreciate your giving me this opportunity, and particularly I appreciate Congresswoman Norton's and Congressman Davis' interest in this, and working with all three of you has been, indeed, a pleasure.

I know all three of you know me very well, and I'm very blunt, so my opening statement will be very blunt.

Madam Chair, I believe that the Family Division in the Superior Court as it exists today is a failure. Its current organizational structure simply doesn't place the highest priority on our children's need to have their cases resolved in a timely manner. Federal law mandates that these cases be decided within 15 months, but by every indicator that we see the District Court is not obeying the law. They aren't closing their cases on time, they aren't holding hearings on time, and the best interests of children aren't their first priority. I think the proposal that they are making illustrates that.

We must change the status quo, and we must change it significantly, because this current system fails its most basic responsibility, and that's putting the interest of abused children first.

I believe that we have to completely revamp the structure of the Superior Court. The judge's plan resists one of the basic elements of Family Court reform—one judge for one family. The judge's plan is short on reform and long on resources and money.

My position has been very, very clear all along: I'll support more funding for the District's court system, but I am doing it to make sure that the needed reforms can be fully carried out. With the funding must come improvements in the way cases are handled and families are served, and that means real change, not just a nice, pretty covering. The court must resolve cases expeditiously.

Upgrading the computers and improving the court facilities, alone, won't reduce the number of children waiting to have their cases closed. It won't find permanent homes. It won't produce timely decisions. And, by themselves, these changes can't bring the District into compliance with the deadlines that are required by the adoption of the Safe Families Act.

Here are the changes I think that the court must make: it should establish a specialized court, require that judges are trained before they serve on Family Court, and mandate that judges sit on the Family Court bench long enough to become effective, and, finally, every judge that serves on this court must volunteer.

The children and families need a court that focuses exclusively on their welfare and not the court's welfare. The practice of allowing judges who rotate off the bench to take cases with them has to end. A specialized Family Court by its very nature requires that all family cases stay in the Family Court. The one judge/one family concept is central to reform. It means that families won't be shuttled from one judge to another. A judge who knows the full history surrounding a child's family will be better able to consider that child's true best interest. We need judges who know what works and doesn't work for a particular family, and they must also know when enough is enough.

In the District, embracing one judge/one family means that the judges will no longer take their cases with them when they rotate off the bench. Judges tell me that family law doesn't offer the types of cases that carry prestige or enhance an ambitious judge's career, but I believe these cases are vitally important because the lives of the children and the trust of the family are directly at stake. That's why I'm insisting that the paramount consideration in making judicial appointments to the Family Court must be that the judge specifically wants to sit on this court.

The judge has to be committed to the work or the children and families that come before the court or the court will not be well served.

Madam Chair, our proposal creates a separate pool of judges who want to sit on Family Court and have the training and the expertise necessary to serve. Training is critical for judges who have to decide if and when a home is too dangerous for a child to remain there or safe enough for a child to be returned.

Changes in the way the court does its business will not happen without committed judges, and that's why I believe that 5-year terms are a key measure of that commitment. A 5-year commitment to serve on the Family Court represents one-third of a 15-year judicial appointment. Having a 5-year term on Family Court will increase the chances that a judge really wants to serve on this bench and is not just serving time.

Like anything else, it takes time to become a good Family Court judge. It takes time to learn the difference between giving a parent a second chance at parenting and putting the child in harm's way a second time. It takes time to learn the difference between the fakers, the liars, the compulsives, the mentally ill, the chronic drug abusers, the alcoholics, and the parents who, with supportive services, can really stop hurting their children. It takes time to figure out the right questions to ask and to realize the flaws in the stories that you are being told.

I would prefer a 15-year term for the Family Court judges, but I have compromised, and, in any case, we simply must begin recruiting people who want to be family law judges.

Madam Chair, the bottom line is this: a 5-year term will let judges who want to serve on the Family Court get good at it, and they can re-up if they so choose.

The legal reforms we support here—a specialized court, trained and experienced judges, and significant terms on the bench—would bring about a real change in the way that this court is organized and how it goes about its business. But these changes simply will not happen until the judges are convinced that change is necessary, and unless the community supports those changes.

So I hope that today's hearing sends the clear message that we mean business about creating a real family court. Our children deserve no less than the best that a Family Court can give them, and that is giving them timely decisions about their future.

Thank you, Madam Chair.

Mrs. MORELLA. Thank you, Mr. DeLay. Frankly, it has been your leadership that has brought us to this point today where we are considering an appropriate reform.

[The prepared statement of Hon. Tom DeLay follows:]

Testimony of the Honorable Tom DeLay
Committee on Government Reform
Subcommittee on the District of Columbia
June 26, 2001

Madam Chair, Congresswoman Norton, Congressman Davis, and distinguished colleagues: Thank you for inviting me to testify before you today about our efforts to reform the District's court system. I congratulate you for holding this hearing.

I believe your efforts have focused attention on the need to make major changes in the child welfare and court system in the District. I'm glad to be working toward that objective with you.

I'd also like to acknowledge the hard work that both Senator De Wine and Senator Landrieu have put into this problem. I've spoken to Mayor Williams several times about this and I'm convinced that seeing the system changed to protect the District's children and families is one of the top priorities of his administration.

I'm pleased to join you this morning to testify about the necessary steps our legislation takes to revamp the way the District of Columbia's Superior Court responds to the needs of children and families in crisis.

The tragic way that Brianna Blackmond lost her life demonstrated, in the starkest possible terms, that the Family Division, as it's structured today, is a failure. Their current organizational structure simply does not place the highest priority on our children's needs to have their cases resolved in a timely manner.

Federal law mandates that these cases be decided within 15 months. By every indicator we see, the District Court is not obeying the law. They aren't closing their cases on time. They aren't holding hearings on time. And the best interests of children aren't their first priority.

And, while there may have been discussions at the court about changing rules and modifying procedures, I've seen no hard evidence that the required steps have been taken--or even seriously contemplated.

That must change. Because the current system fails its most basic responsibility: Putting the interests of abused children first.

The Court is part of the system that is failing but it's not the only part. I'm pleased that Dr. Olivia Golden is now heading the Child and Family Services Agency (CSFA). I want her to know that I believe we can work closely together to implement the needed reforms.

Efforts at reform must include both the child welfare agency and the Court. Our first step in these reform efforts was to vigorously support the end of the receivership and return this agency to the Mayor's control.

I believe we must revamp the structure of the Superior Court.

The Court must change because, at the end of day, the fate of these children really comes down to the men and women who wear the judicial robes. They are in charge of the cases laid before them. Their expertise and involvement largely determines whether or not every child is placed into a safe and permanent home.

For months, many of us in this room have been working closely to convince the Court to begin taking our challenge seriously. We want the Court to reform their system and to start putting the best interests of children first. But, they just don't seem to get it.

I've reviewed the judge's plan for reform. And that review told me that they don't want reform. Their plan retains too many flaws within the current system.

The judge's plan resists one of the basic elements of family court reform: One judge for one family. The judge's plan is short on reform and long on resources.

My position's been clear all along. I'll support more funding for the District's court system but I'm doing it to make sure that the needed reforms can be fully carried out.

With the funding must come improvements in the way cases are handled and families are served. That means real change. The Court must resolve cases expeditiously. It must find safe and stable families for abused children. It must offer families the services they need to responsibly rear their children.

Upgrading the computers and improving the court facilities alone won't reduce the number of children waiting to have their cases closed. It won't find permanent homes. It won't produce timely decisions. And by themselves, these changes can't bring the District into compliance with the deadlines required by the Adoption and Safe Families Act.

That won't happen until the judicial culture stops resisting the changes they need to make.

We developed the ideas that we're discussing today through an exhaustive study of Family Court practices across the country. We consulted Family Court judges in the District and around the country. We held meetings with lawyers, social workers, and court appointed special advocates.

We spoke to agency heads from Child and Family Services to the Metropolitan Police Department. We sat down with Mayor Williams as well as Chief Judge King of the Superior Court.

In addition, countless foster parents and advocates in the District called my office with their suggestions for reform. Finally, we circulated drafts of the DC Family Court Act of 2001, here in the District and across the country. We've incorporated those comments and changes as well.

That process gave us a reform package that could make a real difference in the timing and the appropriateness of the decisions made by the court. Among the benefits, it offers real improvements for abused children, foster children, victims of domestic violence, and children waiting to be adopted.

Here are the changes the Court must make. It should: establish a specialized court; require that judges are trained before they serve on Family Court; and mandate that judges sit on the family court bench long enough to become effective. And finally, every judge that serves on this bench must volunteer.

Children and families need a court that focuses exclusively on their welfare. We're proposing a specialized Family Court so that judges can focus in depth on the legal and social problems facing the children and families that come before them.

This court's structure recognizes that families are often frustrated and children hurt by the lack of consistent attention paid to family cases.

The practice of allowing judges who rotate off the bench to take cases with them must end. A specialized Family Court, by its very nature, requires that all family cases stay in the family court. This means that whether the family is experiencing a divorce, domestic violence, or child abuse the case stays in the Family Court with the same judge.

The "one judge one family" concept is central to reform. It means that families won't be shuttled from one judge to another. A judge who knows the full history surrounding a child's family will be better able to consider the child's true best interests.

We need judges who know what works and doesn't work for a particular family. And they must also know when "enough is enough." In the District embracing one judge one family means that judges will no longer take their cases with them when they rotate off the bench.

By ending this practice, we increase the chances that Family Court cases won't fall through cracks in the judicial system.

Judges make life and death decisions about returning children home, terminating parental rights, and making adoption plans.

Judges tell me that family law doesn't offer the types of cases that carry prestige or enhance an ambitious judge's career. But I believe these cases are the most important cases because the lives of the children and the trust of the family are directly at stake.

That's why I'm insisting that the paramount consideration in making judicial appointment to the Family Court must be that the judge specifically wants to sit on this court. The judge has to be committed to the work or the children and families that come before the court will not be well served.

Our proposal creates a separate pool of judges who want to sit on family court and have the training and expertise necessary to serve. Training is critical for judges who must decide when a home is too dangerous for a child to remain there or safe enough for a child to be returned.

Expertise has been the missing variable in the District. Judges need the requisite skills, knowledge and sensitivity to ask the right questions. Without that experience, there's little chance that the right decisions will follow.

Changes in the way the court does its business will not happen without committed judges. That's why I believe that five -year terms are a key measure of that commitment.

A five-year commitment to serve on Family Court represents one-third of a 15-year judicial appointment. Having a five-year term on family court would increase the chances that a judge really wants to serve on this bench and is not just serving his time.

Like anything else, it takes time to become a good Family Court judge. It takes time to learn the difference between giving a parent a second chance at parenting and putting the child in harm's way a second time.

It takes time to learn the difference between the fakers, the liars, the compulsives, the mentally ill, the chronic drug abusers, the alcoholics, and the parents who with supportive services can really stop hurting their children.

It takes time to figure out the right questions to ask and to realize the flaws in the stories you are being told.

The bottom line is this: A five- year term would let judges who want to serve on the family court get good at it.

The legal reforms we support here: a specialized court, trained and experienced judges, and significant terms on the bench would bring about real change in the way the Court is organized and how it goes about its business.

But these changes simply will not happen until the judges are convinced that change is necessary and unless the community supports the changes.

I hope that today's hearing sends the clear message that we mean business about creating a real Family Court. Our children deserve no less than the best that a Family Court can give them timely decisions about their future.

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Mrs. MORELLA. I know that this would be a tough act to follow, Ms. Meltzer, but I will recognize you and then Judge McCown, and then we'll open it up to questions.

Ms. MELTZER. Thank you. Good afternoon, Chairman Morella, Congresswoman Norton, Congressman DeLay, and other members of the subcommittee. Thank you for inviting me to testify this afternoon and for your leadership on this important subject.

As court-appointed monitor of the District of Columbia's child welfare system under the *LaShawn* lawsuit, the Center for the Study of Social Policy routinely evaluates and reports on the performance of the child welfare system. Although much of our work in the past several years has focused on the operation of the Child and Family Services Agency, accurately assessing the effectiveness of child welfare services necessitates also looking at the functioning of the Metropolitan Police Department, the Office of Corporation Counsel, and the District of Columbia Superior Court. Each of these agencies performs critical functions in the provision of effective child welfare services and, like a chair, the system stands or falls on the joint performance of each of its four legs.

It is not news to this subcommittee that the District's child welfare system does not comply with the requirements of the *LaShawn* Remedial Order or with the Federal Adoption and Safe Families Act. Too many children in the system grow up in foster care without achieving timely permanence through reunification with their birth family or through adoption. It is for this reason that I strongly support the legislation for change in the Family Division of the D.C. Superior Court.

I say this not because I believe that the court is the root of the problem of what is wrong with the child welfare system, nor because I believe that just fixing the court will immediately solve all of the system's deficiencies; I say this because I believe that all of the intertwined parts of the District's child welfare system must simultaneously change in order to achieve better outcomes for children and families.

The proposed changes in the court's structure under consideration at this hearing will make it possible for the necessary and complementary improvements at CFSA, the police, and the Office of Corporation Counsel to be effective. I am strongly supportive of the draft legislation that you've crafted, although I do have a few suggested changes.

Despite the strong evidence of the desire of the current court leadership to implement improvements, I believe that legislation is necessary to address some of the structural problems that currently exist and to assure that any change is institutionalized.

In my view, effective court reform must incorporate four basic elements, some of which are embodied in the legislation and some of which will require modification to the current proposal. These four elements include: Committed judges in the Family Division who are willing to serve for an extended term. The current practice of judicial rotation does not work. My preference is for a 5-year term, but I believe that if judges serve terms within the Family Division of between 3 and 5 years, there will be a substantial improvement. Judges need to be recruited who want to do this work, and then they need to be supported to continue to do this work. I

also support the provision in the bill that will add permanent magistrate judges in the Family Division, and I agree with the court's recommendation that the magistrate judges be court-wide.

Second, the court needs to be given the resources and be required to provide substantial training to both judicial and non-judicial personnel. This training must be ongoing and must include a provision for joint training with the court's other essential partners—social workers, attorneys, and the police.

Third, the court needs to operationalize a commitment to "one judge/one family" that will end the arbitrary division of the caseload into separate calendars. There is no clear rationale, from my point of view, for having separate calendars for intake, case reviews, and adoption, nor for having different judges hear different family law issues involving the same family or child. Experience from around the country suggests that structuring the court to allow for "one judge/one family" will yield considerable improvement in case processing timeframes and ultimately will benefit children and families. I am not convinced that there are any conflict of interest issues that would preclude assigning one judge to hear all Family Court matters for a particular family.

Fourth, the court must assure that, absent a very particular and compelling reason for a case to remain with a judge when the judge leaves the Family Division, all cases should be retained by the Family Division. While I understand that the Superior Court's rationale for disbursing the Family Division cases throughout the entire court was to promote continuity, my experience over the many years that I have served as monitor suggests that this practice does not work. It does not serve the interest of the children toward achieving timely permanency, and it has created considerable discontinuity and lack of consistency for all of the other stakeholders, including social workers, the Office of Corporation Counsel attorneys, the guardians ad litem, and families.

The goal is not for a child to have a permanent relationship with the judge, but to ensure that, as quickly as possible, the child has a permanent relationship with a family. It is for this reason that I suggest modifying the provision in the proposed bill that continues a special master to review the existing caseload. The existing caseload should be brought back and maintained in an adequately resourced Family Division as expeditiously as possible, with the quick hiring of magistrate judges and the selection of the Family Division judges.

In summary, I hope the Congress moves quickly to enact needed legislation and that the final legislation has an expedited implementation date. At the current time, the leadership within the Mayor's office, the Child and Family Services Agency, the Office of Corporation Counsel, and the Superior Court have committed themselves to work together in more productive ways on behalf of abused and/or neglected children.

This legislation has the potential to provide the framework and resources to assist the court in making needed changes that can parallel changes underway throughout other parts of the system.

Thank you.

Mrs. MORELLA. Thank you very much, Ms. Meltzer, for your very succinct and appropriate testimony.

[The prepared statement of Ms. Meltzer follows:]

Statement of
Judith W. Meltzer, Deputy Director
The Center for the Study of Social Policy
to the U.S. House of Representatives Committee on Government Reform,
District of Columbia Subcommittee, regarding
"The Reform of the Family Division of the District of Columbia Superior Court—
Improving Services to Families and Children,"

Tuesday, June 26, 2001

Good afternoon, Chairman Morella, Congresswoman Norton, Congressman DeLay, Congressman Davis, and other members of the Subcommittee on the District of Columbia. Thank you for inviting me to testify this afternoon on the important subject of improving services to families and children through reform of the Family Division of the Superior Court of the District of Columbia. I am Judith Meltzer, Deputy Director of the Center for the Study of Social Policy which is a non-profit policy, research and technical assistance organization located in the District of Columbia. The Center for the Study of Social Policy is the Court-appointed Monitor of the District of Columbia's child welfare system under the LaShawn A. v. Williams federal class action lawsuit.

As Monitor, the Center routinely evaluates and reports on the performance of the child welfare system in the District of Columbia. Although much of our work over the past several years has focused on the operation of the Child and Family Services Agency, assessing the effectiveness of child welfare services necessitates also looking at the functioning of the Metropolitan Police Department, the Office of the Corporation Counsel, and the District of Columbia Superior Court. Each of these agencies performs critical functions in the provision of effective child welfare services, and like a chair, the system stands or falls on the joint performance of each of its four legs.

It should come as no surprise to this Subcommittee that, although the system on the whole is on a path toward reform, the District's child welfare system does not currently comply with the requirements of the LaShawn Remedial Order nor does it comply with

District law or the federal Adoption and Safe Families Act. Too many children in the system still grow up in foster care without achieving timely permanence through reunification with a birth family or relative or through adoption.

It is for this reason that I strongly support the legislation for change in the Family Division of the D.C. Superior Court. I say this, not because I believe that the Court is the root of the problem of what is wrong with the child welfare system nor because I believe that "fixing" the Court will immediately solve the system's problems. I say this because I believe that all of the intertwined parts of the District's child welfare system must simultaneously change in order to achieve better outcomes for children and families. The proposed changes in the Court's structure and operations under consideration at this hearing will make it possible for the necessary and complimentary improvements at CFSA, the Metropolitan Police Department and the Office of Corporation Counsel to work together to achieve desired and necessary results for children and families.

I am strongly supportive of the draft legislation that has been circulated by Representatives Morella, Norton, DeLay and Davis, although I do have a few suggested changes which I will offer. Despite the strong evidence of the desire by the current Court leadership to implement improvements, I believe that legislation is necessary to address some of the structural problems that currently exist and to assure that any change is institutionalized. Without lasting court reform as one part of the broader reform strategy, the District will continue to fail to meet its child welfare improvement objectives.

In my view, effective court reform must incorporate four basic elements, some of which are embodied in the draft legislation and some of which would require modification to the current proposal. These four elements include:

- ***Committed Judges in the Family Division who are willing to serve for an extended term.*** The current practice of judicial rotation in the Superior Court where Judges pass through the Family Division for six months to one year does

not work. My preference is for a five-year term but I believe that if Judges serve terms within the Family Division of between three and five years, that will be a substantial improvement. Judges need to be recruited who want to do this work, and then they need to be supported to continue to do this work. I also support the provision in the bill that will add permanent Magistrate Judges in the Family Division.

- ***Second, the Court needs to be given the resources and be required to provide substantial training to both Judicial and non-judicial personnel.*** This training must be ongoing and must include a provision for joint training with the Court's other essential partners—social workers, attorneys, and the police.

- ***Third, the Court needs to operationalize a commitment to "One Judge/One Family" that will end the arbitrary division of the caseload into separate calendars.*** There is no clear rationale from my point of view for having separate calendars for intake, reviews, and adoption nor for having different Judges hear different Family Law issues involving the same family or child. Experience from around the country suggests that structuring the Court to allow for One Judge/One Family will yield considerable improvement in case processing timeframes and ultimately will benefit children and families. I am not convinced that there are any conflict of interest issues that would preclude assigning one Judge to hear all family court matters.

- ***Fourth, the Court must assure that absent a very particular and compelling reason for a case to remain with a Judge when a Judge leaves the Family Division, all cases must be retained by the Family Division.*** While I understand that the Superior Court's rationale for dispersing the Family Division cases throughout the entire Court was to promote continuity, my experience over the many years that I have served as Monitor suggests that this practice does not work. It does not serve the interest of children toward

achieving timely permanency, and it has created considerable discontinuity and lack of consistency for all of the other stakeholders who interact on children's and family's cases, including the social workers, the Office of Corporation Counsel attorneys, the Guardian Ad Litems (GALs) and families. The goal is not for a child to have a permanent relationship with a Judge but to insure that as quickly as possible, the child has a permanent relationship with a family. It is for this reason, that I suggest modifying the provision in the proposed bill that continues a Special Master to review the existing caseload. Under current practice, the Special Master performs a comprehensive case review and makes recommendations but the case still goes back to the assigned Judge who can be in any of the Superior Court's divisions to resolve any issues. The existing caseload should be brought back and maintained in an adequately resourced Family Division as expeditiously as possible, with the quick hiring of the Magistrate Judges and the selection of the Family Division Judges.

In summary, I hope the Congress moves quickly to enact needed legislation in this area and that the final legislation has an expedited implementation date. At the current time, the leadership within the Mayor's Office, the Child and Family Services Agency, the Office of the Corporation Counsel and the Superior Court have committed themselves to work together in more productive ways on behalf of abused and neglected children. This legislation has the potential to provide the framework and resources to assist the Court in making needed changes that can parallel changes underway throughout the other parts of the system. I thank you for your continued leadership and interest in these most important issues, and I will be glad to answer any questions you may have.

Mrs. MORELLA. Because we have a vote on the floor now, we are going to recess this subcommittee for about 15 minutes and then we'll reconvene. Thank you.

[Recess.]

Mrs. MORELLA. I'm going to reconvene the Subcommittee on the District of Columbia.

It is now my pleasure to recognize Majority Whip DeLay to introduce our final witness on the second panel, Judge McCown.

Mr. DELAY. Thank you, Madam Chair.

It is, indeed, a pleasure to introduce Judge Scott McCown. I have been told during this whole process for over a year now that judges don't want to serve on family law benches, that judges get burned out within 18 months to 3 years if they do, that judges are not responsible for being activists in making sure a child welfare system works, that judges are to be objective bystanders in this whole process.

Well, from Texas we have a judge that refutes all of those arguments. We have a judge that has been a District Court judge in the State of Texas for, I think, 12 years. He is not burned out—far from it. He is excited about dealing with the lives of children and families in Travis County, TX. He is so excited that he serves on the Texas Supreme Court Task Force on Foster Care, has served on the Texas Children's Justice Act Task Force, a multidisciplinary group working to improve the process of fighting child abuse. Most importantly, he has been active in the State of Texas in passing legislation urging an increase in funding to fight child abuse. Under the leadership of Governor Bush at that time the legislature increased funding by over $200 million in the 76th legislature. He has won many awards. He is listening to child advocacy issues all across this Nation because he is a judge that enjoys his job, enjoys working with families and kids, and enjoys what he is able to do to affect the lives of children.

So, Madam Chair, I might also mention he happens to be a Democrat, too.

Scott McCown, judge of the 345th District Court in Austin, TX.

Judge MCCOWN. Thank you, Congressman. It is my pleasure to be here today to perhaps as an outsider share some perspective on this. I am a Democrat. In fact, I come from a progressive wing of the Democratic Party in Texas, and you could have knocked me over with a feather when I answered the phone and Tom DeLay was on the other end asking me to take a look at this.

But the reason that he asked me to and the reason I was willing to is because I have lived through legislatively mandated court reform in the child abuse area in my own State and I wanted to share briefly my experience, and then comment in really some pretty blunt terms about why the reform plan proposed by the Superior Court here simply won't make a difference.

And let me begin by saying that I could be a K Street lawyer. In fact, my daughter often asks me why I'm not. And I got into this business completely by accident when I became a judge almost 13 years ago, and for the last 10 years I have been responsible for one-half of our county's child abuse docket, so I come to this from a very unusual path, but for 10 years I have been responsible for children who are brought into court by our Child Protective Serv-

ices from the day the removal order is signed until the day they go home, or go with a relative permanently, or are placed for adoption, or until the day they turn 18 and graduate. And I've got a lot of graduation photos on the wall since I have been doing this for 10 years.

In our State, through the leadership of Governor Bush, one of the first things he did when he became Governor was appoint a committee to promote adoption and reform the court system, and since the reform legislation took effect on January 1, 1998, no CPS case has taken more than 18 months from start to final order. The overwhelming number have taken less than 12 months. Within 10 months of removing a child from a parent where termination is appropriate, we terminate. Within 20 months the child is adopted—not 20 more months, but 20 months from removal. Or within 10 months the child is placed permanently with a relative. And over 50 percent of the time, after appropriate services, within 9 months a child is returned home.

We have done that through legislatively mandated reform. What it takes is a court that is committed, where a judge, a single judge, from the day the case opens until the child leaves the system, is responsible and accountable for that child's life.

Now, critics of this proposal have said that, "Well, we can't do that because people will burn out." In fact, if you have a committed judge who takes the case from beginning to end, the satisfaction of making that work and meeting those performance standards is what guards against burnout.

The high burnout rate in the District I think is actually a result of the calendar system that the District uses, where they divide the case between many, many different judges, and judges can't experience success and can't see the happiness, really, of families.

The other thing I would say to you about burnout is that judges are not fragile and they can do this job. We ask police officers to be police officers for a career. We ask social workers to be social workers for a career. And judges who have far less stress from the field in both of those occupations can do this job without burnout, and they do all over the country. In urban areas every bit as difficult as the District we have family courts with judges who have been there 10, 15, 20 years working on the problems of children and families.

The other argument is that we cannot find quality judges to do this. That, again, is simply not true. I would say to you, when you stop and rephrase the question, do you mean to say that in the District of Columbia the President of the United States cannot find 10 to 20 lawyers who are committed to children and families who are willing to serve in the Family Court for 5 years and make a difference, who are quality men and women? I don't think that's true. I think there are 10 or 20 who could do the job and do a quality job and care about these kids.

There has been a lot of talk about whether a 5-year term or a 3-year term is appropriate, and I discuss that in my written testimony and can talk about it further, if you would like, but really 5 years is the minimum for the judge to become adequately trained and to learn how this system works and to provide the advantages

of specialization, training, continuity, you have to have a judge who will do the job for at least 5 years.

I'm happy to answer any questions in detail. I know it is kind of confusing. And I don't wish in any way to cast aspersions on the Superior Court. I'm sure that they care very much about kids. But the truth is, in courts all over the country poor children and families get short shrift from the judiciary, and that's what needs to change if you are going to change their lives.

Mrs. MORELLA. Thank you, Judge McCown. Thank you for traveling here and giving us the benefit of your experiences and your commitment.

[The prepared statement of Judge McCown follows:]

Testimony of State District Judge Scott McCown of Texas
Supporting a Family Court for the District of Columbia
June 2001

The District of Columbia Family Court Act of 2001 proposes significant changes in how the Superior Court of the District of Columbia adjudicates family cases. My perspective on the proposed act may be useful to you from two vantage points. First, as a state district judge with general jurisdiction, including family cases, I understand the judicial management issues with which you are grappling. Second, I have lived through legislatively mandated court reform in family law, and I can explain why mandated reform is often necessary and how it made me a better judge in a better court.

The Need for a Family Court

Let me begin with the central issue. I have concluded, after many years as a judge, and after much study as a member of my state's Court Improvement Project, that in urban areas, children and families are best served by a court in which one judge specializing in family law hears each family case from beginning to end. I want to be quick to say that this model has not been adopted in every urban jurisdiction in my state, not even my own. I think, however, that I can convincingly explain to you why it should be.

To begin with, I offer the circumstances of the first child death on my docket, which is tragically reminiscent of the recent death of Brianna Blackmond in the District. Over ten years ago, I was a committed, young judge with fancy legal credentials on a general civil jurisdiction docket, but I had no training or experience in family law. Under our system, in the normal course of events, I was assigned to hear a case brought by Texas Child Protective Services in the interest of a young boy who was about two-years old.

His mother's boyfriend had beaten him. CPS was recommending that I place him in foster care. After hearing the evidence, which included that the mother had a job, her own place to live, had separated from her boyfriend, and was willing to attend protective parenting classes, I returned the child to the mother. A short time later, CPS was back before me because the boy had again been beaten—not by the old boyfriend, but by a new boyfriend. At this hearing, the father appeared and asked for custody. He had a job, a home, and a fiancé. He was willing to take parenting classes. CPS again asked that I place the child in foster care, but I instead placed the boy in his father's care. Then one morning a few weeks later, as I came into the office, I was met by the child's guardian ad litem who said to me, "Judge, I have some bad news." The bad news was that the father's fiancé had killed this two-year old boy.

What was my role in this child's death? I have often reflected on that question. I know I was not a trained and experienced family law judge. A trained and experienced family law judge would have understood that children from chaotic homes where they have been abused can be particularly difficult to parent; these children can act out in

ways that create abnormal stress for inexperienced caregivers who then further abuse them. A trained and experienced family law judge would have moved more slowly and required a more careful home assessment of the father and his fiancé. I now know that making good decisions about families requires more than common sense; it requires a great deal of expert knowledge.

Of course, no judge however expert can guarantee the safety of the children on the judge's docket. Judges must make difficult decisions about children on often little or unclear evidence. When doing so, judges must balance the strengths and weaknesses of various placements, including safety risks, and determine what is in the best interest of the child. Sometimes tragedy will follow even when the judge makes the best decision possible. Even so, from my experience, I have come to the certain conclusion that a trained and experienced judge specializing in family law and presiding over a family law case from beginning to end can obtain a better outcome.

At this point, I need to define some terms. In judicial administration, judges refer to "family courts" and "unified family courts."[1] The distinction is important. A family court is a court hearing only family cases. Different jurisdictions with family courts will divide family cases differently between various "dockets" or "calendars." Some jurisdictions will have less division than others. In any given jurisdiction, however, one family with multiple cases may find itself before multiple judges. For example, one judge may hear a child support case, while another judge hears a child

[1] The history and theory of family courts, including unified family courts, are thoroughly discussed by Judge Robert Page in Page, *"Family Courts" An Effective Judicial Approach to the Resolution of Family Disputes*, 44 Juvenile & Family Court Journal 1 (1993).

abuse case, while yet another judge hears a domestic violence case, all involving the same family.

A unified family court is a court hearing only family cases using a "one-judge, one-family" model. Under the "one-judge, one-family" model, a single judge presides over all the family law issues of a family from the beginning until the end. To offer the most complex example: For one nuclear family, a unified family court judge would decide all applications for protective orders regarding family violence, all complaints of child maltreatment, any divorce and custody case between the mother and father, all questions of child support, and, if the child were removed from the parents, the same judge would decide about termination of parental rights, guardianship, and adoption. Some models go a step further by having the judge also hear any juvenile delinquency case involving a child of the family or any criminal case of a parent regarding a crime within the family such as domestic violence or child abuse.

So, a "unified family court" can be more or less unified depending upon the choices of a particular jurisdiction. In a unified family court, the system does not parcel out questions about the family between judges in different courts or between judges on different calendars. This does not necessarily mean that the system does not have branches. The court may still organize by logical branches since most families will find themselves before only one branch such as child support or child abuse. Regardless in

what branch a case begins, however, a single judge will hear and resolve all the legal issues of the family.[2]

The advantages to judicial decision-making of the unified family court are significant. A single trained and experienced judge who specializes in family law learns all about the family and develops a coordinated plan for the family, including the delivery of social services. A modern family court does more than just adjudicate; a modern family court determines what services a family needs, such as substance abuse treatment, and both orders the use of services and oversees compliance. (A modern family judge is one part cheerleader and one part referee. Because of the need to be a cheerleader, not every good judge can be a good family judge.)

To be clear, the District does not have anything approaching a unified family court, and a harsh critic might go so far as to say it does not have a family court of any sort. The District's "family division" operates on a "slice-and-dice" model. The problems of a family are sliced by dividing issues between various "calendars," each heard by a different judge, and then to compound the problem, the calendars are diced by rotating the judge on each calendar frequently, and then diced yet again by frequently rotating judges out of the family division altogether.[3]

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[2] My personal experience with a unified family court comes from my special assignment to hear half of all the CPS cases filed in our county. When CPS files a case in our county, we treat the family in a unified way. One judge hears all issues, including divorce, child support, domestic violence, termination of parental rights, and any issues of guardianship or adoption. As long as the child remains a dependent of the court, the same judge hears the child's case, so I have been responsible for some children for ten years. We have recently added the issue of delinquency to the unified court, though we do not hear criminal cases. If I am unavailable, another judge may hear a lengthy contested termination trial, though the case remains my responsibility going forward

[3] In child maltreatment cases, when a child cannot be returned to the family, but adoption or permanent guardianship has not been achieved, the judge keeps the case when the judge rotates out of the family

The Importance of Specialization, Training, and Experience

Frequently rotating judges is problematic because specialization is important in law just as it is in medicine. Like medicine, law grows increasingly complex. For example, we know more now than in the past about family dynamics, child development, child maltreatment, domestic violence, mental health/mental retardation, and substance abuse, and since we know more, our laws—and the public—require us to do more. In the highly complex area of family law, to achieve the level of competence necessary to be effective, a judge must specialize in family law. Of course, specialization has its disadvantages, just as generalization has its advantages. In an urban area, however, given the number and complexity of the cases, on balance, specialization is both necessary and desirable.

With specialization come the advantages of training and experience. Of course, every judge has to hear their first case, but no judge should hear family cases without training and experience in family law. The decisions made on the family docket are some of the most profound decisions made by any judges. Understanding family law and families is essential to being a capable family law judge. Preferably, judges should learn through training rather than from their mistakes on the bench. Moreover, quality

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division. The proposed act calls for these cases to be returned to the family court; the superior court wants to leave them with the judge familiar with the case. In my judgment, these cases need to be collected before one judge so that progress in permanency can be the responsibility of a judge current in best practices and available services and whose performance can be measured. These advantages offset any familiarity with the case. Moreover, your child welfare agency has limited resources, and it would be much more efficient for the agency to answer to fewer judges.

training will teach a judge far more than years on a bench. Like training, experience improves decision-making. The more one sees, the more one knows. Both training and experience, however, require an investment of time.

The Importance of a Five-Year Term

The proposed legislation ensures that judges stay in a family court for a significant period of time—at least five years. A significant period of time is required for three different but equally important reasons.

First, a significant period of time is necessary to realize the advantages of the training and experience just discussed. It is helpful to look at the issue in percentages of time. Training and experience are the investment you make in a judge. In my judgment, the point at which training and experience become valuable is about two years. In other words, it takes about two years for a judge to take the courses and hear the cases necessary to become a seasoned decision-maker.

To realize your investment in training and experience, you must therefore have a term longer than two years. If the judge's term is no more than three years, however, you have spent 66% of the time investing in the judge and only 34% of the time realizing your investment. If the judge's term is only four years, you have spent 50% of the time investing in the judge and only 50% of the time realizing your investment. At the five-year mark, you finally get ahead. If the judge's term is at least five years, you

have spent 44% of the time investing in the judge and 56% of the time realizing your investment.

Second, staying in the family court for a significant period is necessary to achieve the decision-making advantages of having a single judge. Keep in mind that rotating a case from judge to judge has the same effect as rotating the case from calendar to calendar or court to court. To put it simply, to have the advantages of "one judge" you must have one judge.

But why do you have to have the same judge for five years? The reason is again related to time. To illustrate: Assume that the average length of a case is one year. If a judge has a term of one year, the judge will hear few cases to a conclusion because litigants will have filed new cases each day throughout the year. If the judge has a term of two years, the judge can at best hear half of the cases to conclusion (50%). If a judge has a term of three years, the judge can at best hear two-thirds of the cases to a conclusion (66%). If a judge has a term of four years, the judge can at best hear three-fourths of the cases to a conclusion (75%). If a judge has a term of five years, however, the judge can hear four-fifths of the cases to a conclusion (80%). Thus, for the greatest number of children and families to achieve the advantage of a unified family court, the term needs to be at least five years.

Finally, a term of five years is important as a test of commitment—sort of like the difference between being married and living together. You want judges who propose to marry the family court, not who offer to just shack up. But again, why five years? Because a lawyer that wants to be a superior court judge, but not a family court judge, is

likely to see doing three years as a family judge with a rotation to another division as a reasonable price to pay for an appointment to the bench (20% of the fifteen-year term), while the same lawyer is unlikely to see five years as a reasonable price to pay (33% of the fifteen-year term). Whoever applies for an appointment to the superior court, knowing that they will serve for at least five years on the family court, is simply more likely to be a family law practitioner who is committed to children and families.

Quality Judges

Some have argued, however, that you cannot find enough judges willing to make a five-year commitment to the family court, and some have suggested that you cannot find enough quality judges among family law practitioners. Both arguments are demonstrably wrong. In the urban jurisdictions of our country, we do not have a shortage of quality applicants for family courts. Furthermore, many fine judges have come from the ranks of family law practitioners.

Moreover, even if it were true that family law practitioners are somehow less able as a class than say corporate lawyers, it is a strange sort of logic that would have us looking for family judges among corporate lawyers. Again, consider an analogy from medicine. A child's general medical needs are best met by a doctor who is trained as a pediatrician and cares about children; a child's general medical needs are unlikely to be well met by a hot-shot heart surgeon, even if the surgeon is a whole lot "smarter" in some abstract way than the pediatrician, particularly if the hot-shot really doesn't care to treat the child.

Judicial "Burnout"

Some have nevertheless argued that serving for five years on the family court will result in "burnout," so judges should serve only three years or even less. "Burnout" means that a judge becomes so worn down by the work that the judge stops making good decisions. The concern about burnout, however, is misplaced for three reasons.

First, the argument is demonstrably wrong. In many urban jurisdictions, judges sit on family benches as difficult as those in the District for their entire careers and continue to make good decisions. We know family judges can work without burnout because we have many of them doing so across the country.

Second, like the argument about quality judges, the argument about burnout is based on a strange sort of logic. We want to avoid judicial burnout because burnout leads to bad decisions. But if your plan is to frequently rotate judges through family court to avoid judicial burnout, then your plan leaves you with the very problem you are trying to avoid—judges who make bad decisions.

Third, and most important, the argument is wrong because it misunderstands the cause of judicial burnout. The cause of judicial burnout is not the number or difficulty of the cases; the cause of judicial burnout is failure at one's work—a feeling of hopelessness about the task. A committed judge with training and experience who sits in a specialized family court doing good work draws deep satisfaction from helping children and families. While such a judge may eventually tire and seek a new assignment, the judge is not likely to do so in a mere five years.

Judicial Leadership

A unified family court is about more than just child welfare cases, but I want to focus for a moment on child welfare. Recently, much study has been done and many steps have been taken to address the issues of the child welfare system in the District. In light of all that has been done and all that remains to be done outside the court, some have suggested that now is not the time for judicial reform. To the contrary, now is the critical time. Nothing in the child welfare system works if the court does not work, so reforming the court is essential for the success of other reforms.

Moreover, by mandating strong judicial oversight of the system through a unified family court, you will empower judges to become community leaders. In this role, judges will work with each part of the public-private partnership that composes the child welfare system to help identify and solve problems.[4] Judicial oversight will also enable you to track how and where the child welfare system is failing. While judicial reform alone is not enough, it is required now.[5]

Separation of Powers

Some have suggested, however, that Congress should leave judicial improvement to the bench and bar. Some have even suggested that to do otherwise would be "unusual." Unfortunately, in the area of family law, legislative action is not only the usual way for reform, usually it is the only way for reform. There are inherent

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[4] For further information about judicial leadership in child welfare, see The National Council of Juvenile and Family Court Judges, *Judicial Leadership and Judicial Practice in Child Abuse Cases*, 2 Technical Assistance Bulletin 5 (July 1998).

[5] The District's children live especially precarious lives. About 100,000 children live in the District. About 36% live in poverty. About 20% live in extreme poverty. About 35% of all children under five live in poverty. The median family income of families with children is about two-thirds of the national average (not quite $29,000). The percentage of female-headed families receiving child support is about

barriers to the judiciary creating a unified family court. Such a change potentially affects 1) what lawyers will become judges and 2) how many judges will be available to hear what cases. For judges, these questions are internal and external political hot potatoes.

Moreover, creating a unified family court will allocate more judicial resources toward low-income families. Low-income families have little political influence, particularly with regard to judicial administration. Even though judges want to do right by low-income families, it is politically difficult both internally and externally for judges to allocate resources toward low-income families. For these reasons, if change is going to happen, the legislative branch must cause it.

Legislatively Mandated Change in Texas

I myself have lived through legislatively mandated reform. In 1996, Governor Bush, now President Bush, appointed the Governor's Committee to Promote Adoption. He charged the committee specifically with looking at judicial barriers to adoption in the child welfare system. From the work of this committee[6] and others, significant legislative reform emerged in 1997 that imposed a schedule for hearings and timelines for disposition much more stringent than the federal Adoption and Safe Families Act. Like many judges, I thought we were already doing a good job and was appalled that the legislature did not leave judging to judges.

13% compared to the national average of 34%. *See* The Annie E. Casey Foundation, 2000 Kids Count Data Book. Given such conditions, numerous and complex cases will come before the court.

[6] Report of the Governor's Committee To Promote Adoption (September 1996).

However, the challenge of implementing the new legislation intrigued me. The legislation took effect for new cases on January 1, 1998. The judges and others worked hard to implement the legislation. In my county, since January 1, 1998, no CPS case has taken more than eighteen months from start to final order, and the overwhelming number have taken less than twelve months. In those cases where appropriate, the court terminates parental rights on average within ten months of removing a child from a parent. We achieve adoption, on average, in twenty months—not twenty more months, but twenty months from removing the child from a parent. In those cases where appropriate, the court establishes a guardianship with a relative or the state on average within ten months of removing a child from a parent. Our courts, however, are not termination mills. In those cases where appropriate, which is about 50% of the time, we return children to a parent, after providing services for the family, on average within nine months. About 25% of the time, we place a child with a relative. About 15% of our children are adopted, and we raise about 10%.

Judicial Responsibility

The reason a judge working in a unified family court can make such a difference is that the structure of the court both requires and empowers the judge to take personal responsibility for the children and families on the judge's docket. On my CPS docket, I am responsible for what happens and when it happens. Making responsibility personal substantially improves performance, particularly when performance is measured. None of us, judges included, like to have our performance measured. Yet, nothing

changes unless you measure it. With a unified family court, you place responsibility on an individual and you measure performance. By doing so, you achieve results.

A unified family court can achieve results in the District. The District's problems are not overwhelming. To the contrary, the District is a small place with many resources. In my single county, we have more than twice as many children as in the District and more children living in poverty, but through legislative reform, we have eliminated our child welfare case backlog and met stringent disposition time tables. Through legislative reform, you can do the same in the District.

Home Rule

As an outsider, I venture with great trepidation into any discussion of home rule. Because I am an outsider, however, my dispassionate perspective may be helpful: As I have explained, only the legislative branch can make the sort of change proposed. In a state, the legislature would make such a change. In a city, the council would make such a change. In the District, however, Congress controls the court. Some argue that this is good for the District because of the prestige and funding it brings the court. Some argue that it would be better for the District to have control of its court because of legitimacy and responsiveness. Regardless of which is true, the reality is that right now the Congress is responsible for the court. The court should not escape effective legislative oversight as sort of a no-man's land in the struggle over home rule. Nor should children and families—mostly low-income families—be caught in the cross fire between opponents and proponents of home rule.

Conclusion

In this unique moment, the District has the opportunity to obtain something truly meaningful for its residents, particularly its children. By embracing the unified family court and deploying the resources that would come with the proposed legislation, the judges of the superior court would be able to do much good. Judges, like others, are naturally resistant to change and naturally hesitant to assume responsibility for the problems of children and families. With the legislative mandate of the District of Columbia Family Court Act of 2001, however, I am confident the judges will rise to meet the challenge. Both they and you will be proud of the results. While I might have an issue with a detail here or there, I strongly support passage of this landmark legislation.

Respectfully submitted,

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Mrs. MORELLA. I'm going to defer the first round of questions to begin with to Mr. DeLay to start the questioning.

Mr. DELAY. Thank you, Madam Chairman.

I did not have the opportunity to read Judge King's testimony, and I apologize for not being here, but, Judge McCown, what we're trying to do here in the District is to reform the system with the best interest of the kids in mind. Part of that is to beef up CASA in this District. Could you explain how we use CASAs in Texas?

Judge MCCOWN. Well, CASA stands for Court-Appointed Special Advocate, and I'm sure the committee members are familiar with it. In Texas each jurisdiction will have a CASA organization. It is usually organized as a nonprofit. And the organization will supervise, train, recruit community volunteers who will then advocate for a child from the beginning to the end as they make their way through the system, and it has been an extremely valuable tool to bring additional resources to the child welfare system and to connect the child welfare system with places in the community that it wouldn't otherwise be connected with, and it has also been extremely valuable for our children in terms of providing advocacy and continuity.

The judges in our county actually were the ones who brought and founded CASA to our county in 1986, and we have about 40 percent of our children now are served by CASA, so it is an extremely valuable organization.

Mr. DELAY. I want to revisit this burnout issue. First, you mentioned 5 years was important, but is 5 years enough, in your estimation, to create this notion that you get judges that actually want to practice family law or sit on the bench and deal with family issues? And please address the whole burnout issue—I know you were pretty articulate about that, but this is critical.

See, I wanted the 15-year term to be all family court, and yet I've come down to 5 years. Is 5 years too short, in your estimation? And you might want to readdress the burnout issue.

Judge MCCOWN. Let me begin by talking about the calendars, because I think you have to understand the calendars in order to understand burnout and the term.

What the District—excuse me, what the Superior Court is proposing to do in their reform plan is to have a permanency branch that is divided into three abuse and neglect calendars, one adoption calendar, one termination of parental rights calendar, and one permanent guardianship calendar.

That means that if a child comes into the system they start on the abuse and neglect calendar, so they have one judge. If that judge rotates while they are on that calendar, they may have a second judge on that calendar. Then, if the child—if Child and Family Services is going to advocate for termination, the child moves to the termination of parental rights calendar, where they have at least a second and maybe a third judge. If the judge rotates while they are on that calendar, they may have a fourth judge.

If parental rights are terminated and the child is now free for adoption, they move to the adoption calendar, where they have another judge. If that judge rotates off the adoption calendar while they are there, unless he takes the case with him, then they are going to have another judge.

I don't know if the child stays on the adoption calendar forever, but once, I think, his plan changes to no longer be adoptable, if that happens, he may move to the permanent guardianship calendar, where he has another judge.

So the calendar system means you don't ever have one family/one judge and you don't have a single person that is accountable, and then it is compounded by the rotating of judges on and off the calendars.

Contrast that—and how this relates to burnout is very important. It relates to burnout because you don't have a judge who experiences success. If you are on the abuse and neglect calendar, you may see some success from the kids that go home off your calendar, but the kids you send on to the next calendar, you never know what happens. And if you are on the termination of parental rights calendar, you are seeing no success. You're sending them on. And the adoption and guardianship calendar, you don't have the joy of sending kids home. And so you've diversified and cut up the job in a way that leads to burnout.

The other problem it leads to, of course, is you don't have good, consistent decisionmaking being made about that child, and, most importantly—and this is what is critical, and this relates to the 5-year terms—you don't have a single judge who is accountable through performance measures to say, "This is a judge moving the docket, disposing of the cases," and that's critical, that personal responsibility.

So how does that relate to the 5 years? Frankly, if you pick the right people to be judge, the 5-year issue goes away because they will want to be there for 5 years and they will renew for a second 5 years. But the reason the 5 years is critical as a piece of legislation is because that will then change who becomes judge, and that's why this is such a contentious issue.

When you say you've got to be in the Family Court for 5 years, you have changed the cast of people who are willing to step up and be judge, and you've got a new cast of people from which you can presumably have a much greater chance of drawing trained, committed judges who want to be there, as opposed to, as you put it, Congressman, people who are willing to serve a 3-year sentence to then get a 12-year advantage of being on the fancy Superior Court in some other division. It changes the cast to apply for the job.

The second important thing about 5 years is that cases are filed every day throughout a 5-year term, and so if you want a judge who is actually going to be there for that child and that child's family, then you've got to have a judge who is going to be there for some number of years.

I illustrate this with a model in my written testimony that, if you are following the cases and we assume it takes a year to dispose of the case, which would be fabulous in the District, and you were there 5 years, 80 percent of the cases would have one judge/one child. If you were there only 3 years, then only 66 percent of the cases have one judge/one child. So it affects the delivery of the one judge/one child.

But, finally, and perhaps most important, I have had children die on my docket, so I'm not here to criticize anybody. I've had two children die as a result of decisions that I made and signed orders

on. This is a difficult business. It takes about 2 years to figure out who is who and what is what and how you do this. If you have a judge for 2 years learning, getting up to speed, you have the advantage of that judge for 1 year and then they're gone—66 percent of the time training, 34 percent of the time performing, as opposed to 5 years, which would be 44 percent of the time training and 56 percent of the time performing. It makes a huge difference.

You've asked me whether 5 years is enough. I would say 5 years is the minimum. If it is a 5-year term with renewable, I think you've got a great start toward changing the system. It is the minimum.

Mr. DELAY. My time is up. Thank you.

Mrs. MORELLA. We'll come back for another round.

Ms. Norton.

Ms. NORTON. I think in fairness I have to hear from those who have opposed. I was not going to begin with that question. I do want to lay the predicate for it by understanding something about Travis County. Where is Travis County?

Judge MCCOWN. It's in Austin. Well, Austin is in Travis County.

Ms. NORTON. What does it include? What does it include?

Judge MCCOWN. We have about 200,000 children, so we're about double the size of the District in terms of child population. About 20 percent of our children would be in poverty, which is about half what the District is, but because we're double in size we actually have more children in poverty in the county than does the District. And——

Ms. NORTON. I just wanted to understand what Travis County is, because we're not in a county, we're not in a State.

Judge MCCOWN. Right.

Ms. NORTON. There has been a lot of talk about panels here from Judge McCown. Our bill does, in fact, require one judge/one family, and I don't want to insert into this something that is not in our bill, but I do think those of you who have said that 5 years are not appropriate for this place need to respond to what I think was an important answer that you heard from Judge McCown.

I suppose first I should hear from Judge King, because, according to Mr. McCown's testimony, your plan would, even with our bill, force people into four or five different judges. Since that is obviously against the express intent of this bill, you need to respond to what he said, if you would.

Judge KING. Thank you, Congresswoman Norton.

Let me thank, in his presence, Congressman DeLay, whose efforts have been so helpful in focusing attention to this area.

I'd like to pick up on one thing that Judge McCown said that I believe is a feature of our proposal reading our court, our judges, our lawyers. I, of course, am not competent to comment on the legal culture in Travis County. But I believe that a 3-year term in our situation draws a balance between the threshold to bring people into the family assignment and at the same time, with renewable and extendable terms, would encourage judges to continue service in that area.

I think Judge McCown said it best. If the Family Court is well-designed and the work is adequately supported, the 3-year or 5-

year issue goes away, because the judges will become interested in renewing and extending those terms.

So what our settlement on 3 years—and I appreciate that in any political determination there's always expected to be some trading and compromise, and we appreciate there has been a tremendous amount of compromise. On this area I am trying very hard to find a way to go beyond what we would recommend, and I can't, in good conscience, do so, because I am looking at a circumstance that many of our strongest family judges have come from ranks where they weren't necessarily family judges to begin with and that become stars of the Family Division and the Family Court.

I believe that this will give us the strongest appeal, given the pool of lawyers that we are looking for, to come on to the Superior Court, to opt into the Family Court, and to then stay.

So I believe that the people that we are looking for will get there. They will get there by professional development and commitment as they do their work, rather than——

Ms. NORTON. I don't know what the answer here is, and, you know, it is all "a priori" blueprint stuff that depends on individuals. I must say that I am struck by the antipathy between what everybody expresses, which is the notion that you've got to want to do this and volunteerism on the one hand and compulsion on the other. "Hey, you've got to want to do this, but you've got to want to do it for 5 years or for 3 years or whatever." And I am completely unconvinced that if you want to do a particular kind of work you will never burn out.

Let me speak about the Congress. People want to be in Congress so bad that Mr. Delay is against campaign finance in order that they would be able to spend any amount of money to get here. People pay—raise a million, $2 million, $3 million to sit in the House of Representatives. They kill their opponents to be here. They come here and there is very little turnover based on being defeated, I say to my fellow Democrat, Judge McCown, but there is a lot of burnout, and we lose some of our best Members, people who I can't imagine leaving—they are in closely held Districts, they have had to raise money every time, they love what they are doing, they would love to stay here if they could find an easier way to do it. They have proven that they want a volunteer to come. They have proven in a way that no judge will ever have to prove. But they get burned out. They go back home to go into law or they bother us from K Street. [Laughter.]

So, I mean, whoever wants to tell this Member that if you want to do something you will never burn out has a very high burden to meet, and so far I have not had it met.

Now, Judge McCown, good lawyer that he is, wants to attempt to meet that burden.

Judge MCCOWN. I'd like to meet that burden, if I could. I don't mean to suggest that a person who volunteers and has commitment doesn't burn out. I don't mean to suggest that at all. What I do mean to suggest, though, is that the way the District organizes its calendar right now and proposed to promotes burnout—that if you change the way the calendar is organized and, with increased resources not just for the judges but for Children and Family Serv-

ices so that you can experience greater success, that will also decrease burnout.

Those are critical, so don't misunderstand me. Those two steps are critical. Having taken those two steps, the question then becomes, "Do we want to ask judges to serve for 3 years or 5 years?" And what I'm saying is that, as an administrative matter, when you think through the numbers, a 3-year term does not give you a trained, competent judge for most of the time he sits in the division. It does not give you one judge/one family for most of the cases that are heard in the division. And you will change the pool of applicants based on whether you require three or require five.

Ms. NORTON. Judge McCown, are you aware that our judges sit on the average for 9 years, and that, therefore, 3 years would be one-third of the time that the average judge sits on the bench in the first place?

Judge MCCOWN. Well——

Ms. NORTON. Are you familiar at all with our court? Have you spoken with anybody in the District of Columbia who is familiar with our courts?

Judge MCCOWN. Yes, ma'am. I——

Ms. NORTON. Who?

Judge MCCOWN. Well, I talked with Jim Marsh at length, who is a child advocate and an attorney who has practiced in the District. I read all of the written testimony from the judges. And what I'm bringing to you are not somehow idiosyncratic or local principles from my district. What I'm bringing to you is best practices in judicial thinking that you will find in the books and the manuals.

Ms. NORTON. Yes, well, we found a lot of disagreement on best practices and the number of years is all over the map, Judge McCown.

I do think this notion—if I could just ask your indulgence to respond to one of Judge McCown's point—if Judge McCown is right that somehow in the Family Court with the panel system you have—divorces and whatever, branches or whatever—that there would be—we would no longer have one judge/one family. That raises the most troublesome point for us because Mr. DeLay and I are in agreement that there must be one family for one judge.

I think you need to respond specifically to Judge McCown's notion—I didn't hear you respond to that earlier—about whether your division within the Family Court will take away one of the prime points of this bill.

Judge KING. We don't disagree with that notion. In fact——

Ms. NORTON. Well, how will you organize—if it is 3 years, how will you organize the court so that one judge and one family, in fact, is the case?

Judge KING. The calendars, as we plan them—and let me point out that we are constantly looking at that to see if there is—to see if that is the best way to implement one family/one judge. We don't disagree with that goal at all.

The way it works now, according to the plan, the way the plan sits now, teams of a judge and three magistrates would take the case in, the case would go to a team member from the day it came

in and it would remain with that team member for the balance of the life of that case.

The only time it would go out to one of the other calendars, assuming that it had the same child and there were the same issues, would be in cases where due process requirements required that a different judge hear some parts of the case.

For example, a termination trial might require a judge who had not spent years listening to hearsay and hearing third-hand comments from social workers about other family members, and so on, just to give the elements of a fair trial in the termination process.

But otherwise there would be one judge or magistrate judge, depending on who took it, picked up the case. That judge would be supported by the team, would be able to consult on the case, much as in the medical profession—you have grand rounds—so you'd have an opportunity to have a constant dialog with other judges.

We already have proven the elements of a one judge/one family system because that's much of what we do now, and I can say from my own experience in neglect cases that I agree with Judge McCown—there is nothing more satisfying than being able to take a case where, for example, an adoption looks like it is going to work, and conferring with the adoption judge, that case gets sent to my calendar or the matter gets sent to my calendar. I simply instruct the parties to file it on my calendar and I'm responsible for the entire thing, for closing the case.

So we have—we are very acutely aware of the advantages of one judge and one family, and our calendar structure addresses families and children where they don't all have the same issues. A custody issue, for example, doesn't need to go on an abuse and neglect calendar, it should go on a custody calendar. If there is a custody issue in a neglect case, then it stays on the neglect calendar. So we are very much in agreement on the one judge/one calendar issue.

I would also—let me point out one other thing there has been on the burnout issue. There is satisfaction in being able to take a child's case to the conclusion, the successful conclusion for that child. There aren't a whole lot of things a judge does that are more satisfying and important and fulfilling and that make a greater contribution to the community.

The problem in the past—and I'm happy that we are sitting at the table here, that among us at the table here is Dr. Olivia Golden. In the past, we have not had that adequate resources piece, so that, no matter what the calendar structure we had was, we knew going in that it was going to be extremely difficult to provide the services and to focus the appropriate resources in bringing the case to permanency promptly.

I believe, I'm very optimistic, that's in the process of changing and that we are moving to an era when that won't be true, and obviously that is going to make a big difference for judges, as well as social workers and others involved in the system.

Mrs. MORELLA. The gentlewoman's time has expired.

Picking up on the same point, it seems to me that the mandated length of service is a critical point where there are different opinions. The Senate version, the Senate draft of proposed legislation would have current judges serving 5 years, but would have the

newly appointed judges serving 3 years—I'm sorry, just the opposite. Those who are currently serving would be serving the 5 years—will serve the 3 years.

Judge KING. If I may, I believe——

Mrs. MORELLA. Would you clarify that, and then I want to pick up on another point.

Judge KING. Yes. We haven't actually seen the draft, so I'm a little bit shooting in the dark, but I——

Mrs. MORELLA. I just heard about that.

Judge KING [continuing]. But what I have heard is that existing judges—I suppose in recognition of the fact that they've already sort of learned to be judges, but now need to learn the family—the specifics of a family assignment, and judges who have already served periods in the family court, so that they would not need the same thing, would serve for 3 years. New judges seeking appointment to the court would anticipate a 5-year term. I believe that's the structure.

Mrs. MORELLA. I'm going to ask all of you very briefly your opinion of that, but I also want to point out something else, and that is that the plan also before us calls for judges to serve for 3 years and judge magistrates to serve for 4 years. I just wondered, have any of you given any thought to making the term 4 years? We're talking about 3 and 5 and your judge magistrates would be 4 and those who are currently serving would be 3 and the new ones would be 5 and——

Judge KING. We have been—I think our notion was to be sure that terms were staggered so that you always had a pool of experienced judges and magistrates, and the other thing, frankly, we borrowed from the experience in a number of jurisdictions, including Ohio, where much of the calendar work is done by magistrate judges, and that was an experience that we drew on in formulating that part of the plan.

Mrs. MORELLA. Yes. And you think that would be effective? I know Senator DeWine has been very much involved with the Family Court issue.

Judge KING. Yes. And the magistrate terms are coterminous with their term of service, their 4-year terms.

Mrs. MORELLA. Their 4 years.

Would the rest of you like to comment on, again, the 3 years, 5 years, 4 years, with justification? Dr. Golden.

Ms. GOLDEN. I guess the comment I would make is that our review of the national experience—for example, as summarized in the Council for Court Excellence summary of experience across the country, shows a very big element of agreement, which is that multi-year terms matter. Having judges who come with experience and training and then who serve for multiple years really matters.

I don't think we read the national experience to give you a number. The successful courts that they visited ranged from the 3-year range up. And so I don't think that there is a single answer to this. I think that the most key thing and the reason that our testimony says a minimum of 3 years is that we need the move from where we are now to a place where we have at least this multi-year opportunity in order to move ahead.

And I guess the one other thing that I would add, speaking as someone embarking on the task of reform of CFSA in a way that fits with the reform of the courts is that, from my perspective, a big opportunity the this legislative change, this work offers is that we can all embark on it together and that the team of judges, the core group of judges who will serve for that multi-year period, at least 3 years, and who will be gaining—who will be having the support as well as the training and the expertise, we will have a group of judges to work closely with as we move ahead, rather than working with all 59 doing their best to remain connected and committed.

So I would highlight that I think the national experience suggests multi-year, that we all do our best to interpret that. As I say, we've interpreted it as at least three, and that, in itself, is an important step.

Mrs. MORELLA. And that some jurisdictions do have a mandated minimum of more than that. We'll be asking Mr. Harlan also, you know, for his comments on best practices as he has seen it.

I am very interested, Councilwoman Patterson, especially since you are going to be having this other hearing and——

Ms. PATTERSON. Let me acknowledge I have no firm, fixed personal view on terms, but I take the point of recommendation made by our court in terms of what is likely to work in our own court's culture and so forth, and taking Mr. DeLay's point that change won't happen until judges accept the need for change. It's important to work with what we have today. At the same time, I would also share the view that I would very much like judges to want to serve 15 years or more in this function. I think the desire to do this work is very important.

Mrs. MORELLA. You know, we've got to increase the concept of our culture of making this important. I've felt that way about teachers, and certainly people in a position like that. We've got to say this is something of deserving of our recognition and attention.

Ms. Meltzer.

Ms. MELTZER. I would just add that I guess my position is closer to Judge McCown's than the Superior Court in the District. I think that what we know is that children in this system now stay somewhere between 4 and 5 years, so if what we're really trying to do, until we bring these lengths of stays down, if we want to achieve a one judge/one child, then it leads me to support more in the range of 5 years rather than 3 years.

On the other hand, I think 3 years would be a big improvement over the 6-months to the 1-year rotation that we have now.

I also know from my own experience as an external monitor of the child welfare system for going on 7 years, that I still find out new things about how the system operates every day. Child welfare policy and practice is extraordinarily complex, and the more judges have the time both to learn and experience it, the better.

The last thing is that I definitely think that you can recruit qualified judges who want to do this job and who want to do it for a minimum of 5 years if you set 5 years as a term.

Mrs. MORELLA. My time has expired. I'm going to recognize Mr. Davis. But I do want you to be thinking about a question I would like to have you answer in the future, and that is: should there be

something that we do to incentivize judges for wanting to get on that court besides the fact that they know it is important because they are dealing with our youth who will become our leaders, but what we might offer in that regard?

So, Mr. Davis, I am pleased to recognize you, sir, for questions.

Mr. DAVIS. I think one of the points we've left open—I just will give you my opinion on 3 years or more. It is 6 in Virginia, and let me just tell you, after 6 years everybody either wants to get reappointed or they want a promotion to the bench. You don't have anybody who says, "I'm burned out. I want to go back. I want to do something else." No one moves from the juvenile domestic relations Family Court back over to General District Court. It doesn't happen. And you get a dedicated cadre of folks who carve out a career niche, and I just don't think you have to face this with the kind of community we see out of the court system. It's just a no-brainer from the perspective that I've had, and I practiced out there for a number of years before I came to Congress.

But one of the points that we've left open for discussion is the total number of judges and magistrate judges that would be necessary. We've talked about resources. You can have a dedicated cadre, but if your docket is overwhelmed, even if they are dedicated, you're back to where you were.

Do we have any figures in mind at this point? What analyses have been done on this to know what resources we would need in terms of judges and magistrate judges?

Judge KING. We have—sidestepping for a moment the issue of the existing case load under review, we have analyzed the capacities of judges to address cases, and our conclusion is that we would need 15 judges and 9 magistrate judges to staff the Family Court as it is currently—as the current draft appears.

Now, that sidesteps the issue, if you suddenly, in one block, brought all cases under review into the Family Court, then there would be a different—that would be a different situation.

We are arguing for and hoping that we can come out of this with some sort of phased process for bringing cases that are now among the 59 judges in closing some of them and bringing some of them in a gradual fashion. That way we could——

Mr. DAVIS. Could I ask this—could we get in the record any analyses that were done to come up with these numbers so that we'd have a better feel for it?

Judge KING. I'm sorry?

Mr. DAVIS. Any analysis you've done to say that we need 59?

Judge KING. Yes, I will be happy to do that.

Mr. DAVIS. I just think that ought to be part of the record——

Judge KING. I will be happy to supplement the record.

Mr. DAVIS [continuing]. Judge, on what that's based so we can take a look at that.

Judge KING. That would be fine.

[The information referred to may be found on p. 152.]

Mr. DAVIS. Let me just—Judge, let me ask you, can you explain to me how the current mediation program in the Family Division operates?

Judge KING. We refer cases on a largely voluntary basis. That's going to change. I think one of the parts of our plan is that medi-

ation should be used in every case, assuming that you've made adequate safeguards for the safety of the participants in mediation and you're watching for issues of——

Mr. DAVIS. So you're going to change it. Let me ask you—let me start over here, Scott. How are mediation programs in other jurisdictions organized?

Judge MCCOWN. Well, in Texas we have mediation organized in many different ways. We took money from the court improvement project and the Children's Justice Act to fund a lot of mediation experiments, and I do support the use of mediation in this area.

Some counties are mediating right at the outset to develop family plans that they feel they get a great deal of buy into, and if the plan doesn't work that they are more likely to secure a voluntary termination. Other counties—in my county, for example, we use mediation primarily toward the middle of a case to dispose of it on the merits.

So there's really a wide variety of federally funded research right now, but I think mediation can be a big part of both a better resolution and a speedier resolution.

Mr. DAVIS. All right. Let me ask—I've got two other quick questions. Judge, I understand that the current head of the Family Division, Judge Walton, is leaving the bench. How long did he serve in the Family Division?

Judge KING. He has been—over the years, he spent—I'd have to get the exact number, but it has been many years. It has been multiple years.

Mr. DAVIS. And what is the process you are doing to select his replacement?

Judge KING. I have already contacted someone to take his place, and——

Mr. DAVIS. Can you tell us what process you went through?

Judge KING. The same process that I went for with Judge Walton——

Mr. DAVIS. Yes, but I'm not familiar with that.

Judge KING [continuing]. And that was to look among my more-experienced judges who enjoyed the respect and standing among their colleagues who I felt would be the best leader to take the Family Division through what I knew at the outset, before we even—before I even met Mr. DeLay or any of the Members here, would be a period of transition.

Mr. DAVIS. So experience and leadership are two of the qualifications you are——

Judge KING. Yes.

Mr. DAVIS [continuing]. Looking at in this——

Judge KING. Experience in family affairs, connection to the issues, and ability to lead colleagues.

Mr. DAVIS. OK. Could I ask just one more question? Ms. Golden, I wanted to ask a question. We want to ensure that the judges have access to the necessary files, because without that you're just not going to get good decisions, and we've seen that with Brianna and some other cases, so we want to make sure that judges have access to all necessary files, data bases, other relevant information in order that they can make informed decisions about the well-being of the child.

What are city agencies and organizations such as the public schools doing to implement a computer system that can be integrated with the court system?

Ms. GOLDEN. Well, perhaps I could start with the Child and Family Services Agency and then——

Mr. DAVIS. Sure.

Ms. GOLDEN [continuing]. Talk a little bit about other city agencies.

One of the key things that makes this the right time to enact this legislation is that it is a moment of reform in the District, as well, and so several key things have happened which make it possible for us to provide information and support high-quality decisions. We've had legislation that unifies the Child Welfare Agency, so we are at last going to be able to provide information about abuse and neglect in a unified way. We have had a major commitment of resources, which will enable us to have enough social workers and enough attorneys, which is a key part of transmitting information. That's often where information doesn't happen. And we are also focusing both on our own automated information system and on closer ties to other agencies. Now that we are back as part of the District, we have the opportunity to have those conversations with our fellow agencies.

So there are—all the pieces are in place to make that much more possible and much more—much stronger than it was before, and I think the opportunity to work on that with a dedicated team of judges who also have the supports to work on it on their end will give us the greatest possibility of a positive outcome.

Mr. DAVIS. Madam Chair, my time is up and I know we have some votes on, so I will yield back.

Mrs. MORELLA. I'd like to give Mr. DeLay an opportunity for just a few minutes to ask a question.

Mr. DELAY. Thank you, Madam Chair. Obviously, we're getting pressed for time and I don't want to dwell on a lot of these issues. Let me just comment, Judge King, that I appreciate the job you are trying to do and how hard it is to do and how hard it is to change the status quo, but I've got to tell you, reading your proposed court rule, which is not even in law, it is very lacking in more areas than just the length of service and the multiple calendars and that kind of thing. Even your answers here today indicate that you're more interested in the comfort and the careers of your existing judges than in the interest of these kids.

The culture—and I think someone said that the culture of D.C. is different than anywhere else in the United States. I can't disagree more. The children in D.C.—if you are an 8-year-old girl being pimped by your family members, is no different than the 8-year-old girl in Houston, TX, being pimped by their family members. The child that gets red socks—do you know what red socks are? That's where you take a baby and drop them in boiling water and it creates red around their feet—no different in Washington, DC, than they are in Seattle, WA. The kids that are being abused, the kid that just this morning on Pennsylvania Avenue that was being severely beaten by their mother in the back seat of a car is the same kind of kid that is being severely beaten in Sugarland, TX. So the kid and the abuse and the neglect is the same. It

doesn't matter where it happens. It matters how you treat that kid. That is what is so vitally important in their cases.

And I've got to tell you, Madam Chair, when we are looking for incentives, it is an incentive when you go to a person and say, "You want to be a judge? Then you are going to serve 5 years of your career being a family law judge." And that is an incentive to become that judge, because you know you are going to spend 5 years of your career, plus options, maybe the whole 15 if you want to serve there.

And what your stuff—Mr. King, I'll give you a chance to respond—is all about is keeping the status quo with a few tweaks. The status quo has failed the children of this District, and the tweaks are going to fail them again.

I just have got to say—I mean, you mentioned due process in this whole calendars thing. Due process is not the issue in implementing one judge/one child. The whole concept of one judge/one child is undermined by your insistence on maintaining separate calendars.

What we are trying to do—and it is systematic. What we are trying to do is to create a system that understands human weaknesses, human desires, and the way humans act when faced with a certain situation, and what you have proposed ain't going to get it.

And, ma'am, with that—I'll be glad to let you respond, Judge King, but I don't need the hold this panel.

Mrs. MORELLA. Mr. DeLay, can you come back after the vote?

Mr. DELAY. I'll come back for the other panel.

Mrs. MORELLA. And I know that the ranking member has questions, and I do, too, so if you would be patient and let us recess again for 15 minutes and come back with the same second panel, thank you.

[Recess.]

Mrs. MORELLA. I'm going to reconvene the Subcommittee on the District of Columbia.

Thank you all for your patience. Now you understand what is a somewhat typical day for us. Very often there are even more votes that are called, but we did have two.

I look forward to the day when Congresswoman Eleanor Holmes Norton accompanies me over to the floor of the House to vote. [Laughter and applause.]

I think the majority whip is planning to come back. He wanted to also ask some further questions, and I know that our ranking member has questions she wants to ask, too.

I might want to ask Judge King about this idea of one judge/one family. How do you handle a situation where a judge goes to a different court but he has a case—a family which he is serving? I know it is kind of in the legislation sort of up to your discretion to make that determination. How will you possibly make such a determination? And would a 3-year term impair that?

Judge KING. The way—I was just discussing that briefly with Congresswoman Norton. The case is characterized by what brings it to the court, so if it is a divorce case it comes in as a divorce case. If other issues emerge as the case develops, it turns out there are other issues, then that raises the issue of another issue needing

to be decided, and there are other calendars to address those issues.

What we would do in that case is to coordinate between the judges with responsibilities for, say, a divorce case and a neglect case, and the judges would work out between them which one will be responsible for the life of the case.

Typically, when an abuse and neglect case comes in, that is where the case remains, and all of the other matters that might arise come onto that calendar by discussion with the judges.

If I might have just a brief moment, have the committee's indulgence, I don't want to leave the record long burdened with the statements that were made just before the recess. In particular, I have to respectfully object to the characterization of our judges as not putting children first and more worried about their own comfort than about the safety and health of children. That is just wrong. It is incorrect and wrong. There is no more-dedicated group of judges who work tirelessly to try to get these cases right, to try to get them to resolution. They work extra hours. They agonize over these decisions. They take training. I have probably three requests a week for training seminars that these judges do not have to take, some of them not even in the Family Division who seek out opportunities to get better at their jobs, to learn more about what they can do to help the children and families in the District of Columbia.

The second thing I don't want to leave unremarked is the comment that there's no due process issue in family cases. When we become judges and are invested—sworn in, that is, our oath contains the phrase "to administer justice without regard to persons agreeably to the Constitution and laws of the United States," and those bodies of law contain rigorous due process requirements which do apply in family cases, as has been said in the Supreme Court of the United States, as has been said in the Court of Appeals in the District of Columbia.

So while, of course, we want to work vigorously for the best interest of the children, we are judges and we are bound by the law. We can't just do what seems right. We have to follow the law.

That's all I'd like to say.

Mrs. MORELLA. Thank you, Judge King.

I wondered if the others on the panel would like to comment on what some of the challenges might be in having one judge for one family with the 3-year term.

[No response.]

Mrs. MORELLA. What I could do is lean to—Judge McCown, yes?

Judge MCCOWN. If I could comment, I guess the need I see for change in the District relates to dividing abuse and neglect cases among four different calendars, and I guess it is going to require some further legal work today, but in jurisdictions across the country termination cases are heard by the same judge who hears everything else, and I'm not aware—and it may be that the law in the District is unique in this regard, but I'm not aware of any Federal or circuit or any U.S. Supreme Court opinion that says a termination case can't be heard by the same judge who has heard the abuse and neglect case up to that point or would then hear the

adoption and guardianship. I don't see that there is a due process issue there.

When you divide it into four different calendars, you're taking your most difficult cases and moving them through four different judges instead of one judge, and I just wanted to kind of sketch for you in a vivid way what my docket is really like. I mean, from the moment the case is filed it is my responsibility and my statistic. The children come to all of the hearings. They come with their foster placement or their RTC placement, and it is my responsibility to get that child to the point where the court literally closes the case, and that is a resource-intensive issue. And one of the things that Judge King and I were visiting with is the importance—I know this is an authorizing committee and not an appropriating committee, but it is very important that the resources come with any authorizations that you make, because it is going to take resources.

But the other point that I would make is that it actually turns out to be more efficient. You can move the children to permanency in a much short timeframe. And so when we say we can't do this for resource reasons, what we really mean is we can't do this right, and so we are going to be forced to do it wrong.

I really think it is important that the resource issue be tackled, but that the docket be set up in a way that does it right.

Mrs. MORELLA. I would love to have you, Judge King, respond to that—the whole docket question.

Judge KING. The way it works, or the way we imagine it working, as we haven't set this in place yet—as it now works, we move cases between judges only when it is necessary for due process reasons, and I agree with the general characterization that often a judge can hear everything involved in a case, but there are cases where you cannot. There are cases where the efforts at reunification, which our statute requires us to pay some attention to, have involved the kind of involvement and the kind of information that would be inadmissible in a trial, to a point where a judge cannot give the appearance of being fair in deciding a termination question, for example. And if the parents leave a termination hearing feeling that they have not been treated fairly, that they have been before a judge who had a decision made up before the hearing ever began, that is going to have long-term consequences both for the child and for the family, no matter what resolution is made.

Our projection and plan is to have matters that come before—and particularly we are focusing on abuse and neglect cases—to have those cases come before one of the members of the neglect and abuse calendars, one of the teams. That's where the case will stay, from the day it comes in until the day it is closed in a permanency resolution.

The exception to that would only be where there is a due process requirement that a hearing would be required by another judge, and then it would still return to the judge, so it would only be sent out for purposes of addressing a motion or a hearing, not for all purposes. It isn't successive judges; it is simply that there will be occasions when a matter has to go to another judge because the judge before whom the neglect and abuse matter is pending has been so intimately involved in efforts to either reunify or to nego-

tiate with a potential care-giver or family member that a termination hearing would appear to be unfair.

Mrs. MORELLA. Thank you for your comments.

I am going to defer to the ranking member. I just am curious about the fact that you say it happens rarely and would only be in the cases of due process, and you've found that to be the case already?

Judge KING. It's certainly not in every case, but it does happen. It does happen, yes. There's a huge amount of—let me make clear there's a——

Ms. NORTON. I think actually I am picking up on Mrs. Morella's question, because I think, with all due deference to the judges here, I am trying to make sure we are not angels dancing on the head of a pin, because Judge McCown would also agree, I'm sure, if due process questions are raised—you know, I think it may be unfortunate the way in which this issue has come up, and I need to know, and I think Mrs. Morella, in pressing this, is correct, although, frankly, I'm going to move on from this issue.

In the normal case—and this is where I want you both to jump in and correct me and stop me—in the normal case, a case would remain, involving an abused or neglected child, would remain with one judge. There are exceptions. It may be difficult—and here's where I'd like—because it was Judge McCown whose testimony led one to believe that there would never be a time when counsel might raise the notion that a judge had been so involved with the abuse and neglect questions that other issues that may come up—divorce, another child in trouble, or the rest—would be prejudiced by comments a judge had already made. I'm not talking about thoughts in his head now. Judges are human beings and they sit on the bench and they say, "This is the worst thing I have ever seen. This is the worst case I have ever seen. This is a terrible shame." They react that way, and nobody says that is prejudicial.

But in comes a circumstance where—involving family law where counsel raises an issue, are you saying to me, Judge McCown, that there could be no instance in which a conflict of interest, in lay terms—in the law we call it a due process question, that the judge has either said or been so involved with the case that he should not sit on an allied case involving the same family, that never rises in Travis County? That judge should remain on this case no matter what counsel says about possible prejudice?

Judge MCCOWN. No, ma'am, and if I could break it down into three parts and kind of move toward the bottom line on your answer, the way I understand what the District is proposing or the Superior Court is proposing includes an adoption calendar and a guardianship calendar, as well as an abuse and neglect calendar and a termination of parental rights calendar.

Ms. NORTON. Just a moment. It also includes divorce calendar? Are those the only things that are included where a case—yes, but——

Judge KING. We have a number of other calendars. I think the judge is addressing the abuse and neglect cases.

Ms. NORTON. OK.

Judge MCCOWN. Right.

Ms. NORTON. All right.

Judge KING. And we have a number of cases where that's not an issue.

Ms. NORTON. All right.

Judge KING. Not for calendars.

Judge MCCOWN. And so I would have no criticism of a judge who said, "I want to be very fair, and if I'm handling an abuse and neglect case, if I don't think I should hear the termination I want to refer that to another judge." My point though would be that once the termination happens or doesn't happen, as I understand what the Superior Court is doing and what it proposes to do, the adoption calendar is separate. So if parental rights are terminated it doesn't come back to the same judge, it goes to an adoption judge. That guardianship calendar is separate. If it is going to go into a permanent guardianship, it doesn't come back to the same judge. So that would be the first point.

Ms. NORTON. Well, just a moment, because I'm trying to get this straight. Is that the case, Judge King?

Judge KING. That's not correct, actually. They would go out to the other calendar for purposes of that hearing and then go back to the judge who is presiding over the neglect and abuse case, so they don't go wandering around the courthouse when they need to go out to this calendar.

Now, it turns out that with 1,500 new cases coming through every year there are enough cases to warrant having a separate calendar for these times when a case does have to go to a neglect—for a neglect—for a termination trial or a permanent custody trial, but then they go back to the presiding judge.

And for the adoption calendar, of course, that's a calendar where there are any number of cases that don't have any abuse or neglect issues in them at all, so you need a separate adoption calendar.

Judge MCCOWN. Well, you may need other judges handling private adoptions that don't come into the context of abuse or neglect, but on a unified calendar the same judge would decide all adoption issues as the abuse and neglect, the same judge would decide all guardianship issues as the abuse and neglect. It would be one judge.

What I'm saying to you about due process—and there's a difference between the minimum that the law requires and what we might want to do. I do not think that there is any Federal due process law that says a judge who is presiding over the preliminary pre-trial abuse and neglect case can also not hear the termination. That would be no different than, say, a judge who has a big antitrust case who hears all of the pretrial and also tries the antitrust case and makes the antitrust order.

Ms. NORTON. Would you agree with that? Do you agree with that, Judge King?

Judge KING. No. Children are different from antitrust issues. The problem with that is that the—when a child comes onto a calendar, comes before a judge, there is first an effort to try to work with the family. We're required by law to look at that and to consider it before moving to other dispositions, so you don't just bring a child in and say, "Boom, you're on a trial calendar and we're going to terminate parental rights and move on." You have to work with the existing family.

There's no normal child in these circumstances, but a rather typical pattern is crack Mom is off getting her drugs and the child is found on the streets at 3 a.m. unattended by—unsupervised by an adult.

That child comes before a judge. That judge then tries to work—find out how serious the drug problem is. Is there any chance of reaching a successful resolution, of coming to some sort of reunification, or is there a good family member. That's all negotiation. It is reacting to people. It is meeting people. It is working with social workers and lawyers to try to work out the best solution.

Where that can't occur, where after those efforts have been unsuccessful, then the case has to go for trial, and sometimes it can be tried by the judge, if there has been no extensive hearsay or other inadmissible evidence or improper considerations brought into those negotiations and discussions.

But a lot of times they can't. You just have to send it out for trial and then bring it back after the issue has been decided and decide—then the child is then again before the judge who retains a beginning-to-end responsibility for what happens to the child.

Judge MCCOWN. Congresswoman, Judge King and I can brief this question, but what I was saying that he said he disagreed with, but I don't think actually that he would, or maybe I've misunderstood him. There is no—as far as I know, there is no Federal law that says it is a due process violation for the same judge to preside over the beginning and middle as the end of the case.

But the second point I was going to make is if, as a matter of fairness, you thought that it was fairer and you wanted to go beyond minimum due process standards and have a judge preside over the termination, that's a policy decision that could be made, but even there we're talking about two calendars and about the case if there's—whether there's termination or not, returning to the original judge, who then continues to shepherd that child toward adoption if parental rights have been terminated or toward permanent guardianship with a relative if you can find one, and I don't think that is what is happening in the District.

Ms. NORTON. This is very tough. You're right. We have to look even more closely at it from both sides.

I tell you one concern I have with the same judge, and I just don't have the evidence of how it works, but we all know that an overriding concern is to get children adopted through the Adoption and Safe Families Act. I do not know about the District of Columbia, because I know so little. This is a matter, as you might imagine, that shouldn't even be in a Federal body like this. But I do know that when people work with a mother for a long time who is struggling to gain back her child and keeps lapsing, very often there is a tendency to give that person one more chance.

You know where my prejudice lies? Terminate it. My prejudice at this point—and here this comes over many years of seeing what happens to children, very young mothers. It's very difficult to think that this woman is not going to get her life together. My concern is the opposite of the due process concern, frankly. My concern is that the judge who becomes involved with that family, has had family members come and say, "Look, this is the only member of our family. We are working with this girl. And this girl becomes

a woman and she doesn't get off and nobody wants to take that child." My concern is that somebody who has not become involved with that family hear this thing, look at how long this child has been there, sees that this child is now 7, how long are you going to wait? Or see that this child is now 4 or, you know—and I'm getting to the point, based on the scientific evidence, where much beyond 2 or 3 we are just tossing that child away, waiting for somebody in some court in some system to work through in good faith.

So, if anything, I suppose this might be called the "conservative" side of the picture, but I now believe that the best interest of the child is early termination, not working with the mother until you somehow get her to do what it's too bad it turns out she can't do. She's got her life. This is a life that is just staring.

Judge McCOWN. And, Congresswoman, that is the best argument for the one judge/one family case, because, as a judge with long tenure and deep experience, I can make an informed decision about whether this is a case where we need to give another chance or this is a case where we need to terminate.

One of the problems with separate calendars is that the termination judge may lack the experience of understanding what our chances are for adoption, what our chances are for guardianship or may lack the experience of understanding that this is a family that just can't do it.

You can't atomize these decisions about the family. You have to have a judge with broad experience on every one of these calendars who can make a hard call in this case about this family.

Ms. NORTON. I can understand that, and I can understand the argument both sides, and you are absolutely right. This comes down—this is why we give judges discretion, because this comes down—these are judgment calls. That's what judicial discretion is all about.

Let me ask you, just to get on the record, what is the yearly intake in Travis County of Family Court cases and then neglect and abuse cases?

Judge McCOWN. We have about 500 cases with about 1,000 children right now, and we would——

Ms. NORTON. 500 of what kind of cases?

Judge McCOWN. I'm talking about child abuse cases.

Ms. NORTON. Yes.

Judge McCOWN. About 500 child abuse cases, with about 1,000 children, a little over on both numbers, and we would be taking in approximately 20 new cases a month.

Ms. NORTON. I asked because I do want us to at least keep in context what we are faced with here.

The Family Court here gets 12,000 new cases per year. The Family Court here gets 1,500 neglect and abuse cases per year. This is really the predicate for my next question. I mean, I think they would die for your case load. But my next question is why judges here have, in fact, taken the cases, Judge King, and given them to 59 judges. Was that a matter of case load? Were you trying to maintain a relationship of the child to the judge? How many of these cases—what proportion of these cases have stayed within the Family Division as opposed to being shipped to all of the judges in the division? Give us some sense of how the court operates.

Judge KING. Until the late 1980's, 1988 or 1989, all our cases did stay in the Family Division. They would come on and appear before one judge in the Family Division, the matter would be tried and decided, and then that judge retained the case for the life of the case.

In about 1988 the case—the new number of cases—and there's a larger number of children involved, but the case load was running around 250 coming in every year. In the late 1980's that started to shoot up, I believe in connection with the crack epidemic, and it went from 200 to 300 to 350, and at about 350 we were simply unable to keep all of those cases in the Family Division as a matter of judicial resources. We just couldn't do it, and so—for two reasons. One is just the hours in a day. You can fit—if all judges take the cases, that's a few hours every week that they can devote exclusively to family members and they can absorb that load, while a small number of judges in the Family Division would end up doing nothing but neglect reviews, which simply wasn't feasible because we had responsibility for incoming trials and all the other business of the Family Division that was before us.

So for the calendar reasons we did that. More importantly, we had a neglect review calendar which had all of the neglect cases coming up every month for—or every periodic, every review period, which would be anywhere from 3 or 4 months in a given case to every 6 months. That calendar became so crowded that a review consisted of, on a good day, 5 or 10 minutes of a judge's time. There would be maybe 30 cases in a day, and by the time you got all the parties before the court and reviewed the report it was too short a time to do anything meaningful.

So the real fundamental reason for sending them out to judges who were no longer in the Family Division was that it gave the judge an opportunity to spend some serious time with the case, to become acquainted with it, to take time at these reviews, which now take anywhere from an hour to an hour-and-a-half of judge time to schedule and review the report and conclude. So that was the reason for getting there.

Obviously, if we had the resources we could move them back into the family division, where we thought they belonged at the beginning.

Mrs. MORELLA. Thank you. We are going to be submitting questions to you that we would like to have for the record and to help us with our deliberations, because we could go on all afternoon with asking further questions.

But, before I recognize the majority whip, I just wanted to ask you, Ms. Meltzer, because you are with the Center for the Study of Social Policy, about this concept we've talked about, the six different calendars, the one judge/one family, if you would like to make some comments, the due process.

Ms. MELTZER. Yes, I am glad to respond. I think it is important to broaden the discussion beyond what they do in Texas as compared to what we think we do in the District of Columbia. Experience across the country in effective courts shows that, in fact, keeping as much as you can within one judge and within one court makes a difference. It makes a difference in the ability to move and

process these cases quickly, while you are at the same time respecting the due process rights of families.

I think those cases where you may need to remove the judge who has been involved in the case at the beginning in order to make a fair determination at the end, are the exceptions rather than the rule, and experience across the country shows that.

Certainly, if there is a prejudiced judge, the lawyer is going to ask to change jurisdiction and you would remove the judge in that case. There are many courts that are bigger than the District that assign cases, for example, coming in to judges alphabetically. For example, one judge takes all the A's and B's this month and then carries those cases. Other courts assign cases geographically so that all the cases, for example, coming in from ward eight would go to three or four judges. This has some advantages, particularly as you are trying to promote the court's understanding of the community-based resources available to the court.

Although I am not a lawyer, I am not persuaded that the potential problems of conflict of interest or due process make a difference, based on what I've seen from around the country.

On the question you raised, Congressman Norton, about whether a judge who has been involved with the family for too long, has become "soft" on the family, I think it cuts both ways. I think we see that in judges here. I see that with some of the judges believe they have been the only continuity for this child for many years as the system has turned workers over and over and over and over again. Those judges are sometimes reluctant to cut the strings because they've become too involved.

On the other hand, when you have—we see it in workers. When you have a constant turnover of social workers, sometimes the new person getting the case, they think, "Well, you know, we haven't been able to make a decision here because we haven't given them a chance, so I'm going to start again. I'm going to start the clock running again." And so sometimes the turnover, in itself, produces poor decisionmaking.

The key, as I see it, is to have a trained judicial work force who understands ASFA, understands the timelines, understands the nature of the practice, and can develop relationships with a stable work force of social workers—and we've got to work on that, too—and who can work together to move these cases in the best interest of children.

I think that is what everybody wants to achieve, although there are some differences in opinion about how to get there.

Mrs. MORELLA. Ms. Golden, would you like to respond to that?

Ms. GOLDEN. Yes. I also, I guess, want to take it back to our shared goals and the way I think you've all worked so hard on the discussion draft to find ways to get to those goals. I share the view, which I think several people have expressed, that the way to accomplish the goals in ASFA, which are goals about making good decisions for children promptly, sharing, I think, the concern that Congresswoman Norton articulated, that if you don't make decisions quickly you lose precious years in a child's life. So the goal is to be able to make good, quality decisions quickly so a child can have a relationship with a permanent family.

What is in the discussion draft is a commitment to the principle of one child/one judge with the ability for the court to come back with a specific plan. What's in the discussion draft is the commitment to that core group of judges who will be supported and trained and experienced and able to handle the cases. That will make a huge difference for us at the agency level, because it will mean we will be working with this highly trained cadre of judges who are supported, themselves, not seeking to have our work force with its limitations stretched in quite the same way across all judges, so that means we will be doing higher-quality work, too, and we'll be able to work to ensure that those children have the best decisions possible and the best outcomes. And I, too, think that's what the national experience suggests and that we all really are very close, I think, on the principles and the key points that you've laid out in your discussion draft.

Mrs. MORELLA. Thank you.

Mr. DeLay.

Mr. DELAY. Thank you, Madam Chair.

I might, just for the panel and for the chairwoman and Ms. Norton, the key to all of this is a system, and that's what we're arguing about here—a system, as I mentioned earlier, and the system that answers a lot of your problems is if you have a strong CASA, a strong CASA unit here that brings in the community that in two ways—one, the CASAs are in the courtroom with the best interest of the child, so the judge may get soft on the family but the CASA doesn't get soft on the family because the CASA is interested in the child, and the community and the CASAs hold the judges accountable, which is what people are not talking about here, particularly, Judge King, in your draft. It is not—there's no way you can hold judges accountable.

So I want to ask you, Judge King, how does the Superior Court currently use CASA volunteers and how do CASAs factor into the reform plan, because I read your plan and I see no mention of CASAs or child advocates or anything.

Judge KING. We actually have talked about that on a number of occasions in the course of our staff discussions. We are very supportive of CASA. They have performed an invaluable service in our court. They have a strong program. Their leader, Ms. Rad, is present today in the hearing room. They have sought funding from us. We've given them almost 90 percent of their request traditionally, and we are very supportive. We'd like to see that role expanded.

I agree with you entirely that one of the things that we need is accountability. The draft I notice has a specification that there will be a report using—we would prefer a generic standard, because standards may change, but some nationally accepted best practices gauge and will hold us accountable. We want to be sure. We welcome that. That should be a part of any reform plan, and we think CASA should be strengthened and encouraged and enhanced. We would welcome that.

Mr. DELAY. Does that mean that you, as the chief administrative judge, would encourage any of your judges or all of your judges to, especially on the tougher cases, to make sure they have a CASA on that case?

Judge KING. Absolutely.

Mr. DELAY. Because I don't believe that's the case right now. What I understand is CASA only handles about 350 cases at this point.

Judge KING. It's a small percentage because their office here has been small and they have been—I know that they, like the rest of us, are struggling for resources. But we have informally encouraged judges to use them historically as a part of our plan. That will be increased, and, to the extent that they can be expanded to cover a greater portion of our caseload, we would welcome that. It would be a very helpful addition to our——

Mr. DELAY. That's good. The court's written comments indicate an unwillingness to end the practice of allowing judges to take family cases out of the Family Division. Can you tell me how many cases exist outside the Family Division right now?

Judge KING. The current—and I think maybe you had not come into the room as I gave a little bit of history as to how we—no, I think you were—the history as to how we got there. Looking forward, our plan contemplates that all of the cases do stay in the Family Division, only with very narrow exceptions. One obvious one is if the case is so near permanency placement that to transfer it to another judge who then has a learning curve and has to get set up again only to terminate the case months later——

Mr. DELAY. I hate to interrupt you, but I'm asking what now. How many——

Judge KING. Right now it is the existing cases we have been talking about, approximately 4,500.

Mr. DELAY. OK, 4,500. And what is the range and average length of stay in foster care for the children who are subject to those 4,500 cases? Do you know?

Judge KING. Let me—if I may, let me supplement the record with a response to that question.

Mr. DELAY. OK.

Judge KING. I would be happy to give it to you.

[The information referred to may be found on p. 152.]

Judge KING. I know that it does range from very new to cases that have been in a number of years.

Mr. DELAY. OK. Then you may have to submit this too, but do you know why these cases have not come to resolution and permanent placement for those children?

Judge KING. Many of them are cases that have eluded permanency placement, and I mentioned a couple of types of cases. I'm going to see if I can just—here a teen who sets fire to every foster home she has been placed in. Just it has eluded us. We haven't found the right formula. A teen who keeps absconding from placements each time she is placed in a placement, but she will call a judge and the judge is able to sort of talk her back into care and back onto her medication. A child of 15 who was hospitalized after 5 years of sexual abuse in her adoptive home. She endured this without reporting it in order to protect her younger sister, who was not being abused. Many of them are cases that are just very, very—have proven very, very difficult.

Another—if there's any single group of cases that has proven difficult for us, it's older teens. When people come into the system for

the first time. Now, that's not to say that we can't improve our record with early referrals. When a child comes in at 18 months or 3 years or in the very young period, I think there is some improvement, and I hope that we can enjoy that, or expect to find that for these children when we—as we move into our new organization. But there will be some cases where a child comes into the court at 11 or 12 and adoption becomes less likely—not impossible, but less likely. So those are the types of cases.

Mr. DELAY. Yes. And it's pretty tough.

Madam Chair, I just have one question of the judge, but I might mention there is an answer and we are building it in my home county and it is a community for those kids to have a permanent home, not moved from foster care to foster care. And when we get that built we're going to come build it here in D.C.

Judge KING. Then we'd like to see it and look at it.

Mr. DELAY. It will be here.

Judge McCown, do you think that cases should stay with the judge who is most familiar with them when the judge leaves the Family Division, or should those cases stay in the Family Division and those that are already outside the Family Division be returned to the Family Division?

Judge MCCOWN. That's a really important question, because at first blush it seems to be contradictory to say that cases that are outside the Family Division should be returned and at the same time be saying you ought to have one judge/one child, but I'm saying both of those things, so how do I reconcile the two?

The answer is that you have to look at this in terms of judge hours, and it makes no sense logically to say we don't have enough judges in the Family Division, so those cases have to go and leave the Family Division and be disbursed among other judges, because if those other judges are doing those cases right and are giving them the amount of time they should take, then you could collect up how much time that is and move it into the Family Division. However many judges it takes in the Family Division to do the cases right—and, again, that comes back to the appropriating committee is going to have to work with the authorizing committee.

But the reason you want all those cases in the Family Division is for two reasons. First, look at this from the point of view of Dr. Golden's outfit. They have 1,200 hearings a month that are spread right now over 59 active judges and about 20 senior judges. That means that a group of social workers that is already spread too thin with not enough time is being asked to answer to 80 different judges in different places with different agendas, and when you are working places in you don't get the consistent, on-time calendaring.

If you move them all back into the Family Division, where they are handled in one place by one set of judges with an on-time calendar, it would make a tremendous difference to Child and Family Services.

Second, look at it from the judge's point of view. Once I leave the Family Division, I cannot stay focused on what is the current resources in the community, and I am no longer focusing on what my numbers are in terms of moving these children to permanency. I've now been moved. I've got to learn a new area of law. I've got to

focus. I've got responsibilities. I have a whole different set of priorities.

Contrast that with the judge in the Family Division, which the judge in the Family Division is current on who is doing what in the community and what the resources are and focused on the numbers of getting children to permanency in a set amount of time and being accountable for it.

Now, it may be—and I just want to say I am actually dubious that the judges who are taking their cases are really all that familiar with the cases and the kids and are giving it all that time. That may be true, but, frankly, I know a lot of judges, and if it is true here the rest of the country needs to come here, because it would not be true anywhere else in the country.

The calendaring system you already have means that when the judge leaves with that case he hasn't had it from the beginning, anyway. There hadn't been one judge/one child now, and so you just have some judge who has the case last, who rotates off with it into another division and can't stay current on it. I think those cases need to come back. They need to be carefully reviewed and there needs to be a real permanency push. I don't doubt that they are the most damaged of the kids and that it is going to be very difficult to seek permanency.

I also want to say I don't doubt that there are some judges and some kids who really know each other, and you might want to have an exception rule. But if I were doing the exception rule I would have a total overall percentage. You can have an exception rule, but it can't be more than 10 or 20 percent of the total case load to sort out the cases that should stay from the cases that need to go back and re-investigated and re-invigorated.

Mr. DELAY. Thank you, Madam Chair.

Mrs. MORELLA. Thank you, Mr. DeLay.

I'm going to ask, Judge King, ask you to provide something for the record. The current workload, including filings by calendar and dispositions for the judges in the Family Division, and the number of Family Division cases that are assigned to judges in other divisions of the Superior Court. I can give it to you in writing, but if you would get that back to us, and then——

Judge KING. That's fine. We would be happy to supply that information.

Mrs. MORELLA. Thank you very much.

[The information referred to follows:]

Superior Court of the District of Columbia
Washington, D.C. 20001

Rufus King III
Chief Judge

(202) 879-1600

September 12, 2001

Hon. Constance Morella
Chair
House D.C. Subcommittee
Washington, D.C. 20515

Hon. Eleanor Holmes Norton
Ranking Minority Member
House D.C. Subcommittee
Washington, D.C. 20515

Dear Congresswomen:

I write in response to questions posed at the Subcommittee's June 26 hearing which required additional research and to which I promised lengthier responses for the hearing record. A review of the preliminary hearing record revealed the following Subcommittee questions:

Number of Judges Needed

Mr. Davis asked for "any analyses that were done to come up with these numbers....any analysis you've done to say that we need 59?"

I believe the number actually under discussion was 15, the number of judges for the Family Court, since 59 is the current statutory cap on the number of judges in the entire Superior Court. We determined that 15 judges would be needed for the Family Court by taking the number of judges currently assigned to the Family Division and adding what we believed to be the number of judges required to address the family matters now assigned outside the Family Division, which would in the future be retained in the Family Court. There are currently 11 judges, 1 senior judge and 8 hearing commissioners assigned to the Family Division. Each year approximately 1,500 abuse and neglect cases are filed with the Court. Of

approximately 1,500 abuse and neglect cases are filed with the Court. Of these, approximately 1,000 are resolved by stipulation, following which they are assigned to judges outside the Family Division for disposition and review until permanency is achieved. Currently approximately 4,600 cases are in review status, of which approximately 3,600 are assigned to judges outside the Family Division and would be transferred back to the Family Court under HR 2657. Returning all of these cases in the Family Court and retaining all new review cases in the future would necessitate additional judges to handle these cases and to supervise magistrate judges handling neglect and abuse cases.

Number of Family Cases Outside of the Family Division & Length of Stay in Foster Care

Mr. DeLay asked for the number of family cases outside of the Family Division. I responded that the number is approximately 4,600 (the number changes day-to-day as some cases close and others reach review status).

I should clarify that this is the number of *abuse and neglect* cases in review that are being handled by judges outside the Family Division. There are also a relatively small number of complex divorce cases that are retained by the judges who presided at the trial when they move out of the Family Division, because of the complexity of these matters and the tendency for these cases to return to the Court with motions to modify, to enforce and for contempt. In addition, there are approximately 253 juvenile cases that have been retained by the sentencing judges who are currently in other divisions of the Court. These are cases where a judge has imposed a probation term or other disposition order, and retains the case to supervise compliance with that order. (There are another 813 of these cases assigned to judges currently in the Family Division).

In both criminal and juvenile cases, the judge who oversees the disposition or sentencing of the offender is responsible for monitoring his or her compliance with that judicial order. It has long the practice for one judge to retain jurisdiction in these types of cases until they are closed, because that judge has familiarity with the parties and the issues in case

additional litigation arises. I did not think that Mr. DeLay was referring to these types of cases, but if so, I apologize for the lack of clarity in my response.

As to the 4,600 abuse and neglect cases that have been adjudicated and are under review (of which approximately 3,600 are assigned to judges outside of the division), Mr. DeLay asked "[W]hat is the range and average length of stay in foster care for the children who are subject to those 4,500 cases?"

Children whose cases are being reviewed after a court determination of abuse or neglect range in age from newborn to 21 years old. While the Court does not keep overall statistics on length of stay in foster care, a sample study of the current caseload yields the following data: the average length of stay for children 1-3 years old is less than a year; for those between 3 and 7 years it is approximately 2.5 years; for those between 8 and 11 it averages over 3 years; and for those over age 12 it averages over 4 years. The Center for the Study of Social Policy, the monitor appointed by the Federal court to oversee D.C.'s Child and Family Services Agency, recently reported that D.C. children spend an average of 3 years in the foster care system, which is significantly above the national average of under 2 years. I would hope that with the pending bill and the additional resources, combined with greater retention of social workers and smaller caseloads for them, we could eliminate this discrepancy.

Current Workload of the Family Division

Ms. Morella, towards the end of the hearing, asked for the current workload "including filings by calendar and dispositions for the judges in the Family Division, and the number of Family Division cases that are assigned to judges in other divisions of the Superior Court."

Family Division calendars are designated as follows:

- Three judges and one hearing commissioner hear domestic relations (divorce, custody and property division). In fiscal year 2000, 3,903 domestic relations cases were filed and 2,757 were disposed.

- Three judges and one hearing commissioner hear juvenile delinquency cases. Again in FY2000, 3,258 juvenile cases were filed and 3,129 were disposed.

- Three judges and one hearing commissioner hear abuse and neglect trials and stipulations. In 2000, 1,448 cases were filed and 1,764 were closed by permanency dispositions.

- Three hearing commissioners hear paternity and child support cases, and each was assigned 2,694 new filings and disposed of 4,397 cases.

- One judge and two hearing commissioners hear mental health and mental retardation (MHR) cases. There were 1,601 new MHR filings and 1,652 dispositions in 2000.

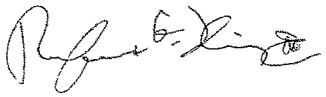
- Finally, one judge hears adoption cases, and 510 new petitions were filed and 507 were closed by final decrees.

Thus, the Family Division caseload varies from 374 cases per judge in abuse and neglect, to a high of 1,080 filings per judicial officer in paternity and child support. This variation occurs because certain types of cases require more judicial time (abuse and neglect, for example) and others require less (factual determinations of non-payment of court-ordered child support take less time to make than determinations of abuse, neglect, custody decisions, etc.)

I appreciate the opportunity to supplement the record with this additional information. The Court is grateful for the interest and support that the Subcommittee has shown to Court, and especially to the children in our

abuse and neglect system. I look forward to continuing to work with both of you to improve the outcomes for those children in the years ahead.

Sincerely,



Rufus G. King III
Chief Judge

Mrs. MORELLA. And we will be asking some other questions of this terrific panel of great expertise.

Congresswoman Norton, did you want to make any statement?

Ms. NORTON. Thank you very much. I think you're right, Madam Chair, that we can get any more information we need from these witnesses through written questions.

Mrs. MORELLA. We certainly held you a long time, but we appreciate very much your commitment and the expertise that you bring to it, and thank you for traveling such a long distance, Judge McCown.

Judge MCCOWN. It's always a pleasure.

Mrs. MORELLA. Thank you very much, Judge King. Thank you, Councilwoman Patterson. Thank you, Dr. Golden. Thank you, Ms. Meltzer. Thank you.

The third panel will now come before us.

Judge KING. Thank you, and thank you for the interest. I think the children of the District of Columbia are going to benefit.

Mrs. MORELLA. Thank you. I think they will, too.

So now I am going to ask our third panel, who has waited so long, patiently: Sister Josephine Murphy of St. Ann's Infant and Maternity Home; Steven Harlan, chairman of the board, the Council for Court Excellence; Margaret McKinney of the Family Law Section of the District of Columbia Bar; and Tommy Wells, executive director, the Consortium for Child Welfare.

Again I reiterate my appreciation and the appreciation of the subcommittee for your patience in waiting so long, but it is such an important issue.

I will ask you—I should have asked you before you were seated—the policy, again, of this committee and subcommittee is to swear in those who will be testifying, so if you will raise your right hands.

[Witnesses sworn.]

Mrs. MORELLA. Thank you. The record will reflect affirmative response.

Sister Josephine, thank you so much for being with us. We will proceed with you, if that's all right, for 5 minutes testimony, and any statements that you have given to us in the way of testimony or exhibits will be included in the record. Thank you.

STATEMENTS OF SISTER JOSEPHINE MURPHY, ST. ANN'S INFANT AND MATERNITY HOME; STEPHEN D. HARLAN, CHAIRMAN OF THE BOARD, COUNCIL FOR COURT EXCELLENCE; TOMMY WELLS, EXECUTIVE DIRECTOR, CONSORTIUM FOR CHILD WELFARE; AND MARGARET J. MCKINNEY, FAMILY LAW SECTION, DISTRICT OF COLUMBIA BAR

Sister MURPHY. Thank you. Chairwoman Morella, Congressman Norton, Congressmen DeLay and Davis, I certainly want to thank you first for inviting me to testify today. My name is Sister Josephine Murphy. I am the administrator of St. Ann's Infant and Maternity Home. I'm happy to be here today because for many years I have felt that the legal system has failed to protect the rights of the youngest and most vulnerable members of our society, our children. I have very strong feelings about it. Brianna was one of our babies, but Brianna was only one. There are many who have died in the system. There are many who have been beaten to death and

starved to death. There are many children that are in and out of St. Ann's, who come back after more abuse, where the courts return them home without enough investigation and enough rehabilitation and without agreeing to terminate parental rights when it is necessary, so I strongly support the establishment of a Family Court with trained and committed judges to serve. I say "trained" because I firmly believe that some child development training, as it relates to children in this system, is needed.

Child care workers are required to have 40 hours of training every year by law, even if they have worked in child care for 15 or 20 years. This training for the judges should relate, I think, to such things as separation and loss, to understand how children at different age levels react to and feel about it. Also, to help the judges better understand children's fears about "telling it like it is" to the judge and to their lawyer. Children are afraid to do this because, as they say, "The judge will send me home, and then I'll just get it a lot worse than I got it before for telling."

We all have an appreciation for families and know they are the backbone of society, but it is equally if not more important, when speaking of children in the system, to look at the developmental clock of a child. Many go on for years being pitched between home, emergency placement, and foster care, and many times a continuous repeat of this until they are halfway or three-fourths of the way to adulthood. Many of our young moms and children at St. Ann's are classic examples of this.

The legal system needs to put into action the Safe Family and Adoption Act of 1997, and this is where the commitment I spoke of comes in. The judge needs to follow cases through and have the courage at the right time to give children back their childhood. In the best interest of a child, there comes a time to look at the timeframe realistically and say, "It's enough." It is time to terminate parental rights and end the child's ordeal and satisfy the need and right they have to permanency, protection, and love in a family setting. This needs to be done before they are older and so aggressive and disturbed that nobody wants to adopt them.

I strongly advocate the 5-year term or longer, and I do this because as I just mentioned, training. I don't know about the rest of you, but I have found whenever I go on a new mission it takes me the first year or two to even know what end is up, and so I think our children deserve better than to have someone new constantly coming into that position.

Another issue is the need for greater coordination and communication between courts and social services, a need for more professional respect and working as a team in the best interest of the child, whose very lives are in their hands—and I repeat that—their very lives are in the hands of those judges and social workers.

A judge only knows what the social worker tells him and writes in the record. If the child had been placed in and out of the home five times, the mother had already been in 19 drug treatment programs—as one of our moms was, to no effect—the social worker needs to communicate this and the judge needs to demand the information if she doesn't, and then act on it.

Another thing that always bothers me is that people involved in these cases miss court hearings, which causes cases to experience

long delays, as do the interstate compact papers, which is another whole problem—and one which I hope someone will deal with before long.

Family Court should act as the authority to hold accountable those that are empowered to work toward the best interest of the child, finding creative ways to keep siblings together and allowing the child his or her best and most expedient opportunity for permanency.

I know I'm running out of time, so I beg you for once, just once, let's really do something in the best interest of the child. Just for once, forget about Democrats, Republicans, judges, social workers, and our own best interest and consider what's the right thing to do and have the intestinal fortitude to do it. Please, I would ask—and I know this happens many times with bills, etc.—no slipping in the attachments, amendments, whatever, to get what we want to further our own political agendas. Let those wait for another time, another bill.

We're always telling other countries about their human rights violations, so let's clean up our own back yard first. People in glass houses shouldn't throw stones. Let's just pass this one for the kids—the kids we all say we love and see as the future of our country.

I thank you all for listening. God bless you.

Mrs. MORELLA. Thank you, Sister Josephine. You really say it like it is. We thank you.

[The prepared statement of Sister Murphy follows:]

TESTIMONY ON THE D.C. FAMILY COURT ACT OF 2001

PRESENTED BEFORE THE SUBCOMMITTE ON THE
DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENT REFORM

BY SISTER JOSEPHINE MURPHY
Administrator of St. Ann's Infant and Maternity Home

Chairwoman Morella, ranking member Norton and other distinguished Members of the Subcommittee on the District of Columbia, Committee on Government Reform:

Thank you for inviting me to testify before you today as you consider the proposal for "The Reform of the Family Division of the District of Columbia Superior Court-Improving Services to Families and Children". My name is Sr. Josephine Murphy and I am a Daughter of Charity. I have been the administrator of St. Ann's Infant and Maternity Home for 12 years.

My testimony will center around what I believe are some of the key problems in our legal system that contribute to the terrible abuse and neglect of children in our society today and my reasons for supporting the concept of a Family Court with trained and experienced judges to serve in that Court.

St. Ann's opened its doors in 1860 and since Abraham Lincoln signed our charter in 1863 St. Ann's has cared for some of Washington, DC's most vulnerable residents, "indigent women at their time of confinement in childbirth", and abused abandoned and neglected infants and young children.

Today St. Ann's cares for up to 60 infants and children to age 9. Children arrive at any hour of the day or night, and the only requirement for entry is the availability of an empty bed. St. Ann's also serves 20 single pregnant and parenting adolescents in our prenatal and mother/baby program. The maternity program also has a fully accredited high school. We also offer reasonably priced day care for 65 children of low income working families.

The children in our residential program each have individual stories, but these stories have common themes - physical and/or sexual abuse, neglect, parents addicted to drugs or alcohol, parents with mental illnesses who do not take their medication regularly. Children who are making their second stay at St. Ann's. Children, who at age 8 or 9 are weary veterans of a long string of homes with relatives, homes with foster parents, and institutional homes. They are angry, impulsive, behind educationally and, if they have been sexually abused, may act out sexually. I would like to share three of their stories with you. Take the case of "William" who, because his mother was a drug addict, assumed at age 8 complete responsibility for his younger siblings, 4 and 15 months old. He has had to fight or do whatever was required to care for his siblings and therefore is angry, cocky and streetwise. He has also been robbed of much of his own childhood. Or the case of Tanya, 7, who as a result of long term abuse, anticipates rejection, harm and disappointment. She was sexually abused by both her day care provider's son and her mother's boyfriend. She witnessed severe domestic violence in her home including incidents when her father threatened her mother with both a gun and a knife, and one occasion when her father attempted to kidnap Tanya and her younger sibling. Tanya tends to be fearful when her mother comes to visit and needs reassurance that her mother will not be able to hurt her. Her mother, who admits to abusing drugs and using harsh discipline with her children, is diagnosed as a manic-depressive but often refuses to take her medication appropriately. Tanya's teachers say that she is aggressive in school, has trouble focusing on her work, and tests well below grade level in most subjects. Molly, 2 years old, arrived at St. Ann's about two weeks ago, after her

mother was hospitalized due to a severe beating. Our nurse practitioner described Molly's behavior as animalistic. In the beginning, she howled and screamed constantly, and has yet to make any human sounds. She does not interact with either childcare workers or other children. When she enters a room she runs her fingers over the furniture and other objects as if she is seeing them for the first time. She is also neurologically impaired, malnourished, was born HIV positive and is prone to seizures. Clearly with these profound delays, Molly is in need of multiple therapies, including speech and occupational therapies.

These are the stories of only a few of the children in care, and there are so many more just as compelling. How many times has the system failed these children? How many judges, social workers, attorneys and other professionals have been involved in the decisions intimately affecting their lives? How many of those involved have considered that the Number One priority is what is in the "best interests of the child"?

The judicial system fails a child when:

- a parent, social worker or attorney misses a court date and cases experience long delays
- decisions are made without completion of all necessary paper work
- meeting a time line is more important than what is best for that child
- a child is afraid to talk freely about the home situation because they " know the judge will send me home and then I will get it worse for telling"
- lawyers and judges believe a drug addicted parent can be rehabilitated in 30 days
- some lawyers don't take the time to get to know the children they represent or their situation, but just drop by the day before the court hearing

According to an attorney writing for the Maryland Bar Journal, the current law grants a child a voice in the courtroom through his or her attorney. I question that assertion. Although some lawyers do a good job trying to get to know their client, there are a large number who dash in the day before the case is going to court, and just briefly visit with the child to get the information they need. Another problem I've seen is that some of the children's lawyers seem to be unduly influenced by the mother's lawyer to consider her best interests rather than that of the child's. If a mother will lose her government check and her housing if her child is placed elsewhere, then that consideration, whether out of pity or convenience, becomes a deciding factor in returning the child to her. For example, a child at St. Ann's had been brought to us so badly burned, that we, along with the police, took pictures to document the child's condition. When we heard that the child was going to be released back into the same situation, I called the child's lawyer and asked to see him. He arrived with the mother's lawyer and even though I showed him the pictures and told him what we knew of the situation, he told me the marks were chicken pox scars and the child went home two days later. Can we believe that that lawyer spoke in the best interests of that child?

In an article I read by Janet Stidman Eveleth (at the time she was Director of Communications for the Maryland State Bar Association and Editor of the Maryland Bar Journal) she speaks to the fact that children are victims of a failing social and judicial system. She asserts that we have neglected and abused the legal rights of children and that the system needs to be restructured.

Our legal system is supposed to protect the rights of all citizens, but to achieve this worthy goal, children need stronger advocates within it. Children have little protection and they know it. Many times they are returned home too soon before adequate investigation and rehabilitation of parents or other caretakers have taken place. Take the case of "David". He was sent to St. Ann's when he was about 3 years old, due to neglect arising from his mother's long history of drug abuse. About 7 months later he was sent back home after his mother made some minimal rehabilitative efforts. David came back to St. Ann's at age 7 when his parents were arrested during a drug raid. At home an older child was helping to package marijuana for sale, bags of cocaine were within the children's reach, and even more horrifying, a loaded gun was found in the children's bedroom. David had no wish to see his mother when she came for visits, and would even ask to go back upstairs to his unit. Is a woman who has been so involved with drugs for such a long time really going to be rehabilitated in a few months? Experience tells us no.

Now is the time to make changes in the legal system, changes that will really be in the "best interests of the child" and make that more than just a great sounding phrase. The importance of this issue cannot be overstated. We all contribute to children's problems and now it's time for all of us to work together to solve at least some of them. Working together as a team and respecting each other as professionals should not be difficult because we are all pursuing the same goal - helping our children. Who knows? We might go on to solve other problems we face such as the interstate compact papers dilemma and putting the Safe Families and Adoption Act of 1997 into action.

Our precious children should not end up in jail but that's where I fear many will land if we don't take action now to prevent it. You are probably more familiar with some of the statistics than I am when it comes to dysfunctional families and future criminal behavior, but it is not difficult to see the connection. Recently, a family of four children was placed again at St. Ann's after physical and sexual abuse had recurred when they were returned to their mother. I was talking with the children, expressing my sadness at what they had been through, when the oldest, an 8 year old boy, told me not to worry. He said he was going to grow up and when he got big enough, he would kill and he named the boyfriend of the mother. Children should not have to lose their childhood, their education and their integrity as they become caretakers for younger children, learning to steal to feed themselves, coping with a mother who, as one child put it, "stays stoned from morning til night." It's not right and it is unjust to sentence them to this kind of life. But this is what happens when the social service and legal systems keep sending children back into situations that haven't changed significantly, and have little or no hope of improving. It's time to change from the family reunification mind set to the acceptance of terminating parental rights in those cases that have been given many chances, have made little or no improvement

In conclusion, I would support the establishment of a Family Court with trained and experienced judges to serve for an extended length of time. I am aware of the controversy in regard to the issue of the length of term for the judges in the Family Court, but I support a term length of five years. I feel the children deserve the benefit of continuity in legal matters that five year terms for judges would bring. Five years is a long time for an adult; unfortunately it can be a lifetime for a child.

Mrs. MORELLA. Mr. Harlan.

Mr. HARLAN. Good afternoon, Chairwoman Morella and Congresswoman Norton and Congressman DeLay. We're delighted to be asked to testify here today on behalf of the Council of Court Excellence. My name is Steve Harlan and I chair the board of directors of the Council of Court Excellence. I'm joined here in the room by Timothy May, who is our Council's president, and Priscilla Skillman, senior vice president, who has really done a lot of work on this area.

The Council of Court Excellence has been engaged for the past 21 months in facilitating the joint work by the city's public officials to reform the child welfare system and specifically to meet the challenges of implementing the Adoption and Safe Families Act of 1997. We believe that work affords us a relevant and contemporary perspective on the issues before this committee.

The Council of Court Excellence is a District of Columbia-based nonpartisan, nonprofit, civic organization that works to improve the administration of justice in the local and Federal courts and related agencies in D.C.

We have judges who are members of our board, but let me emphasize that no judicial member of the Council of Court Excellence prepared in or contributed to the formation of our testimony here today.

Today's hearing focuses solely on the District's Superior Court's Family Division, and particularly its role in the city's child protection system; however, we must not lose sight of the fact that the court is simply one of several principal players in this system. Fixing the Family Division, while laudable and long-needed, will not, by itself, yield a smoothly functioning child protection system in the District of Columbia. Each part of the safety net—the Child and Family Services Agency, the Office of Corporation Counsel, the Metropolitan Police Department, and the Family Division of the court, and the private bar appointed to represent parents and children—must be fixed simultaneously.

In your letter inviting the Council to testify here today, you stated that the purpose of this hearing was to examine proposals to reform the Family Division, especially to better address child abuse and neglect cases, including current backlog, and examining practices in other jurisdictions. We will address both issues, starting with the second.

How do other successful jurisdictions organize their courts and child protection system? Early this year, representatives of the Council of Court Excellence and the D.C. Superior Court visited Chicago, Tucson, Louisville, and Newark, four urban area Family Courts identified as innovators in meeting the rigorous case management standards of the Federal Adoption and Safe Families Act.

In March 2001, the Council of Court Excellence reported our findings. We learned that first-hand, high-quality child protection systems can both operate as divisions within general jurisdiction trial courts like the D.C. Superior Court and as stand-alone Family Courts. One key to good results in these jurisdictions has been the court-specific practices and procedures for handling cases of child neglect and abuse, always with a focus on providing better service to the children and to the users of the court.

This 2001 Council of Court Excellence report listed 10 best practices. I'll not mention those, but we will add that report to our testimony here today.

[The information referred to follows:]

COUNCIL FOR COURT EXCELLENCE

Family Court vs. Family Division:
Does it Make a Difference in Child Abuse and Neglect Cases?

A March 2001 Report on Site Visits by the Council for Court Excellence

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I. Introduction

The District of Columbia faces a tremendous challenge in moving children from foster care to permanent homes. As of January 1, 2001, the District has approximately 5,000 abused or neglected children, many of whom have been in foster care for two years or more. In July 2001, the federal Department of Health and Human Services will audit the District for compliance with the Adoption and Safe Families Act of 1997 ("ASFA"), a federal law that requires both a final decision on a child's permanent placement within 12 months of the child's entry into foster care and prompt action to effect that placement. Failure to comply with ASFA could jeopardize millions of dollars of existing federal funding to the city for foster care.

The District of Columbia is not alone in this predicament. ASFA applies nationwide, and nearly every state is wrestling with its strict requirements. Some jurisdictions are doing better than others. For the past 18 months, the Council for Court Excellence, a nonprofit civic organization dedicated to improving local and federal courts and related agencies in our nation's capital, has been assisting the D.C. government agencies in their effort to comply with ASFA's provisions.

In January and February 2001, we made site visits to several courts that have made significant progress in complying with ASFA. One goal of the site visits was to learn new practices and procedures that might prove helpful to our Superior Court's Family Division and other responsible D.C. agencies. An additional goal was to examine the effect of court structure on court function. Thus, the Council site team visited courts structured as stand-alone family courts as well as family divisions within courts of general jurisdiction.

The Council for Court Excellence visited four courts: 1) the Circuit Court of Cook County, Chicago, Illinois; 2) Pima County Juvenile Court, Tucson, Arizona; 3) Jefferson County Family Court, Louisville, Kentucky; and 4) the Superior Court of New Jersey, Newark, New Jersey. We also included Hamilton County Juvenile Court in Cincinnati, Ohio, in our research because extensive information on this court is available, though we did not visit there. The Deputy Presiding Judge of the D.C. Superior Court Family Division and the Director and Deputy Director of the Family Division Clerk's Office participated in one or more of the four site visits.

During the site visits, we interviewed judges, court managers, an agency representative, clerk's office personnel, and data specialists. The site visit team visited judges' chambers, toured courtrooms and clerk's offices, attended a portion of an interagency committee meeting, and observed one court proceeding. Principal findings of the field work are summarized below. Where appropriate, we have included comparisons to District of Columbia Superior Court practices. Because the Council for Court Excellence's focus is on improving the D.C. foster care system, the focus of this report is solely on child dependency, i.e., abuse and neglect, cases.

II. Summary Findings

A. Court Structure

A major policy finding is that courts with successful child dependency case management systems exist both within general jurisdiction trial courts and as stand-alone family courts. The Council for Court Excellence site visit team had expected to find clear differences between the stand-alone family courts and family divisions. Instead, the distinction between the two models is often blurred.[1]

Pima County (Tucson) Juvenile Court, Newark, New Jersey Superior Court, and Cook County (Chicago) District Court are courts of general jurisdiction with a well-functioning family division. (The D.C. Superior Court also is a general jurisdiction trial court with a family division.) Jefferson County (Louisville) Family Court, and Hamilton County (Cincinnati) Juvenile Court are examples of stand-alone family courts.

A National Center for State Courts 1999 publication states that both family courts and family divisions can be effective in coordinating family law cases.[2] Coordination is not automatic, however. Merely bringing various types of cases involving the family into one setting, whether it be a family court or family division, facilitates but does not guarantee coordination.[3] Coordination among cases is something that must be planned and nurtured regardless of court structure.[4] Thus, successful courts are those which have developed practices and procedures to coordinate cases, as well as to expedite them.

B. Court Practices and Procedures

Ten successful practices and procedures, some of which are being implemented in the District of Columbia, are listed below. They are discussed in more detail in section III of this report.

- An explicit and sustained commitment to permanency for children.
- Partial or full implementation of the one judge/one family concept, i.e., one judge hears all family law matters relating to a family.
- Multi-year judicial assignments and prior experience in family law.

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[1] Indeed, the Pima County Juvenile Court in Tucson has the outward appearance of a stand-alone family court. Notwithstanding its name and the fact that it is housed in its own modern facility, it is a family division within a court of general jurisdiction. Pima County juvenile judges rotate, albeit after a lengthy term of service, among the other divisions of the court.

[2] Flango, Flango, & Rubin, How are Courts Coordinating Family Cases? (National Center for State Courts, 1999), p. 19 & 24.

[3] Id. at 20.

[4] Id.

- Judicial support and teamwork.
- Use of alternative dispute resolution techniques throughout the case.
- Collaboration among judges, lawyers, socials workers and other child welfare personnel.
- Improved calendaring practices including time-specific case calendaring, longer more substantive hearings and conferences, and fewer continuances.
- Interdisciplinary training on ASFA, court practices, and behavioral science issues.
- Tracking of cases to ensure compliance with ASFA.
- Allocation of sufficient space.

C. Results of Court Reform

In each court we visited, the above practices have produced tangible results – children are spending less time in foster care. Perhaps the most remarkable transformation took place in Chicago. In 1994, Chicago, with a population more than five times that of D.C., had 41,000 pending cases open, plus16,500 new dependency cases filed that year. After an aggressive program of court reform, its total dependency docket in 2000 was 16,000 cases. In addition, the average length of time spent in foster care was reduced from seven to less than four years.

In the mid-1980's, Cincinnati, with a Hamilton County population of 850,000, had 4,000 children in temporary custody. Fifty percent of them had been there for over five years. In 1995, following the implementation of extensive court reforms (prior to passage of ASFA), only 1,500 children were in temporary custody, with 50% leaving within one year.

Louisville, with a county population of 670,000, also has made remarkable progress. In the year ending mid-2000, it closed more dependency cases than were opened, 2,516 to 2,396. The reduction in case-processing time has reduced children's average length of time in foster care to 12 months. Results in Tucson are similar. Children in Tucson currently spend an average of 18 months in foster care, down from an average of 3.3 years in 1996. Newark has reduced the time from petition to disposition to 23 months and from disposition to termination of parental rights to an additional 23 months.

Washington, D.C., with a population of 572,000, has approximately 5,000 active child abuse and neglect cases. We are told that nearly 4,000 of these cases have been open for two years or more. The average length of time an abused or neglected child spends in foster care in D.C. is 3.5 years, and longer if there is a termination of parental rights. This is longer than all the jurisdictions we studied except Chicago, and far longer than ASFA permits.

III. Practices and Procedures of Successful Family Courts and Family Divisions

A. Commitment to Permanency for Children

One reason ASFA was enacted was because too many children were spending too long in temporary foster care. Changing longstanding institutional practices is difficult. Each of the five courts we examined appears to have successfully embraced that challenge with an explicit, sustained commitment to achieving timely permanency for abused and neglected children. The

commitment to permanency is evident from the enormous amount of time and hard work each has devoted to system reform. In each of the five jurisdictions surveyed, reform was a multi-year process in which reformers frequently encountered skeptics and other challenges. Indeed, in Cincinnati, the child welfare reform process took ten years.[5] In Chicago, the reforms have consumed nearly six years to date.

The commitment to permanency also is evident in the dedication to continually improving court practices and procedures. Court personnel frequently remarked that they were working on better ways to accomplish things. Of the courts we visited, the Pima County Juvenile Court in Tucson and the Jefferson County Family Court in Louisville, in particular, seemed to be infused with a spirit of innovation.

There is a strong commitment to achieving permanency for children in the D.C. child welfare community. However, D.C.'s child welfare reform effort is in the early stages. Early signs of reform are the establishment of a new case initiative designed to expedite the handling of new dependency cases and a remedial initiative designed to address the backlog of dependency cases pending longer than one year.

B. One Judge/One Family - Jurisdiction and Case Assignment

One aspiration of the family court is the one judge/one family concept, i.e., that one judge hears all family law matters relating to a family. Thus, for example, a judge who hears a dependency case also would hear a juvenile case involving a sibling, a domestic relations case involving the parents, or a termination of parental rights or adoption case involving the family. The one judge/one family approach has many benefits. It facilitates the coordination of cases, prevents judges and agencies from working at cross-purposes, and provides convenience and consistency for families.

One judge/one family is possible only if the family division or family court has jurisdiction over all family matters and affirmatively assigns all cases involving the same family to the same judge. The court we visited that comes closest to achieving the one judge/one family model is Jefferson County Family Court in Louisville, Kentucky. In addition to having jurisdiction over dependency matters, the court also has jurisdiction over domestic relations, adoption, and delinquency. Each judge hears all types of cases under an alphabetic case-assignment system. They can access related cases using a courtroom computer and transfer a new case to the judge handling the family's related cases. However, there is no formal process to screen all new cases to search for related cases.

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[5]Cincinnati, the pioneer of dependency court reform, began its reform effort in the mid-1980's. In 1995, the National Council of Juvenile and Family Court Judges published a blueprint for dependency court reform based in large part upon the practices developed by Cincinnati. Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases, (NCJFCJ 1995).

Some courts have implemented variations of the one judge/one family approach, most often one judge/one case. The Family Court in Cincinnati, whose jurisdiction is limited to dependency and related matters, assigns one magistrate for the life of a dependency case. The Family Division in Newark assigns one judge for the life of a dependency case, although it also has jurisdiction over domestic relations and all related matters.

The jurisdiction of the Pima County Juvenile Court in Tucson and the Cook County (Chicago) District Court is limited to dependency and juvenile matters, and judges hear both types of cases. Chicago's Child Protection (dependency) Division has linked its computer to the court's separate adoption division to provide some coordination among cases.[6]

The D.C. Superior Court Family Division has broader jurisdiction than all of the courts and divisions above. In addition to dependency matters, it has jurisdiction over domestic relations, adoption, juvenile, juvenile drug court, mental health and domestic violence. The division assigns one judge to handle a dependency case for the life of the case, but only after the initial and status hearings. However, D.C. is unique in that its Family Division judges take their dependency cases with them when they rotate to other divisions of the court.[7] Thus, in D.C., dependency cases are handled by 59 judges, most of whom have other full-time assignments. While originally motivated by the one judge/one case concept, this dispersion of cases defeats the goal of one judge/one family which is to achieve coordination among related family law cases. The dispersion also impairs quality control, case scheduling, and the capacity of social workers and their counsel to staff all hearings.

C. Multi-Year Judicial Assignments and Prior Experience in Family Law

In each jurisdiction studied, judicial officers serve a lengthy term in the family court or division. In addition, at least one jurisdiction requires judicial officers to have training and experience in family law.

In Cincinnati, Ohio, dependency cases are handled by a permanently assigned corps of magistrates who hear dependency cases exclusively. Furthermore, the court requires that magistrates have specialized training and qualifications including prior legal practice in the child abuse and neglect field. When there is a vacant magistrate position, a committee of the court looks to the legal community for qualified candidates.

The average term of service for judges in Newark's Family Division is approximately five years. The median term is eight to ten years and judges may stay as long as they want. In the Pima

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[6] D.C. has a computerized case coordination system, OPAL, which is designed to identify related cases. Unfortunately, the system is not fully operational.

[7] All courts we visited keep all family law cases within the family division, even when judges rotate to other divisions or leave the court; still-pending cases are reassigned to another family division/family court judge. Strong staff support and teamwork within the division/court brings the newly assigned judge up to date on case histories.

County, Arizona, Juvenile Court, judges stay an average of three to five years. In the Jefferson County Family Court in Louisville, circuit judges are elected for an eight-year term; district judges are elected for a four-year term and they must make a minimum commitment of three years if they wish to serve in the Family Court.[8] The shortest term of service, 2 years, was in Chicago. Interestingly, the former presiding judge of Chicago's Child Protection Division, who is credited with reducing the Division's enormous backlog of 41,000 dependency cases, served in the Division for six years.

Judges we visited were consistent in their comments that a lengthy term of service within a family court or division is necessary because of the complex nature of family law and family cases. They also conveyed that they were quite happy to serve in the assignment because the system was working well and they felt they were performing meaningful work. One of the judges from the Pima County Court in Tucson stated that she would be content to spend the remainder of her judicial career in the Juvenile Court.

The average term of service for judges in D.C. Superior Court's Family Division is one to two years. The Family Division does not require any prior experience in family law.

D. Judicial Support & Teamwork

Each of the four courts we visited provides their family division/family court judicial officers with substantial administrative and programmatic support. Professionals and para-professionals provide services that go well beyond the duties of a traditional law clerk or courtroom clerk. Court employees conduct case conferencing, coordinate services, manage review boards, and organize dockets. In addition, nearly all of the courts have hearing officers, magistrates or citizen review boards charged with conducting dependency case reviews or hearings.

In Hamilton County Juvenile Court in Cincinnati, where permanently assigned magistrates hear dependency cases from the "Day One Hearing" until the case is closed, judges hear the cases only on appeal. The magistrates are teamed with Case Managers, who prepare the docket and process and track cases after a hearing.

Each of Chicago's 17 Child Protection Division judges is teamed with a hearing officer who conducts progress and permanency hearings, after the initial permanency hearing. Judges also are supported by a Court Coordinator, who has a masters degree in social work, to conduct ADR case conferencing. In addition, Chicago's child welfare agency provides the court with a "help team" of social workers, to help with difficult cases.

Newark has volunteer citizen review boards that are the functional equivalent of a judicial officer while providing independent external scrutiny of the process. The boards conduct review hearings and make recommendations to the court. In addition, Newark uses a cross-agency team approach to handling cases to reduce the possibility of scheduling conflicts. One assistant attorney general

[8] Prior to the creation of Kentucky's Family Court, family matters were heard in both circuit and district court. The Family Court includes both types of judges and each is cross-deputized to hear all types of family law cases.

(the attorney who prosecutes the case) and one guardian ad litem are assigned to each of the judges. Both handle all cases before that judge. Team members meet monthly to ensure that the team runs smoothly. Newark judges also have a "Children in Court Team Leader" who acts as a dependency coordinator, manages the review boards, and provides staff support.

In Louisville, the Family Court has volunteer foster care review boards who review social service files and provide a report to the court prior to the in-court review. Like Newark, Louisville also uses an in-court cross-agency team approach. Each dependency unit has one judge, three guardians ad litem, and four parent's attorneys who are assigned exclusively to that unit. The Louisville judges also have social worker liaisons who link families with services.

The Pima County Juvenile Court in Tucson supplements its complement of judges with six full-time commissioners and one part-time commissioner, all with judicial authority equal to the judges but no court administrative responsibility. In addition, Pima County hires neutral facilitators to conduct pre-hearing conferences in dependency cases. It also has social worker liaisons.

E. Alternative Dispute Resolution (ADR) Techniques Used Throughout the Case

The Pima County Juvenile Court in Tucson has put together an impressive ADR process designed to encourage early settlement of dependency cases. It generates early momentum by holding a 45-minute conference before a neutral non-judicial facilitator prior to the initial hearing. (The initial hearing, referred to as the Preliminary Hearing, takes place five to seven days after the filing of the petition.) The court staff contacts the parties and appoints attorneys as part of the intake process in the period between petition and Preliminary Hearing. This process allows attorneys time to meet with their clients and social workers time to prepare a preliminary case plan prior to the initial conference. This, in turn, greatly increases parental participation in the conference and subsequent phases of the case. Thus, all parties begin actively participating and cooperating at the earliest point possible. Court representatives stated that the pre-hearing conference sets a cooperative tone for the entire case.

In a further effort to avoid contested adjudication, the Pima County Juvenile Court holds a 60-minute settlement conference before a judge or mediator (if requested by counsel) approximately 30 to 45 days after the initial hearing. The court also requires mediation or case conferencing prior to a contested trial. (The success of Tucson's ADR process may explain its relatively low number of active dependency cases,1,282, compared with D.C.'s 5,000 active dependency cases, notwithstanding Pima County's 800,000 population, compared to D.C.'s 572,000.)

The Chicago Child Protection Division of the Circuit Court of Cook County employs a similar ADR process. Its judges conduct a Court Family Conference prior to the initial hearing and 55 days prior to trial. Newark offers dependency mediation at any stage of the case, including termination of parental rights, upon referral of a judge at the request of a party.

Surprisingly, Louisville and Cincinnati, the two stand-alone family courts, do not yet have well-developed ADR processes for dependency cases. Louisville has implemented mediation in contested child custody cases and has only recently begun implementing it in dependency cases.

Cincinnati began an adoption mediation pilot project in 1998 and it recently began a pilot permanency mediation program.

D.C. has a permanency mediation pilot project for cases which have been open for more than two years. The project is in the very early stages. Case conferencing is limited.

F. Interagency Collaboration

Nearly everyone we interviewed stressed that collaboration among judges, lawyers, social workers, and other child welfare personnel is essential to make the foster care system function properly and facilitate permanency for children within ASFA deadlines. Cross-disciplinary collaboration, in a variety of forms, was evident in each of the courts we visited.

Each jurisdiction has an interagency, interdisciplinary group that meets regularly to establish policy and make decisions on child welfare issues. The former presiding judge of the Child Protection Division in Chicago told us that the key ingredient to Chicago's interdisciplinary committee, the "Table of 5," was to have people at the table during the policy-making stage of the process with the authority to make decisions for their agency.

After the initial planning stage, however, these interagency groups evolve into active work groups that address issues and problems as they arise. Attendance then varies, depending on the issues raised. The Council for Court Excellence attended a portion of the Model Children's Court Advisory Committee meeting in Newark. The Newark Committee, which meets weekly, was chaired by the lead dependency judge. Line staff from numerous offices and agencies within and outside the court were in attendance as the group addressed agenda items designed to fine-tune the system. The New Jersey judge stated that the Court actively involves line staff in decision making to encourage them to "buy in" to new practices and procedures.

A formal interagency committee was established in D.C. in late 1999 and has been meeting for the past 18 months.

G. Improved Calendaring Practices

1. Time-Specific Case Calendaring

In four of the five jurisdictions examined, courts use a staggered system of scheduling child dependency hearings, with hearings scheduled at intervals throughout the day. Only Newark does not stagger the scheduling of cases.

Chicago previously had used the "cattle call" approach in which all cases were scheduled for 9:00 a.m., resulting in long waits for parties whose cases were not called until hours later. In 1996, it implemented a staggered call policy in which cases were set at specific time intervals. A 1999 evaluation of the court prepared by Chapin Hall Center for Children commended the change, stating: "[N]o one we interviewed within the court expressed anything but satisfaction with the change to a staggered call; all agreed that the policy was more sensitive to the schedules of

families as well as those of professionals in the court."[9] In addition, the Chapin Hall report found that the average wait time for parties before the court was reduced from 2.3 hours to 1.2 hours and that there was no increase in the number of cases recalled because parties were not present.[10]

Staggered scheduling also is the rule in Louisville, Cincinnati, and Tucson. While Newark does not stagger the scheduling of cases, it does not set trial dates until six months after the filing of the petition because many cases settle prior to this point. Thus, the trial dates that are set are more likely to be "real" dates, i.e., dates on which trials actually go forward.

The D.C. Superior Court's Family Division historically has not staggered the scheduling of dependency cases. Recently, however, it has begun to stagger the scheduling of status hearings.

2. Longer, More Substantive Hearings and Conferences

Tucson, Chicago, and Cincinnati are expressly committed to the process of "front-loading" child dependency cases, i.e., investing time in the early stages of the case to help move it through the system quickly and increase the likelihood of a timely permanent placement. Chicago is conducting lengthier Temporary Custody Hearings which are preceded by ADR case conferences. Both conference and hearing address substantive issues such as case status, relative resources, and availability of services. In Tucson, the court holds a 45-minute initial hearing which is preceded by a 45-minute conference. Approximately 30 to 45 days later, the court holds a one-hour settlement conference. In Cincinnati, "Day One" hearings as well as subsequent hearings typically last one hour.

Survey data collected in 1997 by the District of Columbia Superior Court Improvement Project Advisory Committee indicates that at that time initial hearings in dependency cases lasted an average of 17 minutes.[11] D.C. has begun to implement longer, more substantive hearings to make the necessary judicial findings required by ASFA.

3. Fewer Continuances

None of the courts we visited reports a serious problem with child dependency case continuances. This was not necessarily the result of strict enforcement of an inflexible policy against continuances, although all have a culture discouraging continuances. Rather it appeared to be the effect of implementation of the practices and procedures described above, such as alternative dispute resolution, judicial support to ensure case management, a team approach, time-specific

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[9] Merry, The Impact of Reform in the Cook County Juvenile Court Child Protection Division, (Chapin Hall Center for Children 1999) p.12.

[10] Id.

[11] Court Improvement Advisory Committee, Child Abuse and Neglect Case Processing in the District of Columbia: An Assessment of the D.C. Superior Court's Performance and A Plan for Improvement, July 1997.

case calendaring, and longer, more substantive hearings.

Continuances are a serious problem in child dependency cases in the D.C. Superior Court Family Division. Trials, disposition hearings, and review hearings are sometimes postponed two or three times. In addition, judges sometimes hold multiple status hearings without setting a trial date, and multiple post-adjudication review hearings without making a decision about a child's permanency plan or setting a date for its implementation.

H. Training

Nearly all of the courts require mandatory training for new family court judges, including training on ASFA. Some courts, such as the Pima County Juvenile Court in Tucson, have created bench books to guide judges through each step in a dependency case. Judges, lawyers, social workers, and others also are participating in interdisciplinary training on ASFA and related legal issues as well as behavioral science issues. Those whom we interviewed on the subject agreed that inter-disciplinary training is essential because of the high degree of teamwork and coordination that is required to ensure timely permanency for children.

The D.C. Superior Court held mandatory judicial training in 2000 on ASFA requirements. Additionally, in 2000 the Council for Court Excellence organized three full-day interdisciplinary training seminars on basic ASFA principles. Each seminar was attended by more than 125 lawyers, social workers, judges and others. Because more interdisciplinary training is required, a subcommittee of D.C's interagency committee is spearheading an effort to establish a complete curriculum and recurring schedule of interdisciplinary training sessions.

I. Tracking Cases

All courts we visited place a high priority on tracking cases for compliance with ASFA time requirements, though most felt their existing case tracking systems are inadequate. Nonetheless, all are able to produce data to monitor the progress of their cases.

The Hamilton County Juvenile Court in Cincinnati implemented a computerized dependency case tracking system, JCATS (short for Juvenile Case Activity Tracking System), in 1993 that runs on a stand-alone PC. The system quickly produces a variety of reports that enable the court to analyze its caseload. The Pima County Juvenile Court in Tucson used JCATS on an interim basis while its JOLTS (Juvenile On-Line Tracking System) system was being modified to track dependency cases more effectively. JOLTS was up and running during our site visit, and we were given a demonstration of its capabilities. For the most part, JOLTS is regarded as a success. Court personnel complained, however, of the inability to share case information with other computer systems used in the courthouse, a complaint we heard in other jurisdictions.

Louisville's case management system is capable of producing reports that identify the dates of critical case events for individual cases. Nonetheless, it has identified case management software as a need. One of the specific functions it would like to have is the ability to screen for related cases.

Newark uses its statewide court computer automated system, which is not yet capable of producing the reports Newark judges and managers need. Thus they use a manual system to measure the dates of critical case events. Chicago's case tracking data is produced by the child welfare agency and shared with the court.

The D.C. Superior Court does not have a reliable system to track the progress of its entire dependency caseload.(A prototypical system is being maintained by the Council for Court Excellence to track the progress of new cases only.) D.C. Superior Court Chief Judge Rufus King announced a priority to implement a dependency case tracking system that is compatible with existing court computer systems. (Compatibility with related external computer systems [agency, prosecutor, police, etc.] would also enhance the quality of case management.)

J. Allocation of Sufficient Space

One hallmark of a good family court is a physical facility adequate in size, design, functionality, and comfort to accommodate the people who work there and families and children who must use the court, generally during very stressful times in their lives.

The Pima County Juvenile Court in Tucson, the Newark Family Division, and the Louisville Family Court are all housed in their own separate buildings designed for their function. The Pima County and Louisville court buildings are modern, spacious facilities with state-of-the-art courtrooms and conference rooms; Newark uses a recently well-renovated older building. Pima County Juvenile Court is oversized to accommodate future growth. Louisville's courthouse has visitation centers so that children removed from their homes can visit their families, consultation rooms for attorneys and their clients, and separate waiting areas for child victims. The Newark court provides families with a visitation center and a crisis counseling center. The child welfare agency shares the same building with the court, and the Attorney General's offices are across the street.

The D.C. Superior Court's Family Division is housed in cramped quarters in the same building as the other court divisions. Attorneys, families, and social workers must confer in the hallways because there are no conference facilities. Some courtrooms, such as the status hearing courtroom, are so small that the parties have difficulty fitting into the room.

IV. Conclusion

Meeting the challenge of placing abused and neglected children in safe, permanent homes within strict federal statutory deadlines requires commitment, innovation, collaboration, sustained effort, and resources. As the District of Columbia Superior Court and the other agencies of the District's child welfare system continue to implement the Adoption and Safe Families Act, they can learn from the experiences of other jurisdictions which have made measurable progress in providing services to their vulnerable children.

Attachment: "How D.C. Compares" Chart

How D.C. Compares:
Practices and Procedures of Successful Family Courts and Divisions for Handling Child Abuse and Neglect Cases

Court	Type of Court	Jurisdiction	Population	Active Neg/Abuse Cases**	1 Judge/ 1 Family	Average Case-load per Judge	Judges Term of Service	Judicial Support	Alternative Dispute Mechanisms	Interdisciplinary Collaboration	Time Specific Calendar ing	Length of Time in Foster Care
Superior Court of the District of Columbia, Family Division	Unified Court, with Family Division	DR, Dependency Adopt/TPR, Juv, Mental Health, Domestic Vio.	575,000	5,000	No	Range among 59 judges is 31 to 246 cases	1-2 years	2 Hearing Commis. Cover Initial and Status Hearings	Pilot mediation project begun in 2000.	Interdisciplinary Committee created in 2000	No	3.5 years
Circuit Court of Cook County, Child Protection Division, Chicago, Illinois	Unified Court with Family Division	Dependency, Juvenile	2.8 million	16,000	No	1,000	2 years	17 hearing officers; Ct Coordinator, Help Team, Drug Screening	Court Family Conference prior to initial hearing and 55 days prior to trial.	Interdisciplinary Committee, partnership with universities	Yes	Reduction from 7 years to 3 to 4 years
Pima County Juvenile Court, Tucson, Arizona	Unified Court with Family Division	Dependency, Adoption, Guardianship, Juvenile	800,000	Between 2,300 and 2,500	No	250-300	3 to 5 years	Case Conference Facilitators; 6 ½ Commis., Social worker liaisons	ADR prior to & 30 - 45 days after 1st hearing; Mandatory ADR prior to trial; mediation of TPRs	Interdisciplinary Committee	Yes	18 months

** One case equals one child

Prepared by the Council for Court Excellence 3/29/01
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How D.C. Compares:
Practices and Procedures of Successful Family Courts and Divisions for Handling Child Abuse and Neglect Cases

Court	Type of Court	Jurisdiction	Population	Active Neg/Abuse Cases**	1 Judge/ 1 Family	Average Case-load per Judge	Judges Term of Service	Judicial Support	Alternative Dispute Mechanisms	Interdisciplinary Collaboration	Time Specific Calendar ing	Length of Time in Foster Care
Jefferson County Family Court, Louisville, Kentucky	Family Court	DR, Dependency, Adoption/TPR Domestic Violence, Delinquency	670,000	2,396	A goal	266	3 years	Volunteer Citizen Review Boards, Social Worker Liaisons	Mediation recently implemented.	Interdisciplinary Committee; Cross-agency in-court team	Yes	12 Months
Superior Court of New Jersey, Chancery Division, Family Part	Unified Court with Family Division	Dependency, Divorce, Support, Custody, Adoption, Delinquency, Civil and Crim Domestic Violence	700,000	1,180	modified version	430 includes TPRs & over-sight of nonpetitione d cases	mean: 5 years; median: 8 to10 years	Volunteer Citizen Review Boards, Children in Court Team Leader	Mediation available at any stage of the case, including termination of parental rights.	Interdisciplinary Committee; Cross-agency in-court team; Child welfare agency in courthouse	No, but accommo-dates parties in attendance	2.4 years; if TPR additional 2.4 years
Hamilton County Juvenile Court, Cincinnati, Ohio	Family Court	Juvenile, Dependency, Paternity/Child Support, Custody	857,000	1,500	modified version	258	perma-nently assigned magis-trates	Magistrates hear cases from beginning to end; teamed with Case Managers	Adoption mediation, Permanency planning pilot project	Interdisciplinary Committee; collaboration with Agency and other jurisdictions on adoption issues.	Yes	1 to 2 years

**One Case equals one child.

Prepared by the Council for Court Excellence 3/29/01
Page 2 of 2

Mr. HARLAN. In our opinion, the bill under discussion today, which would reform the Family Division of the D.C. Superior Court, supports these Family Court best practices. We believe that to be true. Let me, though, comment on some specific issues within that bill.

No. 1, Family Court within the D.C. Superior Court—we do support the decision to reform the Family Division within the D.C. Superior Court rather than to establish a separate Family Court. We believe that this approach promises a faster, more effective, and more economical way to improve services to children and families in the short run. In the longer run, keeping a unified general jurisdiction court permits more flexible, faster response through fluctuating court case loads.

No. 2, judicial term of service in Family Court—the extension of the judicial terms in the Family Court is a needed change. We believe that a minimum of 3 years is an appropriate minimum of rotation, but hope that the Family Court operations improve so well that many judges will welcome the opportunity to serve longer.

No. 3, one judge/one family—we believe this is absolutely essential. The bill mandates this system to the greatest extent practicable and feasible to ensure that all family issues in the Family Court can be handled by a single judicial officer. The bill requires the Superior Court to document how it plans to follow this mandate in a 90-day Family Court transition plan.

The court has adopted a plan for providing a one family/one team approach to child abuse and neglect cases; however, heretofore, with all due deference to the Superior Court, we have not found the court willing to embrace the more comprehensive one judge/one family concept embodied in the bill. We urge the court to move to a one judge/one family system of case assignment on a unified calendar basis by having family judges concurrently hear all types of family law cases while assigned to the Family Court. This practice is followed in several of the other Family Courts that the Council of Court Excellence visited. They assigned all family law cases either by geographic sector—or by family name.

No. 4, minimum number of judges—the bill locks in an initial number of Family Court judges as a minimum permanently. We do not believe that the statute should prescribe a particular number of judges of one division of a unified court, such as the Superior Court, where different types of case loads fluctuate over time. We therefore suggest that the appropriate level of judicial manpower in the Family Court be set on an annual basis by the chief judge and that Congress review that decision annually as part of its ongoing oversight.

No. 5, keeping all family law cases in the Family Court—we strongly support the bill's dual requirement that now-pending family law cases be reassigned to family court and that all new cases remain in the Family Court until closed. Based on our research and site visits, we know of no other court other than the District's Superior Court, which disburses its child abuse and neglect cases to judges throughout the court outside the Family Division.

No. 6, magistrates, judges, hearing commissioners, and special masters—the bill creates a new category of judicial officer, the magistrate judge, for the Family Court, but it does not authorize

reclassifying hearing commissioners positions to the magistrate judge in other divisions of the Superior Court. We believe this inconsistency should be corrected.

No. 7, incentives—family law matters are among the most stressful cases that judges and other court officers have ever handled. In addition, the Family Division of the Superior Court has long been under-staffed, under-equipped, and assigned inadequate space. To signal that a new day has arrived and that the service in Family Court is strongly valued, we believe that statutory training incentives should be expressly provided, as you've just heard by the good Sister here, in the bill for judicial service in the Family Court. Specifically, we suggest authorized funding for Family Court judges and magistrates to receive not less than 80 hours per year of paid offsite training in family law and related matters.

No. 8, residency—we support the D.C. residency requirement for magistrate judges; however, we believe, as now drafted, it unnecessarily limits the candidate pool. Permitting magistrates to become permanent residents within 90 days after appointment rather than before appointment would enable more qualified family practitioners to apply for the magistrate judge position and thus attract new residents to our city.

No. 9, staffing and space—we believe that it is an error that this bill is silent on this issue. The Family Division of the Superior Court has long been under-resourced to meet its responsibilities to this city. We hope this legislative process will correct that deficiency now and that continuing congressional priority on child protection and other family law matters will ensure that under-funding of family court does not reoccur. The D.C. Superior Court will require substantial new operating and capital funds to execute the goals of this legislation. That funding must be forthcoming if we expect the District's child welfare system to change for the better.

No. 10, collaboration on the 90-day plan—the Family Court is but one part of the city's inter-woven child protection system. How the court organizes to do its work either supports or impairs the abilities of the other agencies to discharge their statutory duties to children and family. As this committee required last September with the emergency plan, we strongly urge that the bill require that the court's 90-day implementation plan be developed in full consultation and collaboration with the D.C. Child and Family Services Agency, the D.C. Office of Corporation Counsel, and the D.C. Metropolitan Police Department.

No. 11, effective date—to convey the urgency of reform, we believe that the bill should have a prompt effective date, not 2 years down the road. However, we also believe that all necessary judicial staff support and facility resources must be provided to the court prior to the effective date, or we'll just be setting that court up for failure.

I would be happy to answer your questions. Thank you.

Mrs. MORELLA. Thank you very much, Mr. Harlan, and thank you for the great work being done by the Council for Court Excellence. We appreciate your key points and the work that is being done.

[The prepared statement of Mr. Harlan follows:]

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Statement

of the

Council for Court Excellence

to the

U.S. House of Representatives Committee on Government Reform

District of Columbia Subcommittee

regarding

Reform of the Family Division of the District of Columbia Superior Court

June 26, 2001

COUNCIL FOR COURT EXCELLENCE

Good afternoon, Chairwoman Morella, Congresswoman Norton, Congressman DeLay, Congressman Davis, and other members of the U.S. House of Representatives Subcommittee on the District of Columbia. Thank you for inviting the Council for Court Excellence to provide testimony at today's hearing on the subject of "The Reform of the Family Division of the District of Columbia Superior Court – Improving Services to Families and Children." My name is Steve Harlan, and I serve as Chairman of the Board of Directors of the Council for Court Excellence. I am joined at the witness table by Timothy J. May, the Council's President.

We are honored to present the views of the Council for Court Excellence to this Committee. Our organization has been engaged over the past twenty-one months in facilitating the joint work by the city's public officials to reform the child welfare system and specifically to meet the challenge of implementing the Adoption and Safe Families Act of 1997. We believe that work affords us a relevant contemporary perspective on the issues before this Committee.

Permit me for the record to summarize the mission of the Council for Court Excellence. The Council for Court Excellence is a District of Columbia-based non-partisan, non-profit civic organization that works to improve the administration of justice in the local and federal courts and related agencies in the Washington, D.C. area. For nearly 20 years, the Council for Court Excellence has been a unique resource for our community, bringing together members of the civic, legal, judicial, and business communities to work in common purpose to improve the administration of justice. We have worked closely with this Subcommittee and the Senate D.C. Subcommittee in the past on such issues as the D.C. Court System One Day/One Trial Jury Reform Legislation, and we were privileged to testify before you last month, on May 11, regarding the need for a Criminal Justice Coordinating Council in the District of Columbia.

No judicial member of the Council for Court Excellence participated in or contributed to the formulation of our testimony here today.

Today's hearing focuses solely on the D.C. Superior Court's Family Division, and particularly its role in the city's child protection system. However we must not lose sight of the fact that the Court is simply one of several principal players in the system. "Fixing" the Family Division, while laudable and long needed, will not by itself yield a smoothly functioning child protection system in the District of Columbia. Each part of the safety net – the Child and Family Services Agency, the Office of Corporation Counsel, the Metropolitan Police Department, the Family Division of the Court, and the

private bar appointed to represent parents and children – must be "fixed" simultaneously to be able to work as seamlessly together as they must, to protect and find permanent homes for abused and neglected children.

I know this Committee understands the systemic nature of this topic. We commend the Committee for asking in September 2000 for city leaders of both the executive and judicial branches to provide a joint "Emergency Plan" to fix the child protection system. In early October 2000, the Mayor and the Chief Judge submitted that plan, which promised the court reform proposals by March 2001 which are the subject of this hearing. We urge the Committee to provide regular, ongoing oversight of the Mayor's and the Chief Judge's progress in implementing the October 2000 Emergency Plan, and we strongly urge you to focus your oversight on the performance measure embodied in federal law: namely, are the city's children spending less time in foster care?

In your letter inviting the Council for Court Excellence to testify today, you stated that the purpose of this hearing is to examine proposals to reform the Family Division of the D.C. Superior Court, especially to better address child abuse and neglect cases including the current "backlog" of cases, and to examine practices used by other jurisdictions.

We will address both issues, starting with the second: how do other successful jurisdictions organize their court's child protection system? Early this year, representatives of the Council for Court Excellence and the D.C. Superior Court visited Chicago, Tucson, Louisville, and Newark: four other urban family courts identified as innovators in meeting the rigorous case management standards of the federal Adoption and Safe Families Act of 1997 (ASFA).

In March 2001, the Council for Court Excellence reported on our findings from those site visits and from research on a fifth successful urban family court: Cincinnati. Each of the five courts serves an urban jurisdiction with a larger population than the District of Columbia. We learned first-hand that high quality child protection systems can operate both as divisions within general jurisdiction trial courts – like the D.C. Superior Court – and as stand-alone family courts. One key to good results in these jurisdictions has been the courts' specific practices and procedures for handling cases of child abuse and neglect, always with the focus on providing better service to the users of the court.

This March 2001 Council for Court Excellence report listed ten family court "best practices" in the field: (1) an explicit and sustained commitment to permanency for children; (2) partial or full

implementation of the one judge/one family concept, with one judge hearing all family law matters relating to one family; (3) multi-year judicial assignments and prior experience in family law; (4) strong staff support to judges and teamwork; (5) continuous use of alternative dispute resolution techniques throughout the case; (6) close collaboration among judges, lawyers, social workers, and other child welfare personnel; (7) improved calendaring practices, including time-specific case calendaring, longer more substantive hearings and conferences, and few continuances; (8) interdisciplinary training on ASFA, court practices, and behavioral science issues; (9) rigorous tracking of cases to ensure compliance with ASFA; and (10) allocation of sufficient, well-designed space for family court operations.

In our opinion, the bill under discussion today, which would reform the Family Division of the D.C. Superior Court, supports these family court "best practices." We commend the bill's co-sponsors for their efforts to craft a strong, clear policy framework in the bill. We further commend this committee for waiting to draft the bill until the D.C. Superior Court had presented its own Family Division reform plan for your consideration. Finally we especially commend Chief Judge Rufus King and his colleagues for the diligence and quality of the Family Division re-engineering project begun in January 2001 and for the Court's willingness during this process to re-think all facets of its approach to family law case management.

I turn now to the draft bill's proposal to reform the Superior Court Family Division, especially to better address child abuse and neglect cases including the current backlog of cases. We will comment on a number of policy issues.

1. **Family Court within D.C. Superior Court.** We strongly support the decision to reform the Family Division within the D.C. Superior Court rather than to establish a separate Family Court. We believe that approach promises a faster, more effective, and more economical way to improve services to children and families in the short run. In the longer run, keeping a unified general jurisdiction court permits a more flexible, faster response to fluctuating court caseloads.

2. **Judicial term of service in Family Court.** The extension of judicial terms in the Family Court is a needed change. We believe three years is an appropriate statutory minimum rotation but would hope that, as Family Court operations improve, many judges will welcome the opportunity to serve longer than three years in this critically important assignment. That has been the experience in other family courts we visited.

3. One judge/one family. The bill mandates this system "to the greatest extent practicable and feasible," to ensure that all of a family's issues in Family Court can be handled by a single judicial officer. The bill requires the Superior Court to document how it plans to follow this mandate in its 90-day family court transition plan.

The Court has developed a plan for providing a one family/one team approach to child abuse and neglect cases. However, heretofore, with all due deference to the Superior Court, we have not found the Court willing to embrace the more comprehensive one judge/one family concept embodied in this bill. We urge the Court to move to a one judge/one family system of case assignment by having Family Court judges concurrently hearing all types of family law cases while assigned to the Family Court. This practice is followed in several of the other family courts the Council for Court Excellence visited, which assign all family law cases either by sector of the city or by family name.

While other jurisdictions have embraced the one judge/one family goal more readily than has the D.C. Superior Court, no urban jurisdiction we found appears to have fully achieved the goal. We acknowledge the Court's concerns that due process and conflict of interest considerations weigh against a one judge/one family system, but we urge them to reconsider. While a one judge/one family assignment system would be a dramatic change from the current case-assignment practice in the Superior Court Family Division, we believe such an approach has advantages for both court users and judges over current practice. The families and children who come before the D.C. Family Court would only need to deal with one judge for all family matters. They would find a judge who is aware of the family's total situation. Families would thus experience more uniformity, consistency, and predictability in all their dealings with the Court than they now do. Assigning judges to all types of cases might also reduce judicial burnout, both because judges would have a greater variety of cases, and because they could get a greater sense of having a positive, consistent impact on a child's and family's situation.

4. Minimum number of judges. The bill locks in the initial number of Family Court judges as the minimum permanently. We do not believe that the statute should prescribe a particular number of judges for one division of a unified court such as Superior Court, where the different types of caseloads fluctuate over time. Thus we strongly suggest that the appropriate level of judicial manpower in the Family Court be set on an annual basis by the Chief Judge, and that Congress review that decision annually as part of its ongoing oversight of the Court's performance and its annual appropriations for Court operations. If Family Court caseloads drop as they have in other divisions of Superior Court over the past decade, it would be unwise to have a statute in place which precludes proportional reductions in Family Court judicial manpower.

5. Keeping all family law cases in the Family Court. We strongly support the bill's dual requirements that all now-pending family law cases be reassigned to the Family Court and that all new cases remain in the Family Court until closed. Based on our research and site visits, we know of no other court than D.C. Superior Court which disperses its child abuse and neglect cases to judges throughout the court, outside the Family Division.

From our past two years' work with officials of the judicial and executive branches who are responsible for the D.C. child abuse and neglect system, we believe the dispersal outside the Family Division impairs quality control on the cases, and we know that the dispersal impairs the capacity of the Child and Family Services Agency and the Office of Corporation Counsel to properly handle the cases.

As to pending cases, we understand that the Court's current plan is to leave them dispersed outside the Family Court. We respectfully disagree with that policy. As to new cases, we understand that the Court wants to permit judges to retain those cases under "extraordinary circumstances" when they rotate out of Family Court, and that the Court has provided the Senate with a list of such extraordinary circumstances. We believe that all cases should remain in the Family Court until closure, and that the only possible "extraordinary circumstance" permitting an exception might be that "the case is nearing permanency and changing judges would delay that goal."

The bill authorizes an immediate task force of magistrate judges to work on pending cases and it directs the Court within 90 days to develop a detailed implementation plan which, among other things, identifies the total number of judges and magistrate judges that will be needed in Family Court to handle its total diverse caseload. We believe that both of those provisions assuage concerns about "overloading" the Family Court.

6. Magistrates/hearing commissioners/special masters. The bill creates a new category of judicial officer, Magistrate Judge, for the Family Court but does not authorize reclassifying the Hearing Commissioner position to Magistrate Judge in the other divisions of the Superior Court. We believe this inconsistency should be corrected. The current draft may deter qualified current Hearing Commissioners from applying for Family Court magistrate positions, because their employment options may be limited following their term of service in Family Court.

Further, we urge deletion of section 6 of the bill which authorizes a special master to handle pending cases. This provision is unnecessary for several reasons. First, the Court already has sufficient authority to appoint special masters; second, the special master has no judicial authority to resolve cases; and third, section 5 of the bill authorizes the immediate appointment of a special task force of magistrate judges to handle pending cases.

7. Incentives. Family law matters are among the most stressful cases which judges and other court officers ever handle. In addition, the Family Division of Superior Court has long been understaffed, underequipped, and assigned inadequate space. To signal that a new day has arrived and that service in Family Court is strongly valued, we believe that statutory training incentives should be expressly provided in the bill for judicial service in the Family Court. These would increase expertise by exposing judges, magistrate judges, and other court staff to experts and "best practices" from other jurisdictions and should reduce burnout.

Specifically, we suggest authorizing funding for Family Court judges and magistrates to receive not less than eighty hours per year of paid off-site training in family law and related matters (in addition to in-house training), and an additional guaranteed paid study or training interval of six weeks between terms for any judge or magistrate who signs on for a second three-or-four-year term of service in Family Court. Family Court clerk's office personnel similarly should participate in substantive in-service education and training, and the bill should recognize their important role as well.

8. Residency. We support a D.C. residency requirement for magistrate judges. However, we believe as now drafted it unnecessarily limits the candidate pool. Permitting magistrates to become permanent D.C. residents within 90 days after appointment would enable more qualified family law practitioners to apply for magistrate judge positions and thus could attract new residents to the city. We recognize that the current draft merely replicates the current D.C. Code provision regarding residency of Hearing Commissioners. We believe that provision should be changed as recommended.

9. Staffing and Space. One clear lesson learned from good family courts is the need for strong professional case-management staff support to the judges. Another is the need for sufficient well-designed, family-friendly space to accommodate the public activities and support functions of the family court. We believe it is an error that this bill is silent on these issues. The Family Division of the Superior Court has long been under-resourced to meet its responsibilities to this city. We hope this legislative process will correct that deficiency now, and that continuing Congressional priority on child protection and other family law matters will ensure that underfunding of the Family Court does not recur. The D.C. Superior Court will require substantial new operating and capital funding to execute the goals of this legislation. That funding must be forthcoming if we expect the District's child welfare system to change for the better.

10. Collaboration on The 90-Day Plan. As I have said earlier, the Family Court is but one part of the city's interwoven child protection system. How the Court organizes to do its work can either support or impair the ability of the other agencies to discharge their statutory duties to children and families. As this Committee required last September with the Emergency Plan, we strongly urge that the bill require that the Court's 90-day implementation plan be developed in full consultation and collaboration with the D.C. Child and Family Services Agency, the D.C. Office of Corporation Counsel, and the D.C. Metropolitan Police Department.

11. Effective date. To convey the urgency of reform, we believe the bill should have a prompt effective date, not two years down the road. However, we also believe that all necessary judicial, staff support, and facilities resources must be provided to the Court prior to the effective date, or we will be setting the Family Court up to fail.

This bill will be the first major change to the D.C. Superior Court's structure since July 1970. We commend the Committee for your leadership on this issue and for your desire to provide the District of Columbia with a Family Court that embodies the best principles and practices now known.

We would be happy to answer your questions at this time.

Mrs. MORELLA. I am now pleased to recognize Margaret McKinney, Family Law Section of the D.C. Bar.

Ms. MCKINNEY. Thank you. Good afternoon, Chairwoman Morella, Congresswoman Norton, and Congressman DeLay. My name is Meg McKinney. I'm the co-chair of the Family Law Section of the D.C. Bar. I have been a family lawyer practicing in D.C. and Maryland for almost 9 years, and I am a D.C. resident.

The Family Law Section is compromised of attorneys who represent children and families who will be most affected by the proposed legislation. As family lawyers, we have always worked with the court to improve its functioning. We appreciate the opportunity to testify before this subcommittee.

From our perspective, there are several crucial components to any reform plan for the Superior Court. First, and most importantly, the Family Court must remain part of the Superior Court and not be relegated to a separate court. We are very pleased that the legislation does not create a separate court.

The other crucial elements of reform are addressed fully in my written testimony, but I will touch on them just briefly.

We urge Congress to do only what is absolutely necessary to effectuate the proposed reforms and not to unnecessarily restrict the discretion of the court. Congress must remember that whatever reforms are enacted will affect all of the different types of family cases, not just abuse and neglect, and it will also affect the court, as a whole.

We are also concerned about the funding of the reforms. There must be sufficient funding or we will be in a worse position than when we started.

The Family Law Section is most concerned about the length of judicial assignment to the Family Court. If Congress requires a minimum assignment, we believe that minimum should be 3 years. We want to see the best and most-experienced judges sitting in the Family Court. We believe the children and families of D.C. deserve nothing less. However, as my written testimony explains and as you've heard earlier today, a Family Court assignment is grueling. Judges in Family Court don't have juries to help them make decisions. They often don't have the resources needed to really help the families. And they have very little control over every other part of the abuse and neglect system. It is a tremendous challenge for any judge.

If the legislation requires more than 3 years and places additional restrictions on the judges, we are not likely to attract the best judges to the Family Court. We may not even be able to fill all the positions. The reason for this is not that it is considered a less-prestigious assignment; it is simply that it is extremely challenging, both intellectually and emotionally. Judges in Family Court see the worst possible family situations day after day. They repeatedly see problems that have no solution, yet they are expected to fix those problems. That is a daunting prospect.

The longest a Family Division judge is required to sit in Maryland is 2 years. In Baltimore, judges are assigned to the family dockets for 1-year terms.

If given proper support, we believe judges will want to stay in the Family Court, but first we have to attract them to it, and we

must acknowledge that Family Court is not for everyone. Judges are judges, not social workers, and they're not supposed to be social workers.

There is a narrative in my testimony that describes what I saw in just 1 hour in one of the three abuse and neglect courtrooms in the District. I saw a dedicated and experienced judge, dedicated, experienced attorneys and social workers struggling with very difficult problems.

One case involved a 17-year-old boy who had been shot 2 nights before in a drive-by shooting. His mother was in jail.

In another case, the alleged father of the child was in jail and the mother refused to submit to a psychiatric exam, even though she had been previously institutionalized. Despite the judge's urging, the mother refused.

There was also a 14-year-old mentally handicapped child whose mother, an alcoholic, gave the child to a family friend 10 years ago. The child's father had been in and out of jail. The family friend died, leaving her daughter to care for the child. The child entered the system because it was that daughter who had been accused of abusing her; 15 witnesses were scheduled to testify, most of them against the caretaker.

There was another case involving a teenage girl with sickle cell anemia who came to the United States from a Third World country where no medical treatments were available to her. Her uncle, who was the only person who had health insurance to cover her, was accused of sexually abusing her.

In fiscal year 2000 there were more than 4,500 open abuse and neglect cases in Superior Court. Of those, 1,400 were new cases. But there were also more than 4,600 active domestic violence cases, more than 3,400 active juvenile delinquency cases.

In the Family Division and the DV unit, as a whole, there were more than 33,000 open cases in fiscal year 2000. Each of these cases represents a family in trouble. I haven't even tried to describe in my testimony the difficulties faced by judges in juvenile, custody, divorce, domestic violence, and support cases in Superior Court. Family cases, especially abuse and neglect, are extremely complex. I give you this information to illustrate those complexities and to demonstrate that the complexities are not the result of the court system. We're dealing with human beings who have human frailties, and reforming the court will not solve the underlying societal problems that lead to the abuse and neglect of our city's children, nor will it create more permanent homes for those children.

We appreciate the need for reforms and we are grateful that Congress is willing to help address those problems, but we urge Congress to be cautious and to make sure that the reforms are truly beneficial to this city.

Thank you.

Mrs. MORELLA. Thank you very much, Ms. McKinney. Please know that your testimony in its entirety will be in the record.

[The prepared statement of Ms. McKinney follows:]

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Testimony of the Family Law Section
Of the District of Columbia Bar
Before the Committee on Government Reform
Subcommittee on the District of Columbia

June 26, 2001

The Family Law Section of the District of Columbia Bar is pleased to submit to this Subcommittee this testimony on the draft District of Columbia Family Court Act of 2001. Our members are attorneys who represent children, parents, grandparents and other caretakers in all types of family law cases, including adoption, divorce, custody, abuse and neglect, child support, paternity and other such proceedings. The Family Law Section of the D.C. Bar represents the most highly respected family lawyers in the D.C. area and some of the best family lawyers in the country. The District of Columbia Bar has approximately 74,000 members. The Family Law Section is comprised of those members of the D.C. Bar practicing family law in Washington, D.C. and neighboring jurisdictions. The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The reason for the Family Law Section's interest in this legislation is very simple. The Section is wholly comprised of individuals who represent, on a daily basis, the children and families who will be most affected by the proposed legislation. Our collective knowledge and experience regarding D.C. family law, our deep concern for the persons these laws seek to serve and protect, and our unique understanding of the pressures facing the Family Division of the D.C. Superior Court and the judges that labor therein, give the Section an enlightened and valuable perspective on the issues facing the Superior Court today. It is important to state

at the outset that the Family Law Section has always had a strong interest in ensuring that the Family Division of the Superior Court provides the best services that it possibly can to the children and the families of the District of Columbia. The Section has always supported positive and productive movements initiated both inside and outside of the Court to improve its ability to meet the needs of its constituents.

The Family Law Section is grateful to Chairwoman Morella, Representative DeLay, Representative Norton and Representative Davis for including us in the discussions which led to this draft legislation. We appreciate having the opportunity to voice our concerns. We are pleased to see that the present draft keeps the family court within the Superior Court. We view this as the most critical element of any reform plan.

We applaud the sponsors of the legislation for including in the draft bill mandates for a new computer system, continual education and training of Family Court judicial officers and personnel, increased provisions for alternative dispute resolution, practice standards for court-appointed attorneys, permissive extension of a judge's assignment to the Family Court, the use of specially trained magistrate judges, on-site coordination with other government agencies necessary to the efficient management of abuse and neglect cases, a social service liaison, and annual reporting by the Family Court. It is crucial, however, that Congress also provide the funding necessary to support these mandates.

The Family Law section would like Congress to know that since January, when Chief Judge King, Judge Walton and Judge Josey-Herring assumed their current leadership roles, there have been significant improvements in the functioning of the Family Division of the Superior Court. Chief Judge King added an additional calendar and judge to handle abuse and neglect matters in the Family Division. Judge Walton established working groups that have studied the

Family Division. The working groups include judges, court personnel, children's advocates, local counsel, members of the bar and others. The changes suggested by the working groups would significantly improve the Division. In fact, some of the suggestions from the working groups have already been implemented. All of the calendars in the Family Division are being run much more efficiently and with greater success. We attribute these changes to the dedication and extraordinary efforts of Chief Judge King, Judge Walton, and Judge Josey-Herring, along with all of the judges currently sitting in the various branches of the Family Division.

The Family Law Section has a number of concerns about the proposed legislation. We have conducted an independent analysis of the draft legislation to determine its potential impact upon the children and families we represent in D.C. Superior Court. Day after day, we see the problems faced by children and families, both systemic and societal. We are pleased that the Family Division has received the attention it needs. However, from our perspective there is a significant tension between the desire to implement legislation that would prevent today's improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that prevents it from adapting to the needs of the community it serves. We urge Congress to consider the potential unintended consequences of tightly constricting the discretion of the Court to manage its busy dockets, which may inhibit the Court's ability to adapt to the changing needs of this city. As practitioners we want to see continued improvements to the system but we recognize that it is important not to over-legislate the particulars of the Family Court, as addressed more fully below. With strict Congressional oversight, all parties affected by the system will be assured that there will only be forward progress.

I. Length of Judicial Assignments to the Family Court

Aside from the need for ongoing funding, the most important issue in the current draft of this legislation is the length of any mandatory assignment to the Family Court. If Congress intends to mandate the length of a judge's assignment to the Family Court, we urge Congress to provide that the initial assignment to the Family Court is no more than three years, with the opportunity for judges to voluntarily extend the assignment. In taking this position, we are primarily concerned with protecting the humanity of our judges and, thereby, the integrity of our judicial system. It was a life and death issue that brought us to this point and we should not forget that fact in our haste to make improvements to the system. It is imperative that each judge sitting on the Family Court has compassion, tolerance, patience, and the quality of spirit necessary to look at the most difficult family situations day after day and not lose hope or become desensitized.

Congress should be aware that in Maryland, which has a family division system within its Circuit Courts, judges are assigned to the family division for one to two years. In Montgomery County, judges are assigned to the family division for approximately 18 months with voluntary extension of the assignment. The Honorable Louise G. Scrivener, presiding judge of the Montgomery County Circuit Court Family Division, has served three years in the Family Division and will voluntarily rotate out of the Division this summer. Judge Scrivener was a family law practitioner and Domestic Relations Master prior to becoming a judge. She has been a dedicated advocate of children and families throughout her distinguished career. In Prince George's County, Maryland, which has the longest family division assignment in the state of Maryland, judges are assigned to the family division for two years. In the Circuit Court for the City of Baltimore, arguably the only truly "urban" jurisdiction in Maryland, judges have one-

year assignments to the juvenile/abuse and neglect calendars and one-year assignments to the domestic relations calendars, where they preside over divorce, custody, child support/paternity, and domestic violence proceedings.

In order to understand why the Family Law Section recommends that the initial assignment to the Family Court not exceed three years and that the assignment be extended only voluntarily, it is necessary to recognize the difficulties inherent in being a Family Court judge in the District of Columbia. Family cases differ from civil and criminal cases in some very important ways. In civil and criminal cases it is usually the jury who considers the facts, applies the law, and makes the ultimate decision. However, and more importantly, Family Court cases do not have juries—the judge is the sole decision-maker. At the end of the day, a Family Court judge cannot simply turn the case over to the jury and receive a decision. In a Family Court case a judge must listen to whatever evidence is presented, apply his or her knowledge of the law and his or her experience, decide on the issues, and often write detailed findings of fact to justify the decision. Every decision made by a Family Court judge will irrevocably alter the lives of children and their families.

Making the Family Court judge's job more difficult, many people in the District of Columbia who are involved in family cases come before the Court without the benefit of an attorney. In divorce, child custody, child support, paternity and domestic violence cases many of the litigants do not have attorneys and have no right to court-appointed counsel. Divorce, child custody, and child support/paternity cases accounted for slightly less than fifty percent (50%) of the approximately 13,000 filings in the Family Division of D.C. Superior Court in fiscal year 2000. That meant 13,000 families entered the Court system that year. In addition, there were more than 3,715 new domestic violence cases filed in the D.C. Domestic Violence Unit in fiscal

year 2000.[1] When one or both parties appear before the court in these cases without an attorney, the judge must protect and, therefore, educate the unrepresented parties in order to ensure a fair hearing. Hearings are protracted in these cases and require more of a judge's patience, tolerance and time. This causes an extreme but delicate tension between the individual needs of the family members and the Court's need to manage its congested docket. Even in cases where all parties are represented by counsel, the judge faces difficulties. The judge must allocate the available time and resources in order to provide those parties ample time to try their cases while also taking into account the needs of those parties waiting in the courtroom. Given very limited time, the judge must balance and manage the docket in order to give all parties their day in court. With overcrowded dockets and many unrepresented parties, this is an extraordinary challenge.

In fiscal year 2000, there were 3,064 juvenile cases, 1,494 abuse and neglect cases, 1,915 mental health/retardation, and 406 adoption cases filed in the Family Division. These cases account for slightly more than fifty percent (50%) of the cases filed (or placed at issue) in the Family Division in fiscal year 2000, with abuse and neglect proceedings accounting for approximately eleven percent (11%) of the total. There are more than 3,000 ongoing abuse and neglect proceedings, in addition to the 1,494 new or reactivated cases. The Office of Corporation Counsel (OCC) is responsible for representing the District of Columbia Government in abuse and neglect cases. These attorneys represent the government's interests in protecting its children throughout the life of the abuse and neglect cases.

In juvenile, abuse and neglect, termination of parental rights, and certain mental health/retardation cases, children and indigent parties have a right to free court-appointed counsel. As with indigent criminal defendants, the right to counsel in these matters is axiomatic. Attorneys are provided and paid for through Court programs, with some *pro bono* attorneys

[1] All Superior Court statistics reported herein are from the 2000 Annual Report, District of Columbia Courts.

provided through other non-profit agencies. In abuse and neglect cases, the child and each of his or her parents has court-appointed counsel. In certain instances foster parents, relative caregivers, and adoptive parents also receive court-appointed counsel. Most of these attorneys are appointed through the Counsel for Child Abuse & Neglect Office (CCAN) in Superior Court, which currently has approximately 275 attorneys on its list of approved counsel. Only approximately four of those attorneys speak Spanish, in a city with thousands of low-income Spanish-speaking residents. Attorneys for juvenile proceedings are appointed through the Criminal Justice Act Office (CJA) in Superior Court or the Public Defender Service (PDS). There are currently fewer than 250 lawyers approved to handle juvenile matters. For some of the same reasons it is difficult to recruit judges to the Family Division, it is difficult to recruit lawyers to represent parents and children in abuse and neglect proceedings and juveniles in delinquency proceedings. In addition to the difficult and frustrating nature of the work, lawyers who represent children and parents through the CCAN and CJA offices are paid only $50.00 per hour. CCAN lawyers must zealously represent their clients with the knowledge that the fees they will receive for the representation are capped at $1,100 per case, except in exceptional circumstances. Clearly, there are not enough lawyers to provide quality legal representation to all the individuals in family cases who desperately need it. The Court needs additional funding for the CCAN and CJA offices in order to attract additional quality lawyers to represent children and indigent people. Raising the hourly rate of pay would help the CCAN office find more lawyers willing to take these difficult cases.

Unfortunately, in addition to not having enough lawyers, Family Court judges also see a number of cases where a party or a child has inadequate representation by counsel. In these cases it is the judge who must ensure that the child's best interest and the parent's rights are

protected. This is often a very delicate balancing act for the judge. To further complicate these abuse and neglect cases, the social services agencies involved have been understaffed and overworked. Often, the social service agencies are simply unable to perform their role. We hope that with the new leadership at the Child and Family Services Agency (CFSA), and with better funding, CFSA will have the resources it needs to adequately manage the overwhelming number of abuse and neglect cases in the District.

In family cases, particularly child abuse and neglect cases, the Superior Court judge often must try to assist a child in need without vital information or access to the services necessary to improve the child's situation. Lack of counsel, inadequate counsel, and overworked social workers, often mean there is less evidence available upon which the judge can make these difficult decisions. In these cases the judge begins to perform several roles—not just the role of the decision-maker. The judge may become the investigator, the provider of information as to available services, or the protector of the unrepresented or poorly represented party. The judge must spend significant time explaining the process to the litigants, maintaining control in the courtroom, and assuring that each party receives a full and fair hearing. However, at the end of the day, the responsibility lies with the judge, and he or she must make a decision.

Day after day, Family Court judges see children and families in crisis. But not only do the judges face people in crisis every day, they generally see only the worst cases of family crisis. The "easy" and "simple" cases resolve themselves through mediation or negotiation, often before they even reach the court. Family Court judges often see cases in which one or more of the people involved has a serious mental illness, substance abuse problem, physical limitation, or a combination of the three, and where there is not enough money to support the family let alone provide the services the family truly needs. There is often emotional, physical or

psychological abuse on the part of one or more family members. Sometimes the problems of the family are readily apparent; sometimes the problems are subtle and much time is needed to identify and find a solution to the problems. Often there is no light at the end of the tunnel for the families that come before the Court. One cannot underestimate the emotional and psychological toll these cases take on all the people involved in them—litigants, family members, lawyers, and most importantly the decision-makers, the judges. Family Court judges are charged with making life-altering decisions each day in cases where there is no simple solution to the families' problems and where there is often inadequate information and support from the people who should be informing the judge. This is especially true in this urban jurisdiction where there are such significant problems with substance abuse, poverty and lack of education.

As family lawyers we have some ability to limit the number of these particularly difficult cases we handle at a given time. We try to avoid fatigue by keeping our hours in check and working on cases with varying levels of difficulty and trauma. Many family lawyers choose not to work on abuse cases because they are simply too heart wrenching and stressful—the stakes are too high. Judges have no such luxury. In general, the cases Family Court judges see are before the Court precisely because the problems were too complex or severe for the family members to resolve on their own.

In addition to the emotional and psychological demands of being a Family Court judge, Congress should also consider the practical aspects of the assignment when determining its length. Judges in Superior Court typically preside over cases from approximately 9:30 a.m. to 4:30 p.m. five days per week. Family Court judges typically use the time before 9:30 a.m. and after 4:30 p.m., as well as weekends, to write decisions and issue orders. To sit on a family court docket is to have what amounts to two full-time jobs. After hearing cases all day, judges must

return to their chambers to spend additional time making decisions, writing opinions, issuing orders and performing their administrative duties. The decisions are not easy to make in most cases and judges struggle to find the best possible result for children. We know judges in the Family Division, past and present, who regularly work 12 and 14-hour days, or longer, and weekends in order to keep up with their caseload. Even the most dedicated advocate of children and families could not be expected to maintain such a demanding schedule day after day and year after year.

Judicial fatigue, like fatigue in any area of life, leads to mistakes. Even with all of the improvements called for by this legislation and by the Superior Court reform plan, we fear that judges sitting on the Family Court will become fatigued and desensitized if they are required to stay more than three years. We worry about what could happen if the judge has seen too much misery, when he or she has heard the same story one too many times, and has been drained of the necessary compassion, tolerance, and energy it takes to make wise decisions. The children and families of the District of Columbia need judges who have the time, the resources, and the assistance from other branches of government that the children need. It is primarily for this reason that we hope Congress will provide the funds necessary to implement the planned reforms to Superior Court.

Finally, the children and families of the District of Columbia deserve to have the best and brightest Superior Court Judges sitting in the Family Court. For good reason, many judges hesitate to take an assignment to the Family Division. Requiring by law a specific length of assignment to the Family Court would make it more difficult to recruit qualified judges. Even three years is a long time for a judge to serve in the Family Court. A shorter assignment would encourage more judges to volunteer for the Family Court. For many people, including many

family law practitioners, more than three years on the Family Court bench would be far too long. Five years represents fully one-third of a judge's initial term of appointment--too many to make it an appealing assignment for many judges. Moreover, a five-year assignment would likely eliminate a judge's willingness or ability to return to the Family Court after serving in a different division. The Family Division has benefited greatly from the experience and insight gained by judges who have served in other divisions and returned to the Family Division bringing with them fresh perspectives, new skills, renewed energy and dedication. The Family Division has also benefited from having judges from all backgrounds sitting in the Division. Some of the best Family Division judges had no prior experience in family law. What matters most is not the judge's background, but that the judge has excellent judicial skills, life experience, and a great deal of compassion.

We believe that Congress should not mandate the length of judicial assignments to the Family Court. We believe it would be preferable for the Committee to recommend to the Chief Judge an assignment of two to three years on the Family Court, which can be monitored through Congressional oversight. If Congress feels it necessary to mandate the length of judicial assignments to the Family Court, for all of the reasons set forth above, we strongly recommend that the assignment be no longer than three years.

II. Minimizing the potential negative impact of the proposed legislation.

As stated previously, for family law practitioners there is a significant tension between the desire to implement legislation that would improve the Superior Court and prevent those improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that may have a negative impact on the Court and the community it serves. We have analyzed the legislation and we have reviewed the Comments of the Superior Court on

the draft legislation. Our concerns about the legislation arise from our interest in having the best possible judges in the Family Court. The proposed legislation may inhibit the ability of the Chief Judge to ensure that there is a full complement of highly qualified judges in the Family Court and the D.C. Domestic Violence Unit at all times. Limiting the discretion of the Chief Judge to require judges to serve in the Family Court and to remove judges when necessary could cause significant problems. What if there are not enough judges who volunteer for the assignment because of the restrictions in the legislation? What if the best judges do not volunteer? What if after a judge leaves, no other judge volunteers to take his or her seat? It is imperative that the Chief Judge retains the discretion necessary to ensure that the Family Court and the D.C. Domestic Violence Unit have the highly qualified and skilled judges needed to resolve these complicated family cases. From our perspective as family law practitioners, we make the following additional recommendations with respect to the draft legislation:

A. It is imperative that the legislation specifically acknowledges that cases pending in the Domestic Violence Unit will not be required to be transferred to the Family Court. The Domestic Violence Unit was created, after careful study and much hard work, to address the specific needs of families and children touched by the myriad of issues arising from domestic violence. It is important not to create confusion between that Unit and the new Family Court, and to permit cases to move between the two as necessary to best serve the families involved. Again, the Court must be given discretion to address such matters on a case-by-case basis.

B. If the legislation in its final form requires a mandatory minimum number of judges to be assigned to the Family Court, the Family Law Section supports an overall increase in the total number of judges in the Superior Court. We believe it is important for the Chief Judge to retain the discretion to shift judicial resources as necessary to address changes in the

needs of the court and the community as a whole. Just as we believe additional judges should be pulled from the Civil or Criminal divisions when needed in the Family Court, we believe the Chief Judge should have authority to move a Family Court judge to another division if necessary, and if the Family Court can spare the judge. If the Chief Judge does not have discretion to move judges, within reason, between divisions, the Court's ability to meet the needs of the entire D.C. community may be compromised. The Court is already limited by the fact that Superior Court judges are federally appointed, and the length of the confirmation process delays the ability of the Court to fill vacancies. There are currently three vacancies in the Superior Court. The judges expect three more vacancies to occur by the end of this year. There are generally at least two to three vacancies each year. Increasing the number of judges allocated to the Court would allow for each division of the Court, the Family Court, and the Domestic Violence Unit, to remain at maximum strength despite the usual vacancies expected with judges leaving the court.

C. Many abuse and neglect cases are complex and remain open for good reasons. Requiring these cases to be transferred into the Family Court without an assessment of what result would most benefit the child in question is unreasonable and may not serve the child's best interest. We believe the Presiding Judge of the Family Court should have discretion to determine that particular children are best served by leaving their case with a particular judge, even if that judge is not sitting in the Family Court. We believe it is best not to mandate a wholesale transfer of all currently pending abuse and neglect cases to the Family Court but rather to allow discretion in special circumstances. Additionally, we fear that the wholesale transfer of approximately 4,500 abuse and neglect cases into the newly created Family Court without sufficient judicial and court resources would negatively impact the children involved in those cases. Many of the children in the abuse and neglect system have serious emotional,

psychological, and physical limitations that require significant resources and attention. If the new Family Court is inundated by the influx of existing cases, we believe it is highly likely those children will suffer from the lack of individual attention by a judge familiar with their circumstances.

D. We have already outlined the many reasons a judge might not volunteer for or be able to tolerate a long-term assignment to the Family Court, although he or she might be an excellent Family Court judge for several years. The legislation should not require judges to make certifications to the Chief Judge prior to assignment to the Family Court; nor should the removal of a judge from the Family Court require a "finding" that "the retention of the judge in the Family Court is inconsistent with the best interests of the individuals and families who are served by the Family Court." These certifications and the potential of a public finding are likely to discourage even more judges from volunteering for an assignment to the Family Court. Judges are only human and the Family Court docket is a very demanding assignment. Congress must not strip the Chief Judge of the discretion to quietly make certain decisions without causing his fellow judges public embarrassment. There are many reasons why a judge may need to leave the assignment early. There could be many reasons the Chief Judge would need to remove a judge mid-term. A judge could have a family crisis, become ill, become overwhelmed by the difficult and overcrowded docket, or simply be ill suited for service on the Family Court. If Congress requires a three or five-year assignment, includes requirements for certifications by judges before taking the assignment, and requires findings by the Chief Judge before a judge could be removed (voluntarily or involuntarily) from the Family Court, the Chief Judge may be unable to fill vacancies or remove judges when necessary. This would have a negative impact upon the children and families appearing before the Family Court.

It is our hope that with the planned reforms to the Superior Court and the abuse and neglect system as a whole, the number of abuse and neglect cases in Superior Court will be significantly reduced, which would change the needs of the Family Court. We believe the legislation does not need to restrict the Court's ability to manage family cases as much as the proposed draft would. Since the legislation provides annual reporting by the Chief Judge and significant Congressional oversight, Congress, children's advocates, members of the bar, and the community will have an opportunity to evaluate whether the Family Court is functioning appropriately.

III. Appropriations

If Congress intends to proceed with this legislation, the addition of a provision that specifically authorizes funding of the changes required by the bill is absolutely essential. The substantial changes to Superior Court required by the bill cannot be funded within the Court's current budget. The Family Law Section is aware that if the bill does not contain specific authorization for funding the reforms, the necessary funding may not be available. If funding is not available, the Court will not be able to make many of the necessary changes. If reforms are mandated without proper funding, the families and children of the District will likely be in a worse position than when we started this process.

IV. Conclusion

In conclusion, we would like to thank Congress for shining a light on these very important issues. We recognize the need to improve the handling of abuse and neglect matters in D.C. Superior Court and throughout the system. We believe that as a result of the attention these issues have received, there have already been substantial improvements. We believe the improvements will continue under the watchful eyes of Congress, advocacy groups and the bar.

According to the most recent Annual Report of the District of Columbia Courts, in fiscal year 2000 the Family Division had 29,204 active cases under its jurisdiction. In addition, there were more than 4,675 active domestic violence cases. The open abuse and neglect cases represent approximately thirteen percent (13%) of those 33,879 cases. We realize that these are in fact the most important cases the Court handles. However, the draft legislation would impact all family cases.

It is important for this Subcommittee to understand as it considers legislation that would dramatically affect the entire Family Division exactly what challenges the judges of Superior Court face in handling abuse and neglect cases. In fiscal year 2000, approximately seventy-five percent (75%) of the 1,417 new children who entered the abuse and neglect system in Superior Court were over four years of age; more than fifty-eight percent (58%) were over the age of seven. In order to provide this Committee with a true picture of the abuse and neglect situation in the District of Columbia, I would like to share with you what I observed in just one hour of one day in one of the three abuse and neglect courtrooms in D.C. Superior Court:

On this particular day, the judge was scheduled to hear two trials, two status hearings, and two review hearings. In addition, the trial from the preceding day had to be completed.

When the court called the first trial scheduled at 9:30 that morning, the attorneys and social workers stepped forward. There was an attorney from OCC, a social worker, an attorney for the child (a *guardian ad litem* or GAL), an attorney for the mother, and an attorney for the father. The attorney for the mother was substituting for the attorney who had been appointed by the Court but who had never actually appeared in the case, or returned the phone calls of the father's attorney or the GAL. The substitute attorney had only recently learned of his role in the case. The child was not residing with either parent. The man alleged to be the father of the child

was denying paternity but could not be tested because he was in jail in another jurisdiction. The social worker had not been able to perform her job because the mother, who had previously spent time in a psychiatric hospital, refused to participate in the court-ordered psychological evaluation. Despite the judge's gentle but firm admonishment and warning as to how it might affect the decision as to whether her child returned to her custody, the mother refused to participate saying she had already been evaluated once, she did not have mental problems, and she had to work. Since the trial from the preceding day had to be finished, the case was continued for several weeks. Simply rescheduling the case took 20 minutes of Court time.

As the first case was being rescheduled, the judge received an emergency telephone call from a third party caretaker of a child in the system. After taking the call, the judge learned that the caretaker was about to be evicted from her apartment. The judge tried to calm down the caretaker and asked the Courtroom clerk to call the social worker to give the caretaker assistance.

When the Court called the second trial, present were an attorney for OCC, two social workers, the GAL, the father and his attorney, and the mother. The mother's attorney was not present and the mother had been unable to reach him. He is also her attorney in the case of another child she and the father have in the system. The Court could not proceed without the mother's attorney present. The case was passed by the Court in the hope that the mother's attorney could be located and a new hearing date set. This case was before the court for approximately ten minutes.

The first status hearing took approximately ten minutes. The child in question had been shot in a drive-by shooting two nights before. The mother was in the Superior Court lock-up because she had been arrested the night before. The child's grandmother was the long-time official custodian of the child, but had only just learned of the shooting. The child's condition

was unknown. Present for the status hearing were the attorney from OCC, the grandmother's attorney, the mother's attorney and the GAL. The case was rescheduled for six days later.

The first case called for a review hearing was delayed because the mother's attorney was not present and the father was expected to appear at the hearing but had not arrived. Present in the Courtroom for this review hearing were the GAL, the foster mother and her attorney, the mother, the father's attorney, the father's wife, an adult child of the mother, several social workers, and several witnesses. The case would be called again later in the day.

In the second case called for a review hearing, the facts were devastating but a permanent placement was achieved for the child. The child suffers from sickle cell anemia, but no longer has legal immigration status. The child's father lives in a war-torn third world country. Her parents hoped she would receive better medical treatment in the U.S. She had been living with her mother and an uncle before the uncle was accused of sexually abusing her. Present in the courtroom for the hearing were the attorney for OCC, a court social worker, a CFSA social worker, the GAL, the mother's attorney, the accused uncle's attorney, the father's attorney, the aunt who was the current caretaker and her attorney, the uncle who hoped to become the child's custodian so she could move to the jurisdiction where her mother now lives and works, and the social worker, nurse and art therapist from the local hospital where the child has received treatment for several years. The child's immigration status and need for health insurance were critical issues. There was also an issue of whether the father had consented to an adoption by the accused uncle, and whether he consented to the other uncle having custody. The case was before the Court for 25 minutes before it was clearly established that all the relevant parties consented to the second uncle having custody, that the immigration issue was resolved, and that the child would have health insurance through the uncle. The parties and counsel left the Courtroom to

prepare a consent order for the judge to sign. The case would be called again when the consent order was ready.

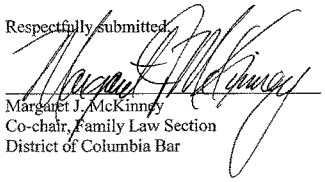
As for the trial that started the day before, the attorney from OCC had not finished presenting her evidence to the Court. A total of 15 witnesses were expected to testify. Approximately half of those witnesses had already testified. At issue in the case was the alleged abuse of a teenage mentally retarded child whose mother had put her in the care of a family friend more than 10 years earlier. The child's mother has an alcohol problem and her father has been in and out of jail. The family friend cared for the child until her death at which point her adult child began to care for the mentally retarded child. It is this caretaker who is accused of abuse and neglect. This trial was scheduled to resume at 10:30.

This is what unfolded before one judge, in one hour, on one random day in D.C. Superior Court. These were not even some of the more difficult cases. Imagine, if you would, what the other hours of that day are like and all of the other days that came before and that will certainly follow.

It is admirable that the Committee is willing to tackle this problem. We urge it to tread gently in reforming the Family Division of the Superior Court. Family cases, particularly abuse and neglect cases, are extremely complex. They are intellectually and emotionally challenging for all of the individuals involved. The Court is only one small part of the entire system. Reforming the Court will not solve the underlying societal problems that lead to the abuse and neglect of our city's children, nor will it create more permanent homes for the children in need. A judge can only do so much to protect children and families. Dedicated as they are, the judges cannot prevent abuse and neglect, or create permanent homes for the children affected by it. Until we have adequate mental health services, educational and job training programs, residential

drug and alcohol treatment programs where parents can bring their children, and effective employment programs, we cannot hope to solve this problem.

Respectfully submitted,



Margaret J. McKinney
Co-chair, Family Law Section
District of Columbia Bar

Mrs. MORELLA. I am pleased to recognize Tommy Wells, executive director of the Consortium for Child Welfare.

Mr. Wells.

Mr. WELLS. Thank you, Chairwoman Morella and Congressman DeLay and, of course, my Congresswoman, Eleanor Holmes Norton. Thank you very much.

I am Tommy Wells, the director of the Consortium for Child Welfare, and I am testifying today in strong support of the proposed bill to establish a Family Court for D.C. within the D.C. Superior Court.

The Consortium is a 24-year-old umbrella agency for the private family service providers for the District of Columbia, and we have advocated for a Family Court for D.C. since 1997. We believe it is extremely important to have well-trained judges who want to hear cases of abuse and neglect and have experience in family law. We support using magistrates to staff the Family Court, drawing from a large pool of qualified attorneys in the city who have worked for many years in this field on behalf of children.

All new cases of neglect and abuse must remain with the Family Court, and the practice of sending the cases all over the courthouse should end. This one change will improve outcomes for children by enabling government attorneys to be present at all child abuse and neglect hearings, and it will assure the consistent application of our child welfare laws.

Understanding there are arguments on both sides of the issue, we support 5-year judicial appointments to the Family Court. We have seen the incredible impact on the number of children adopted from the foster care system since one judge has been assigned that responsibility—from less than 60 per year to almost 300 per year.

This bill allows for providing services closer to where children and families live. We support establishing a satellite court for children and families east of the Anacostia River. The location of the current court best serves the interests of the lawyers and judges and the other professionals that practice there, not the 60 percent of the District's children and the majority of the families and children that live east of the Anacostia River that are in the child welfare system. The likelihood families are reunited or children are freed for adoption in a timely manner is directly related to a parent's involvement in the court process. A satellite court would dramatically increase parents' ability to participate in this process.

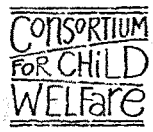
Last, the bill provides badly needed resources, or hopefully the bill can help spur badly needed resources for the court's Family Division. It is with—this court has—our current Family Division has received the lowest priority for support for too many years. The current Superior Court is not readily accessible to the city's children and families. They have to wait in the hallways to have their cases heard, and there are generally not any rooms available for social workers and attorneys to meet with their clients. The current computer system is not up to the task of tracking our children's cases.

Thank you for this opportunity today. Based on my 15 years experience in working in child welfare, there is no doubt in my mind that a Family Court will improve the outcomes for our children.

Thank you.

Mrs. MORELLA. Thank you very much, Mr. Wells.

[The prepared statement of Mr. Wells follows:]



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St. Ann's Infant and Maternity Home

Sasha Bruce Youthwork

TRICOM Training Institute

300 I Street, NE, Suite 106
Washington, DC
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Phone: 202-547-1589
Fax: 202-547-2857
www.consortiumcfc.org

Testimony for the Committee on Government Reform Subcommittee on the District of Columbia Honorable Constance Morella, Chairwoman

The Reform of the Family Division of the District of Columbia Superior Court – Improving Services to Families and Children

Thomas C. Wells, MSW, JD
Executive Director
Consortium for Child Welfare

June 26, 2001

Thank you for the opportunity to testify today on reforming the Family Division of the District of Columbia Superior Court.

My knowledge of the Superior Court stems from 15 years working in the DC child welfare system, both as director of the Consortium for Child Welfare and as a DC social worker. The Consortium is an umbrella organization representing the majority of the not-for-profit family service agencies that serve the children of the District of Columbia. Our member agencies care for more than a third of the children in the District's foster care system. The agencies' social workers provide the case management services required under local and federal law and routinely appear in the Family Division of the DC Superior Court.

On a personal note, I spent six years as a social worker for the DC Child and Family Services Agency, where almost all of my cases were under the jurisdiction of the Family Division of the Superior Court.

The Consortium for Child Welfare has advocated the creation of a Family Court for the District of Columbia since 1997 and we strongly support the legislation proposed today. The District of Columbia Family Court Act of 2001 addresses two major issues. First, it assigns judges (and magistrates) with the experience and interest needed to be effective in this field of law, ending the practice of assigning cases throughout the courthouse (to more than 59 judges). Second, it provides the resources necessary for treating children and families humanely when they interact with the court.

Keeping all child abuse and neglect cases in the Family Court *and* the hiring of magistrates and assigning additional judges with increased terms to a Family Court will accomplish the following:

- **Ensure consistent application of the law.** Judges and magistrates with expertise gained through longer assignments and specialized training will be able to develop sustainable judicial strategies to improve outcomes for children. This is not hypothetical. When the Adoptions and Termination of Parental Rights calendar was assigned to one judge for three years, the number of adoptions granted by the court rose from less then fifty per year to nearly 300 per year.

- **Enable the government to be represented at all neglect and abuse court hearings.** The government is unrepresented at more than half of the court proceedings involving abused and neglected children in the District. The District's Corporation Counsel is unable to attend and provide counsel in the majority of abused and neglected children's court review hearings because they cannot cover fifty-nine different judges and courtrooms. This means that the government is rarely able to ensure that the timelines of the Adoption and Safe Families Act are met and they are not available to advocate for permanency goals for children.

- **Increase safety and improve outcomes for children.** Judges hearing cases of children under the care of the government as a matter of routine are able to set standards and recognize systemic problems that need to be addressed. When judges hear abuse and neglect cases while presiding over the Criminal Court or Landlord-tenant Court, they are rarely able to provide a sustained focus on problem areas at the Child and Family Service Agency that impact children. For example, when an infant/toddler is living at a group care institution for months, an unreasonable length of time, a judge easily can fail to recognize that it has become the norm for all children at the facility. Judges are often the last safety net for children in the government's care.

The Consortium for Child Welfare supports increasing terms for Judges assigned to the Family Court.

The District of Columbia's professional child welfare community almost universally supports increasing the terms of judges assigned to the Family Division/Court. The Consortium for Child Welfare supports a five-year term – especially for judges overseeing adoptions and termination of parental rights. There has been a six-fold increase in the number of children adopted from foster care since a single judge has been handling the cases rather than rotating the responsibility among many judges on a short-term basis. Increasing the terms of Superior Court Judges in the Family Division has been recommended by Former DC Corporation Counsel Judge John Ferrin, former Presiding Judge of the Family Division Judge Zinora Mitchell Rankin, The Children's Law Center, the Council for Court Excellence and local child advocacy groups including DC Action for Children.

The Consortium supports increased resources for the Family Court and locating court proceedings closer to where children and families live to improve outcomes for children.

A satellite court with sufficient parking should be located East of the Anacostia River. Currently, the Superior Court is not readily accessible nor is it well suited for the vast majority of children, families and foster families it serves. More than 60 percent of the District's children live East of the Anacostia River. More than 50 percent of DC's foster families live in Maryland. There is very little reliable or affordable parking near the courthouse. The waiting area for families for hearings is in the hallway. There are insufficient rooms for social workers and attorneys to meet with children and families. A parent's participation in court proceedings is a primary factor for determining family reunification or making a timely decision terminating a parent's rights. The physical requirements of a Family a Court is very different from a Court of General Jurisdiction.

A new integrated computerized tracking system will assist in managing cases for expediting permanent placements for children.
There are more than 4,500 children's cases under the jurisdiction of Superior Court. The Court conducts in excess of 1,000 hearings per month on cases of child abuse and neglect. Tracking goals, siblings and use of services in relation to the Child and Family Services Agency is required for assuring timely decision making in children's cases.

Summary

The Consortium for Child Welfare strongly supports all aspects of the bill to establish a Family Court of the Superior Court for the District of Columbia. We expect the proposed changes to reduce the time children spend in foster care by expediting the placement of children with safe, stable, permanent families. We also expect the proposed legislation to increase the safety of children by assuring greater expertise in the Court's decision making when confronted with the complexities that accompany family neglect and abuse.

Consortium for Child Welfare - Members

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The National Center for Children and Families (Formerly Baptist Homes for Children)

One Church One Child

Port Hope Family and Youth

Pressley Ridge of Washington, DC

Progressive Life Center

St. Ann's Infant and Maternity Home

Sasha Bruce Youthwork, Inc.

Tricom Training Institute

Mrs. MORELLA. Thank you all for your testimony.

I guess I'll start with Mr. Harlan. I know that in the recommendations—I guess those 10 recommendations that you submitted from the Council for Court Excellence, you talked about incentives, and it was pretty much the kind of question I wanted to ask the previous panel, as we talk about burnout of judges and the area's difficulties in attracting the most committed people to learn and to serve in the Family Division of the Superior Court. Are there some incentives that could be offered that would attract more people and demonstrate society's high value placed on such judges? And if any of the rest of you would like to comment on that also.

Mr. HARLAN. Yes, we believe incentives are an important part of this process. As you point out, there has been a lot of belief that the Family Court was, in fact, a second level of importance within the Superior Court system, and it's quite unfortunate. That has to change. The location, just as you just heard, and the physical facilities, they are not conducive to encouraging a person to want to be a part of this Family Court, a judge.

Specific incentives, I think one thing—by moving to a unified calendaring system where it is one family and one judge, that it would be much more interesting to the judge not to have to listen to just child abuse and neglect cases, but to really understand—and you've heard the judge from Texas talk about—to have the feeling of success when things work. Right now they just get passed down and there's not that feeling. So I think the whole attitude of the judges will change with that fundamental one judge/one family unified calendaring approach.

There are some other suggested in our written testimony. We had some other ideas for incentives, such as additional guaranteed pay, paid study or training interval of 6 to 8 weeks between terms for any judge or magistrate who signs up for a second term of 3 or 4 or 5 years, whatever it is. That type of incentive that is unique and recognized, but it is very beneficial to the conduct of that judge's work. I mean, it's not going and goofing off, but studying what best practices are around the country and things of this nature that add to the feeling of really, "I'm on my game. I'm doing a great job. And I'm being supported by a court system in a city that values it." And I think all of those things will come into play as really strong incentives.

Mrs. MORELLA. Are you finding some of these practices are being employed in different parts of the country?

Mr. HARLAN. I don't believe our report specifically found that. These are ideas that were decided as we needed incentives. If we were in your position, which ones would we be considering? And then that's what we believe.

But let me, if I may, ask one of my associates here today who is really working the vineyard on this—Priscilla, what's the answer to that question?

Mrs. MORELLA. She was nodding her head affirmatively.

Mr. HARLAN. She said there are some pieces of information within our research that would focus on this.

Mrs. MORELLA. It might be very helpful for us——
Mr. HARLAN. We will.
Mrs. MORELLA [continuing]. If you could get that to us, too.
Mr. HARLAN. We will be happy to.
[The information referred to follows:]

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MEMORANDUM

Date: July 16, 2001

To: Russell Smith, Staff Director
Subcommittee on the District of Columbia

From: Andrea Larry
Senior Policy Analyst

Re: Recruitment Incentives for Family Law Judges

In response to your inquiry, I conducted research to determine whether other courts offer added incentives to encourage judicial applicants to serve longer terms of service in family divisions or courts. I gathered information from an inquiry I posted on the National Center for State Courts' ("NCSC") list serve and NCSC's Madelynn Herman provided me with some articles on the subject. I also spoke directly with the Administrator of the Family Court in Louisville, Kentucky and the Presiding Judge of the Pima County Juvenile Court in Tucson, Arizona, two courts that impressed us during our site visits.

Most of the people I heard from acknowledged that attracting and retaining qualified family law judges is a problem in their jurisdiction. See attached list serve responses from Seminole County, Florida, Wisconsin, and Delaware. The literature seems to confirm this. Yet, most indicated that their jurisdictions offer no incentives to counter this. One notable exception is the Family Court in Louisville, Kentucky. Judges in Louisville run for office and according to Family Court Administrator, Jim Birmingham, there is no shortage of candidates. The most important incentive Louisville offers is the basic tools necessary to do the job, i.e., staffing and resources.

Although Tucson's Juvenile Court has had difficulty recruiting judges, it has a large number of commissioners *pro tem* who regularly renew their terms of service. The commissioners *pro tem*, have greater authority than regular commissioners, including the authority to hear contested matters, and they are treated like judges. This elevated status appears to be sufficient incentive for them to renew their terms. The Congressional bill proposed by your committee provides for a similar elevated status for magistrates (in other

divisions of the court they are referred to as commissioners and they do not have authority to hear contested matters) which may have a similar effect.

Jeffrey Kuhn's article, *A Seven-Year Lesson on Unified Family Courts: "What We Have Learned Since the 1990 National Family Court Symposium,"* Spring 1998, pgs 75-76 (copy enclosed) contains a good discussion of possible judicial incentives and ways of preventing judicial burnout. Another good resource on the topic is Victor Flango's article, *Creating Family Friendly Courts: Lessons from Two Oregon Counties*, Family Law Quarterly, Volume 34, Number 1, Spring 2000 pgs 123-126 (copy enclosed). The following list was compiled from these and other resources:

1) **Pay differential**

2) **Extraordinary retirement benefits**

3) **Extra vacation time**

4) **Family court leave that could be devoted to related academic pursuits**

5) **Frequent Involvement in Education and Training / Sabbaticals** - CCE proposed a combination of 4 and 5, i.e., guaranteeing judges and magistrates not less than 80 hours per year of paid off-site training in family law and related matters and a guaranteed paid respite or training interval (e.g. 240 hours after a 3-year term) for any judge or magistrate who signs on for another tour of duty in Family Court. We also proposed that non-judicial personnel be guaranteed good training.

The Louisville Family Court provides its judges with 4 "in-service" days each year, i.e., days devoted to training. In addition, it encourages its judges to attend the National Council of Juvenile and Family Court Judges' ("NCJFC") annual training seminar. The Tucson Juvenile Court also sends its judges and commissioners to NCJFC training. Deborah Bernini, Tucson's presiding family court judge says she finds NCJFC training "invigorating." Court Administrator, Jim Birmingham, and Judge Bernini both agreed that the incentives proposed by CCE were very attractive.

6) **Encourage community involvement.**

7) **Encourage judges to act as agent for change** - Examples given are testifying at legislative hearings and communicating with the media.

8) **Sufficient resources** - This includes providing adequate well-trained staff and the resources to provide families with necessary services, i.e., the basic tools to do the job.

Louisville and Tucson provide their judicial officers with excellent resources. CCE saw first-hand evidence of this on our site visits. Both courts are located in spacious modern buildings. Both have excellent management. Louisville provides its judges with a large administrative staff including staff attorneys, social workers, law clerks, and secretaries. Tucson has a comprehensive ADR system and a highly functional information management system.

Tucson also has a part-time commissioner *pro tem* who fills in for other commissioners one afternoon a month on juvenile cases to give them a break from courtroom duty.

9) **One Judge/One Family** - Another means of avoiding judicial burnout, which already has been incorporated into the Congressional bill proposed by your committee, is to have judges hear all cases related to a family, i.e., the one judge/one family approach. This well recognized "best practice" is not only good for families, it adds variety to a judge's caseload. Many courts are striving to implement the one judge/one family approach or some variation of the approach (most often one judge/one case.) Two jurisdictions that come close to achieving the one judge/one family model are Louisville and Deschutes County, Oregon. See List Serve Response from C. Flango and *How are Courts Coordinating Family Cases,?* Flango, Flango & Rubin, (National Center for State Courts, 1999) (excerpt attached). (The Oregon judges also carry a general jurisdiction caseload, but are responsible for coordinating a limited number of family law cases both civil and criminal.)

The traditional response to judicial burn-out has been to rotate judges to other divisions throughout the court. However, many courts are now beginning to see rotation as a problem rather than a solution. See List Serve Responses from E. Carlson and A. Skove. Rotation discourages training and efforts to obtain the specialized knowledge required to handle family law cases. Rotation also is incompatible with the one judge/one family approach. *Creating Family Friendly Courts: Lessons from Two Oregon Counties* at 123-24.

Subject: Re: Judicial Incentives
Date: Wed, 4 Jul 2001 09:48:55 -0700
From: "eric silverberg" <desilver@ix.netcom.com>
To: "Andrea Larry" <larry@courtexcellence.org>

Andres,

This is a problem. I am employed in the 18th Judicial Circuit of Florida located in central Florida. In my part of the circuit, Seminole County, 4 judges work in family. Half of their caseload is civil, the other half is family.. The judges will never agree to work a pure family divison again.

Until quite recetly, the other part of the circuit used to assign jugdes to a pure family division. Due to burnout, they opted for thr Seminole model. Let me konw if you need more details..

Eric
From: Andrea Larry <larry@courtexcellence.org>
To: NCSC - court2court mailing list <court2court@mail.ncsc.dni.us>
Sent: Tuesday, July 03, 2001 11:25 AM
Subject: Judicial Incentives

> This is a message from the "court2court" mailing list.
> ----------
> Is anyone familiar with courts offering incentives (financial or
> otherwise) to judges to encourage them to serve long term assignments
> (i.e., 5 to 7 years or longer) in family courts or divisions. I am
> interesting in learning whether other jurisdictions have difficulty
> recruiting judicial officers to serve a lengthy term in the family court
> or division and if so how they handle this. In your response, please
> indicate whether your court is a stand-alone family court or a general
> jurisdiction court with a family division. Thanks
>
> Andrea Larry
> Council for Court Excellence
> Larry@courtexcellence.org
> (202) 785-5917
>
> ----------
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> Send any questions about the functioning of
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Subject: Re: Judicial Incentives
Date: Wed, 04 Jul 2001 00:44:18 -0500
From: Gary / Marlis Carlson <jwudgy@tds.net>
To: court2court@mail.ncsc.dni.us (NCSC - court2court mailing list)

This is a message from the "court2court" mailing list.

Wisconsin does not provide any such "incentives." But then we have a single level trial court with the expectation that every judge is capable of doing anything. Thus, in the multi-judge counties, we have periodic rotation. One year, two years, whatever, in one branch with the rotation to another branch at the end. So, in counties like Dane or Milwaukee, the judges during the course of a six-year term, will rotate through at least three areas.

In other multi-judge counties, judges don't rotate in that sense but rotate through an "intake" period during which they take any cases that come in during that period. Thus they get the mix of everything that I already have being in a one-judge county. (If you want justice in Taylor County, you come to me! Frightening thought, isn't it?). Intake rotation is okay but it puts a lot of power in the district attorney and other attorneys in choosing which week to file their case.

When rotation was originally implemented, there was strong resistance from some judges. It took stamina, perseverance, chicanery and pressure from the top to get it fully implemented. Some judges retired rather than go to Juvy court. So long, said I.

But there are no incentives. We're all supposed to take our turn in the trenches. In that sense, I tend to echo Karl's thoughts (although I emailed him and told him he really should get a bonus for firing someone--two, if the person was really deserving!).

But if you don't have a single-level trial court, or a strong administrative backing from the powers "up there" to force judges to rotate, then incentives would work. It's the free market system at work. How much will you pay me to come out there?

Gary (cheddarhead) Carlson
Circuit Judge, Taylor County
Medford, WI

FRITZOLAMC@aol.com wrote:
>
> *This is a message from the "court2court" mailing list.*
> *---*
> *Karl,*
> *Does Minnesota provide any employees longevity pay, educational bonus, night*
> *differential, uniform allowance, hazardous duty pay, geographic differential?*
> *Do peace officers have a better retirement program than court administrators?*
>
> *There are some difficult issues to overcome when it comes to paying judges in*
> *"undesirable assignments" a bonus, but the idea should not be dismissed*
> *simply because it doesn't seem to fit our traditional sensibilities.*
>
> *How do we get judges to move from the high profile criminal trials, major*
> *civil litigation and felony preliminary hearings to those assignments that*

Subject: Re: Judicial Incentives
Date: Fri, 6 Jul 2001 6:33:16 EDT
From: <nlaird@state.de.us> (Nancy Laird)
To: <larry@courtexcellence.org>

The following message is from Ed Pollard.

The Family Court of Delaware is a unified family court. The judges are appointed for twelve year terms. No incentives are offered beyond those provided to the judges in other trial courts.

Edward G. Pollard, Jr.
Court Administrator
Family Court of Delaware
First Federal Plaza
2nd Floor
704 King Street
Wilmington, DE 19801

Nancy Laird
Secretary

(302) 577-2222 [telephone]
(302) 577-3092 [fax]
epollard@state.de.us

- - - - - - - - - - - - - - Original Message - - - - - - - - - - - - - -
From: "Andrea Larry" <larry@courtexcellence.org>
Subject: Judicial Incentives
Date: 07/03/01 14:25

This is a message from the "court2court" mailing list.

Is anyone familiar with courts offering incentives (financial or otherwise) to judges to encourage them to serve long term assignments (i.e., 5 to 7 years or longer) in family courts or divisions. I am interesting in learning whether other jurisdictions have difficulty recruiting judicial officers to serve a lengthy term in the family court or division and if so how they handle this. In your response, please indicate whether your court is a stand-alone family court or a general jurisdiction court with a family division. Thanks

Andrea Larry
Council for Court Excellence
Larry@courtexcellence.org
(202) 785-5917

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To subscribe or unsubscribe, send a message to court2court-request@mail.ncsc.dni.us with just the word subscribe or unsubscribe as the subject.

Send any questions about the functioning of this list to court2court-owner@mail.ncsc.dni.us

Subject: FW: judicial incentives for family court
Date: Wed, 11 Jul 2001 14:26:59 -0400
From: "Herman, Madelynn" <mherman@ncsc.dni.us>
To: "'larry@courtexcellence.org'" <larry@courtexcellence.org>

Andrea,

I'm attaching the responses I received from Gene and Carol Flango here regarding your question. If you would like, I can fax to you Gene's article, "Creating Family Friendly Courts: Lessons from Two Oregon Counties," from Family Law Quarterly, Spring 2000. There is also the article by Jeffrey Kuhn, "A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Court Symposium," from Family Law Quarterly, Spring 1998.

It doesn't seem like anyone can come up with anything directly on-point. Some of the information on model family courts might be useful. It would be looking at it from a slightly different angle. "Model Family Court Cut Foster Care Stays," from the Fall 2000 issue of the New York State Jury Pool News talks about increased cooperation and faster resolution to cases.

I would be happy to fax to you any of these articles. Just let me know.

Madelynn

Madelynn Herman
Knowledge Management Office
National Center for State Courts
(757) 259-1549 or
mherman@ncsc.dni.us

> *-----Original Message-----*
> *From: Flango, Gene*
> *Sent: Tuesday, July 10, 2001 9:11 AM*
> *To: Flango, Carol; Herman, Madelynn*
> *Subject: RE: judicial incentives for family court*
>
> *I agree Carol: #1 method of selection must take into account judges who*
> *want to be there, #2 a diverse caseload with family cases layered on top*
> *(20% of caseload). See my article in Family Law Quarterly--I have*
> *reprints. Gene*
>
> *-----Original Message-----*
> *From: Flango, Carol*
> *Sent: Tuesday, July 10, 2001 9:09 AM*
> *To: Herman, Madelynn*
> *Cc: Flango, Gene*
> *Subject: RE: judicial incentives for family court*
>
> *Madelynn, Gene and I were watching the court2court posts with interest.*
> *I don't know of any sources that deal directly with this issue for family*
> *courts. It seems that the best judges for family court are those who want*
> *to be there so some of the writings of Len Edwards, Robert Page, and Judge*
> *Fitzgerald might be helpful. Another model we discuss in the"yellow*
> *book" is the Oregon model where judges hear all cases related to a family*
> *which include civil and criminal so they may not feel the specialist*
> *burnout plus these courts have a very comprehensive social services*
> *support system in place. I think the court support structure for families*
> *may be just as important as $ for judges in making the whole system more*
> *pleasant. Carol*

>
> -----Original Message-----
> From: Herman, Madelynn
> Sent: Tuesday, July 10, 2001 8:38 AM
> To: Flango, Carol
> Subject: judicial incentives for family court
>
> Hi Carol!
>
> I've got someone asking about judicial incentives for judges in
> family court. Are you aware of what family courts are doing to entice
> judges to extend their terms in family court? I'm sure that burnout is a
> big problem due to the subject areas they deal with. I have not found
> anything directly on point in our library but thought you might have some
> ideas. Andrea Larry from the Council for Court Excellence is asking. She
> has already posted her question on court2court and has not received much
> of a response. I have referred her to NCJFCJ and AJS. Any other ideas or
> thoughts?? Thanks.
>
> Madelynn
>

Subject: RE: Judicial Incentives
Date: Tue, 3 Jul 2001 09:30:56 -0700
From: "Carlson, Eric" <ECarlson@supreme.sp.state.az.us>
To: "Andrea Larry" <larry@courtexcellence.org>
CC: "Carlson, Eric" <ECarlson@supreme.sp.state.az.us>

If you could share, I would be very interested in the responses that you get to your question. I oversee the judical performance review program here in Arizona and the practice of regular bench rotation is finally beginning to be discussed as a problem rather than a solution. It would be fun to stimulate the discussion a bit by providing some information about programs to incent longer stays on a particular bench.

Eric W. Carlson
Director of Human Resources
Arizona Supreme Court
Administrative Office of the Courts
602-542-9306
ecarlson@supreme.sp.state.az.us

-----Original Message-----
From: Andrea Larry [mailto:larry@courtexcellence.org]
Sent: Tuesday, July 03, 2001 11:26 AM
To: court2court@mail.ncsc.dni.us
Subject: Judicial Incentives

This is a message from the "court2court" mailing list.

Is anyone familiar with courts offering incentives (financial or otherwise) to judges to encourage them to serve long term assignments (i.e., 5 to 7 years or longer) in family courts or divisions. I am interesting in learning whether other jurisdictions have difficulty recruiting judicial officers to serve a lengthy term in the family court or division and if so how they handle this. In your response, please indicate whether your court is a stand-alone family court or a general jurisdiction court with a family division. Thanks

Andrea Larry
Council for Court Excellence
Larry@courtexcellence.org
(202) 785-5917

Simple replies go to the original sender only.

To post to the entire list, either do a Reply-All, or re-address your message to court2court@mail.ncsc.dni.us

To subscribe or unsubscribe, send a message to court2court-request@mail.ncsc.dni.us with just the word subscribe or unsubscribe as the subject.

Send any questions about the functioning of this list to court2court-owner@mail.ncsc.dni.us

Subject: RE: Judicial Incentives
Date: Fri, 6 Jul 2001 15:28:30 -0400
From: "Skove, Anne" <askove@ncsc.dni.us>
To: "'Andrea Larry'" <larry@courtexcellence.org>

Ms. Larry,

New Jersey had rotation for family court judges. I remember that it was (is?) controversial because there was the feeling that "bad" judges were sent to family court as punishment. I don' t remember, though, whether the rotation was supposed to cure that, or whether the charge was made about the way rotation was carried out.

It is an issue where you have a "one judge/one family" system-just how long is the one judge going to be there? Kind of defeats the purpose if they leave after 6 months, and the family stays in court for 18 years! Another issue is training-who is qualified to handle a family case in this day and age (particularly when family law is rarely required in law school)?

I hope you got some good feedback from Court2court...

Anne Skove
National Center for State Courts
Information Resource Center
800-616-6164
http://www.ncsconline.org

-----Original Message-----
From: Andrea Larry [mailto:larry@courtexcellence.org]
Sent: Tuesday, July 03, 2001 2:26 PM
To: court2court@mail.ncsc.dni.us
Subject: Judicial Incentives

This is a message from the "court2court" mailing list.

Is anyone familiar with courts offering incentives (financial or otherwise) to judges to encourage them to serve long term assignments (i.e., 5 to 7 years or longer) in family courts or divisions. I am interesting in learning whether other jurisdictions have difficulty recruiting judicial officers to serve a lengthy term in the family court or division and if so how they handle this. In your response, please indicate whether your court is a stand-alone family court or a general jurisdiction court with a family division. Thanks

Andrea Larry
Council for Court Excellence
Larry@courtexcellence.org
(202) 785-5917

Simple replies go to the original sender only.

To post to the entire list, either do a Reply-All, or re-address your message to court2court@mail.ncsc.dni.us

To subscribe or unsubscribe, send a message to court2court-request@mail.ncsc.dni.us with just the word subscribe or unsubscribe as the subject.

Send any questions about the functioning of this list to court2court-owner@mail.ncsc.dni.us

Creating Family Friendly Courts: Lessons from Two Oregon Counties

VICTOR EUGENE FLANGO*

Unified family courts were created to promote coordination and to provide better service to children and families. On that premise, the American Bar Association recommends the establishment of unified family courts in all jurisdictions.[1] Unified family courts have four essential components: "(1) comprehensive jurisdiction; (2) efficient administration designed to support the concept of 'one family, one team'; (3) broad training for all court personnel; and (4) comprehensive services."[2] Each of these components was designed to overcome one or more problems in existing court organization or procedure. While there is little disagreement over the problems that led to the call for unified family courts, the proposed solutions are not appropriate for all court systems and have resulted in problems of their own.

* Vice President, Research Division, National Center for State Courts.

The author would like to thank *all* of the people in Oregon who were so gracious and helpful to the research. Although every one was exceptionally supportive, I must mention by name the judges and court administrators at the state and county levels. I am especially grateful for the support of Chief Justice Wallace P. Carson of the Oregon Supreme Court and Kingsley W. Click, state court administrator, to Judge Stephen H. Titkin and Ernest J. Mazorol III from Deschutes County (Bend), and to Judge Rebecca Orf and Jim Adams from Jackson County (Medford). My visits to Oregon were funded by two different projects, *Court Coordination of Family Cases Model Action Plans* (SJI-96-12C-B-222), funded by the State Justice Institute, and *Models of Effective Court Based Service Delivery to Children and Their Families* (94-MU-CX-0004), funded by the Bureau of Justice Assistance.

1. ABA PRESIDENTIAL WORKING GROUP ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 54 (1993) [hereinafter CHILDREN AT RISK]. A national conference of bar presidents also called for the creation of unified family courts. *see* Mary Wechsler, *Unified Family Courts*, *in* 2 THE CONFERENCE CALL, Summer 1995, at 1.

2. Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAM. L. Q. 3, 15 (1998).

This article is structured into four sections that parallel the four components of family courts. Each section contains: (1) a brief discussion of the problems that led to need for a family court, (2) the family court solution, (3) problems either not addressed by family courts or dilemmas caused by the creation of specialized family courts themselves, and finally (4) possible solutions to some of these dilemmas based upon Oregon's experience.

I. Comprehensive Jurisdiction

A. The Problem: Fragmentation

The problem arises from multiple courts with overlapping jurisdictions over related cases that involve a single family. In the worst scenarios, this can result in delay, redundant proceedings, and conflicting orders.[3] One author cites the "proliferation of venues and resulting illogical compartmentalization of issues" as having "predictably harmful consequences for children and parents."[4] In the words of Paul Williams:

> Under the current system, it is not uncommon to have a family involved with one judge because of an adult abuse proceeding, a second judge because of the ensuing divorce, with still another judge because of the child abuse and neglect allegations, and a fourth judge if the abuse allegation led to criminal charges. The fragmented judicial system is costly to litigants, inefficient in the use of judicial resources, and can result in the issuance of diverse or even conflicting orders affecting the family.[5]

B. The Family Court Remedy

The classic response to the problem of fragmentation is creation of a specialized court with comprehensive jurisdiction over interrelated issues that affect the family. The problem has been in defining the family court and determining its jurisdiction.

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3. *See, e.g.*, VIRGINIA FAMILY COURT PILOT PROJECT ADVISORY COMMITTEE, REPORT ON THE FAMILY COURT PILOT PROJECT 21, 28 (1992), which identified problems of inconvenience, inefficiency, lack of coordination, backlog, and unpredictable outcomes for litigants; GOVERNOR'S CONSTITUENCY FOR CHILDREN, A FAMILY COURT FOR FLORIDA 10-11 (1988), which identified high volume, delay, lack of coordination, and inconsistency as problems; and STATE BAR OF GEORGIA COMMISSION ON FAMILY COURTS, REPORT AND RECOMMENDATIONS 13-14 (1995), which listed problems of confusion, inefficiency, delay, conflicting rulings, extended appeals, lack of services, and untrained or unqualified court personnel.

4. Ross, *supra* note 2, at 8.

5. Paul A. Williams, *A Unified Family Court for Missouri*, 63 UMKC L. REV. 383, 383-84 (1995).

1. COURT STRUCTURE

The term "Family Court" is used by many courts " . . . without any thought about what the term includes substantively or procedurally."[6] In Rhode Island, Delaware, and South Carolina, a family court is a separate court with its own administration and judges. In Vermont, the family court is a separate court served by judges drawn from the upper and lower trial courts. The family court in New York, despite its name, is not considered unified by some because it does not have jurisdiction over divorce.[7] In the District of Columbia, Hawaii, and New Jersey, the family court is a division of the general trial court, and judges may rotate between the family division and other court divisions. Massachusetts assigns family law cases to a separate department of a trial court.[8] All of the other states have family courts only in selected areas of the state or do not have specialized courts to handle family matters at all.

2. COURT JURISDICTION

A unified family court typically covers juvenile delinquency and dependency, domestic relations, including divorce, custody, child support, paternity, domestic violence, adoptions, guardianships, termination of parental rights, and child abuse and neglect.[9] Before discussing

6. Robert Page, *"Family Courts" a Model for an Effective Judicial Approach to the Resolution of Family Disputes*, *in* ABA SUMMIT ON UNIFIED FAMILY COURTS; EXPLORING SOLUTIONS FOR FAMILIES, WOMEN AND CHILDREN IN CRISIS (1998), at A3 [hereinafter, ABA SUMMIT]. *See also* LINDA SZYMANSKI ET AL., POLICY ALTERNATIVES AND CURRENT COURT PRACTICE IN THE SPECIAL PROBLEM AREAS OF JURISDICTION OVER THE FAMILY 6 (1993).

7. Judge Page regards jurisdiction over juvenile delinquency and divorce within one court as the primary indicator of a family court. Page, *supra* note 6, at § A, A-5. In New York, matrimonial matters, including divorce, annulment, and separation, are heard in the Supreme Court. N.Y. FAM. CT. ACT § 115 (McKinney 1988 & Supp. 1997). For a discussion of subject-matter jurisdiction of family courts, *see* Robert E. Shephard, Jr., *The Unified Family Court: An Idea Whose Time Has Finally Come*, 8 CRIM. JUST. 37, 37-38 (1993). *See also* William C. Gordon, *Establishing a Family Court System*, 28 JUV. JUST. 9 (1977).

8. MASS. GEN. LAWS ch. 211B, § 1 (Supp. 1996).

9. The American Bar Association recommends that the jurisdiction of family courts include:

> [j]uvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings, appointment of legal guardians for juveniles; intrafamily criminal offenses (including all forms of domestic violence); proceedings in regard to divorce, separation, annulment, alimony, custody and support of juveniles; proceedings to establish paternity and to enforce [child]support . . . .

INSTITUTE OF JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION, Standard 1.1 Part 1, 5 (1980). The National Council of Juvenile and Family Court Judges recommended a similar jurisdiction for unified family courts, SANFORD N. KATZ & JEFFREY A. KUHN,

comprehensive jurisdiction, it needs to be established that sufficient cases involving the family exist to warrant the effort it takes to coordinate cases in court. The family court movement is based on the premise that family members are often enmeshed concurrently or subsequently in multiple actions in several courts. If this premise is not accurate, the rationale for a family court is weakened.

A survey by the National Center for State Courts concluded that there are a sufficient number of related cases involving families to warrant the effort necessary to coordinate case processing.[10] Court records in three different sites found that 41 percent of cases involving families had related cases. Obviously this proportion depends on how one defines a related case and how far back in time one looks, but there is no doubt that the proportion of related cases is high.

This threshold question answered means that we can proceed to the second question, "What types of cases are interrelated and need to be resolved together?"[11] The proportion of related cases also depends upon the type of case being examined. Divorces have fewer related cases, especially for childless couples, and child abuse and neglect typically has the most related cases. The surveys reported that child custody, support, or visitation, whether in conjunction with divorce or separate from divorce, were most likely to occur together. The NCSC survey found divorce cases are most related to domestic assaults and prior divorce cases. Delinquency cases are most associated with other instances of delinquency, including delinquency of a sibling—sometimes with divorce or much earlier abuse and neglect. Abuse and neglect occurred with custody/support/visitation separate from divorce, domestic assault, prior abuse and neglect or abuse, and neglect of a sibling.[12]

C. Questions Remaining

1. Court Structure

Family courts were created under the assumption that the simple act of having a single court or division of a general jurisdiction trial court

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Recommendations for a Model Family Court; A Report from the National Family Court Symposium, Recommendations 13-17 (National Council of Juvenile and Family Court Judges, May 1991).

10. H. Ted Rubin & Victor Eugene Flango, Court Coordination of Family Cases 75 (National Center for State Courts 1992).

11. Another way of examining that question may be, "Is it more appropriate for the judge to be ignorant of case context and setting or familiar with the related parties and dynamics of a family, as well as the environmental situation from which individual cases emerge?" Jay Folberg, *Family Courts: Assessing the Trade-Offs*, 37 Fam. & Concil. Cts. Rev. 448 (1999).

12. Rubin & Flango, *supra* note 10, at 76.

with jurisdiction over all issues affecting the family would automatically ensure coordination. Hunter Hurst has provided examples where the establishment of a family court has done very little to improve coordination and integration of child and family proceedings.[13]

A review of the literature on unified family courts reveals much passion advocating unified family courts, but without a more specific discussion of the *conditions under which* family courts are appropriate. Family courts are often presented as the *only* alternative to the current system. This alternative presumes that one specialized court system fits all circumstances. Yet many courts in the United States have only one or two judges to hear the entire caseload, including civil, criminal, traffic, and family cases. Are these de facto family courts? At the other extreme are large jurisdictions with the case volumes large enough to permit specialization. Judge Len Edwards recommends that courts with four or more judges should have separate delinquency and dependency dockets.[14]

2. COURT JURISDICTION

With respect to jurisdiction, the critical issue for family courts is where does jurisdiction end? For example, the ABA recommends jurisdiction over intra-family criminal offenses, but a National Family Court Symposium noted a lack of consensus over the question of family court jurisdiction over such intra-familial matters such as spousal abuse.[15] Opponents are concerned that family courts, with their treatment orientation, will be more lenient on offenders than a criminal court. Moreover, criminal cases require careful screening to reduce danger to participants, perhaps the availability of holding cells or additional guards, prompt bail hearings, and judicial officers knowledgeable about the criminal process.

Proponents contend that including these cases promotes coordinated service delivery to the family. Moreover, imposition of some sentences, e.g., incarceration, impacts all family members and may affect resolution of family disputes, such as child support or child placement during period of incarceration. In practice, most family courts either do

13. Hunter Hurst, *Implications for Legislation in Court Coordination of Family Cases*, *in* RUBIN & FLANGO, *supra* note 10, at 66.

14. Leonard P. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, *in* RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 149 (National Council of Juvenile and Family Court Judges 1995)[hereinafter RESOURCE GUIDELINES].

15. KATZ & KUHN, *supra* note 9.

not hear intra-family criminal cases at all, or if they do, hear only misdemeanors.[16]

Secondly, if family courts hear cases of child abuse and neglect, should they also hear cases of elder abuse or neglect?[17] The ABA Commission on Legal Problems of the Elderly finds that adult guardianship, elder abuse, grandparent caregivers of children, and end-of-life cases are appropriate for family courts.[18]

Similarly, the special problems of domestic violence have proponents arguing whether the ability to coordinate the delivery of services to the family and discourage multiple interviewing of victims balances the difference in power between victim and victimizer.[19] It also raises conflicts between the rehabilitation orientation of family courts and the punitive mission of criminal courts. A related question is why divorces that do not involve children, but rather the division of property, should be heard in family court?

The knottiest problem of jurisdiction involves substance abuse. The current Chief Judge of the New York Court of Appeals believes that crack cocaine cases have strained the resources of child protective agencies as well as courts.[20] Should family courts hear cases involving substance abuse or would these more appropriately be heard in courts of general jurisdiction or specialized drug courts? In New York, 75 percent of all new abuse and neglect petitions involve a substance-abusing parent. Do we need specialized Family Treatment Courts for drug-addicted parents and their children to meet the goals of early intervention, access to appropriate services, and consistent monitoring?

D. The Oregon Solution

1. Court Structure

All of Oregon's general jurisdiction circuit court judges are designated as family court judges. They carry a general caseload, but also are responsible for coordinating a limited number of family law cases.

16. Barbara A. Babb, *Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 Fam. L. Q. 31, 42 (1998).

17. Hurst, *supra* note 13, notes that even in the two states that most closely approximate the ideal of integrated family court jurisdiction, Hawaii and New Jersey, the courts do not have jurisdiction over abuse of elders by children or the administration of children's estates.

18. Erica F. Wood & Lori A. Stiegel, *Not Just for Kids: Including Elders in the Family Court Concept*, ABA Summit, *supra* note 6, at M-5-7.

19. Billie Lee Dunford-Jackson et al., *Unified Family Courts: How Will They Serve Victims of Domestic Violence?*, 32 Fam. L. Q. 138, 138-140 (1998).

20. Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, 48 Hastings L. J. 851, 860-61 (1997).

The judges become responsible for family members' domestic violence, dissolution, drug/alcohol, criminal, and children's matters.

Criteria for designation as a family court case in Deschutes County (Bend, Oregon) are not so hard and fast. The family court clerk, upon receipt of a delinquency or abuse and neglect filing, searches local and statewide court databases for currently active family cases. There is particular interest in "bundling" criminal filings, active dissolution, and active or recent domestic violence protection, and stalking orders with these filings. An alternate case finding method conducts a search upon an indication of concern, expressed by a justice system or school official, or even relatives or neighbors, about a family. The judge determines whether to accept the clerk-proposed family court case. A family may be accepted for coordinated judicial handling, but only families with children are eligible for the subsequent process of possible court-coordinated service delivery.

In Jackson County (Medford, Oregon), judges are assigned to a civil or criminal docket on a regular rotation, and the bundled family cases are assigned as well. All bundled cases involve families with children. Families with multiple related cases in court are eligible for three levels of service. Level I is simply the compilation of related cases affecting the family.[21] Related cases include all inactive and active cases involving the family, existing orders, reports, investigations, services, and pending hearing dates. After examining all of the related cases, the coordinator meets with the judge who has had the most involvement with the family to determine assignment. Families that can benefit from judicial coordination of current and potentially future cases are assigned to a specific judge.

Once a family is assigned to a judge, the assignment is permanent and all prior and pending cases are "bundled" and referred to that judge. Future cases also will be referred to the designated judge. This is Level II service. The coordinator then screens all Level II families to select those that could benefit from a comprehensive family plan and integration of services. The coordinator meets with the family, interested parties, and service providers to create a plan that focuses on the family's strengths. Services may be provided through a family resource center or by an interagency service team. Family plans are filed with the court and monitored for compliance. Participation in this Level III service is voluntary.[22]

21. *Id.* at 8.

22. Description of service levels was also printed in CAROL R. FLANGO ET AL., HOW ARE COURTS COORDINATING FAMILY CASES? 61-62 (National Center for State Courts 1999).

2. COURT JURISDICTION

Family court departments in Oregon hear all "domestic relations matters, guardianships of minors, juvenile court proceedings, mental health matters, domestic violence proceedings as well as criminal matters that involve domestic violence or crimes between family members."[23] What is the relationship between special courts for cases involving the families and cases with jurisdiction over a broader variety of cases that literally defines a court of general jurisdiction. Oregon practice seems to strike a balance between these two points of tension.[24]

In Deschutes and Jackson Counties in Oregon, all of these questions become moot because the family court and court of general jurisdiction are coextensive. The argument over whether to include criminal cases in courts hearing family matters, especially intra-familial cases such as domestic violence, becomes irrelevant. Because judges are circuit judges, they hear a full range of civil and criminal cases. Yet cases involving the family are assigned to one judge for a period of five years.

II. One Family—One Judge

The idea of "one family, one judge" is believed by some to be the embodiment of the family court.[25] As one observer noted, "Besides jurisdiction, the most important aspect of the unified family court is "one family, one judge," sometimes reframed as "one family, one team."[26]

A. The Problem

The one family, one judge concept was originated to prevent judge shopping, judicial inconsistencies, and manipulation of the system to avoid enforcement of court orders.[27] Extending this principle to case management teams means that the team learns more about the problems of each family and can more easily share information.

23. 1993 Or. Laws 165; OR. REV. STAT. § 3.405.

24. It would be presumptuous to claim to fully understand the Oregon court system in all of its facets after a week on site. Rather the features observed by the author provide a springboard from which to discuss the implications of the Oregon experience for the discussion of the dilemmas of a unified family court.

25. *See* AMERICAN BAR ASSOCIATION COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, COURT ORGANIZATION (1974, 1990); Institute of Judicial Administration-American Bar Association, *id.*; NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS (1973).

26. ROSS, *supra* note 2, at 17. *See also* Jeffrey A. Kuhn, *A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium*, 32 FAM. L. Q. 67, 77-79 (1998).

27. Page, *supra* note 6, at A-19.

B. The Family Court Remedy

Eleven states that are have family courts of divisions, even on a pilot basis, are experimenting with the one-judge/one family concept.[28] The assumption is that coordination will be improved, opportunities for inconsistencies and errors based on inaccurate or incomplete information will be reduced, if the same team deals with the family. Ongoing involvement with a family permits a judge to develop a more complete understanding of the family's legal problems and enables the judge to craft more effective resolutions. Even when judicial officers are involved, the theory is that cases should not be shifted between judges and hearing officers at different stages of the proceedings.[29]

C. Questions Remaining

At the heart of the one-judge/one-family question are tensions between the merits of specialization and continuity on one hand and the risk of a judicial burnout, lack of a career path, and a threat to judicial objectivity on the other. The one family/one judge approach undoubtedly provides greater consistency and predictability, but at the risk of "consistently unfavorable outcomes for a given family."[30] What is the balance point between having judges remain on the family bench long enough to master the specialized legal knowledge necessary to make quality decisions, and deciding so many of these emotionally charged cases for so long that a more general perspective is lost?

Although judicial sabbaticals, incentives, such as pay differentials, additional retirement benefits, or additional vacation time, for judges who handle family cases have been suggested as ways to keep family law judges fresh, the most common solution has been rotation.[31] Rotation provides some continuity to families requiring court services in a variety of cases while simultaneously encouraging change in judicial assignments to enhance professional experience and opportunities. Rotation is also the prescribed remedy for judicial "burnout." Judges who hear only emotionally charged family cases day after day are susceptible to burnout. Indeed, burnout is the flip side of specialization. If it can be avoided, a court can retain the significant benefits afforded by

28. Babb, *supra* note 16, at 63.

29. RESOURCE GUIDELINES, *supra* note 14, at 21.

30. Folberg, *supra* note 11, at 451. Folberg put the same point more directly and dramatically in the same article by saying, "God help the family that gets stuck with the wrong judge—forever."

31. TIMOTHY F. FAUTSKO ET AL., PLANNING FOR THE DEVELOPMENT OF A FAMILY COURT IN KENTUCKY 37 44 (1997).

specialization without incurring the detrimental effects of overload from hearing too many difficult cases day after day.[32]

Judicial continuity fostered by long terms may cause a lack of objectivity toward family members who appear often before the same judges, though in different cases. Hunter Hurst concluded that rotation gives judges a broader perspective and helps with the status differential among special jurisdiction and general jurisdiction judges, but it also discourages training and efforts needed to obtain the specialized knowledge required in family court.[33] ABA Standards recommend periodic rotation of judges to help them become familiar with the full range of the courts' activities and to prevent specialized divisions from becoming the preserve of individual judges.[34] The one family/one judge solution is not an option if the length of time judges remain on family court is short. The length of term in family court ranges from nine months in the District of Columbia to a life term in Massachusetts and Rhode Island.[35] In brief,

> rotation is a disincentive to the practice of one judge/one family. Short-term rotation is incompatible with it. In single-judge courts, rotation is not an option. Indeed, those judges already have achieved a de facto one-judge/one-family court. Smaller courts many not have a sufficient number of judges to implement such a program. Urban courts with specialized calendars and crowded dockets may make the one-family/one-judge concept just as difficult to achieve.[36]

Rotation is also complicated in areas with a mobile population, where judges and hearing officers share responsibilities for decision making, or where judges sit in multiple locations. Very large family courts, such as Hawaii, can achieve a balance between rotation and specialization by limiting rotation to specialized dockets of family court, e.g., between divorce, delinquency, and dependency dockets.

Even in one family/one judge courts, there are some circumstances, e.g., emergencies or cases requiring special knowledge or expertise, where it is not possible to have the judge who heard the initial case involving a family, hear the subsequent case.[37] Judges may be unavail-

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32. Poznanski & Bassett, *A Family Court for Michigan?*, 66 MICH. BAR J. 657-66 (1987).

33. Hunter Hurst, *Judicial Rotation in Juvenile and Family Courts: A View from the Judiciary*, 42 FAM. CT. J. 13-23 (1991).

34. 1 ABA STANDARDS RELATING TO COURT ADMINISTRATION § 1.11(b), at 10 (1990).

35. Babb, *supra* note 16, at 60.

36. Szymanski et al., *supra* note 6, at 23.

37. Andrew Schepard, *Introduction to the Unified Family Courts*, N.Y.L.J., April 16, 1997, at 3.

able for many reasons, including vacation, illness, military leave, transfer to other courts, or even retirement.[38] Suggestions to overcome judicial stress, including sabbaticals, also detract from the one-judge/one-family concept. These illustrations point out the practical difficulty of balancing specialization and rotation in one-judge/one-family courts.

One solution is to more narrowly define the cases that require hearing officer continuity. When should related cases be heard by the same judge who heard other cases involving the family? It is undoubtedly preferable for one judge to hear one child welfare case from start to finish. Splitting parts of a case among multiple judges is inefficient and reduces accountability. Obviously, it is preferable to have the same judge who hears the divorce hear the closely related custody, visitation, and child support matters, whether or not they are consolidated into one case. But how much time should pass before cases can be considered unrelated? Is it necessary to have the judge, who granted an uncontested divorce to a young couple ten years ago, hear a delinquency case involving their child? How do families view bringing new issues before the same judge? Anecdotal evidence from Oregon indicates that families favor having their "own" judge, but systematic research is necessary to test that proposition.

D. The Oregon Solution

The Oregon courts come the closest to presenting a one-family/one-judge approach ideal in that one judge may handle all civil and criminal proceedings involving family members. Indeed a single family is assigned not only to a single judge, but to a community service integration team, the membership of which varies from jurisdiction to jurisdiction. In Deschutes County, four circuit court judges have agreed to accept a family caseload. Only certain bundled cases are selected for service coordination and these cases must include children. All subsequent cases remain with one judge as long as he or she is on the bench. In Jackson County, all seven judges are designated family court judges. Three judges are assigned for three years to either a civil or criminal docket, and the presiding judge divides the approximately 20 percent of the time not spent upon administrative duties between the two dockets. Family cases remain with judges, regardless of their rotation between a civil or criminal docket assignment. When a new matter is assigned to a judge and the family has not been designated a family

38. Ted Rubin, *Families in Court: Will a Family Court Do It Better?*, 16 BEHAV. SCI. & LAW 169, at 174 (1998).

court case, the judge is to receive all files pertaining to a family's past and currently active cases.[39]

By having judges with a general docket accept cases from specific families, Oregon has the advantage of one family/one judge and avoids the whole rotation problem because judges hear cases other than just family. Diversifying the calendar to include civil or criminal matters can provide the variety necessary to reduce judicial burnout. Judges are not concerned about the diverse nature of their caseload because as judges in general jurisdiction courts, they have been assigned these matters before the experiment with a family court began. Perhaps experienced judges accustomed to handling a diverse caseload may have an easier time adapting to the one-family/one-judge approach to case scheduling.

III. Training of Court Personnel

A. The Problem

Law school does not necessarily train court personnel to address the medical, social, child development, and psychological issues that often occur in cases involving families. As cases become more complex and more reliant upon social sciences, judges handling family issues must develop the expertise to provide effective resolutions of family cases. They need to be knowledgeable in child development, social work, family dynamics, psychology, and medicine, to name a few. Indeed, judges require training to know which questions to ask professionals from other specialized fields and how to interpret their responses.[40] Even so, many court personnel, including judges, work with children and families without any preparation whatsoever.

In addition to the need for expertise on substantive family legal issues, judges and court staff dealing with family issues are more likely to employ non-adversarial techniques, including mediation and conciliation. Custody and mediation disputes are primary candidates for non-adversarial resolution of cases.[41] Court staff need to be familiar with

39. In Deschutes County, at present, a juvenile referee hears all juvenile-related matters and is not eligible to simultaneously be responsible for a family's domestic or criminal cases. Nonetheless, a referee case can be joined with other family-related matters to become a judge's family court case.

40. Ross, *supra* note 2, at 21. *See also* CHILDREN AT RISK, *supra* note 1, at 55. LEGAL ACTION 55 (1993).

41. Thirty-six states and the District of Columbia had a custody mediation program in place in 1987. Myers et al., *Divorce Mediation in the States: Institutionalization, Use and Assessment*, STATE COURT J. 17 (1988).

the availability of services from many different social service and treatment agencies, along with the capabilities of each program.

B. The Family Court Remedy

The National Family Court Symposium recommended mandatory judicial education on: ". . . custody, support, dissolution, separation, child development, substance abuse, sexual abuse, domestic violence, child abuse and neglect, juvenile justice, adoption, social services and mental health."[42] Most courts rotate panels of judges into specialty courts for defined time periods. Some reformers consider this remedy a good way to achieve temporary specialization, but prefer permanent assignments of specialized judges.[43]

The need for specialized training for all court personnel, from intake officers, to case managers, to judges, is unquestioned. Ideally, training should not only be a job prerequisite, but should continue periodically to keep staff abreast of the latest knowledge. Involvement of judges in education programs, as student or teacher, may reduce the burnout factor as judges discuss ways to handle problems unique to family cases.[44] Released time may also be necessary to permit judges to coordinate with social service, treatment, and community agencies.

C. Questions Remaining

The discussion on one family/one judge earlier raised the question of the relationship between continuity and specialization. The same issue arises with respect to training in the sense that there is a disincentive to spend a long period of time acquiring specialized expertise in legal matters affecting the family if the judicial assignment to family docket is short.

D. The Oregon Solution

If the entire bench accepts family law cases, all judges require education in handling these specialized cases. Oregon uses a statewide family law advisory committee to serve in many capacities, training among them. The Chief Justice appointed the statewide committee in January 1998 to advise the state court administrator on family law issues. It has presented a conference on implementing Oregon's family law reform legislation, conducted regional workshops on family law

42. KATZ & KUHN, *supra* note 9, at ch. II.
43. Jeffrey W. Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 127 (1995).
44. Kuhn, *supra* note 26, at 76.

topics, and published a monthly newsletter on family law developments. Local family law advisory committees, the county counterpart to state advisory committees, have also been appointed by presiding circuit court judges.

Oregon found that the need for training and education of court staff increased as family court departments were established. Most interesting was not the familiarity with new operating procedures in courts, but the identified need related to coordination with social service agencies and treatment providers. Court staff had to be trained in identifying services provided by others, establishing services run by the court (e.g., parent education programs, supervised visitation), and monitoring enforcement of court orders.

Service to the public can be increased through the use of trained volunteers. Judge Page gives a capsulized look at a successful program using volunteers assigned by family courts and notes that they sometimes provide specialized services not otherwise available.[45] Oregon makes use of volunteers, but also explicit exchanges with agencies. Staff is needed to inform the community about the family court and to serve people who come to court, especially those that arrive without legal representation.

IV. Service Delivery

A. The Problem

As societal problems become more intertwined, courts have been called on to determine the various rights and responsibilities of groups with conflicting interests and unequal power. Without the resources and administrative improvements needed to meet these new burdens, judicial decision-making suffers. Court hearings become delayed or conducted superficially in order to be disposed within existing time guidelines. Sometimes information is not received from social service agencies in a timely fashion, or information is received in a form that cannot be accepted without violating rules of evidence. Staff is not available to monitor progress of service delivery, permanency plans, and so forth, after the case leaves court. Legal problems not resolved at the first court contact can escalate into more severe problems for the family and for courts later. Moreover, increasing burdens placed on courts are not matched by increased financial and human resources. The unfortunate consequence is that gaps in service provision and lim-

45. Page, *supra* note 6, at A-29.

ited resources frustrate the good intentions of public institutions to protect children and their families.

Many matters that end in court are generated by dysfunctional family relationships. Unless the causes of the problems are identified and addressed, family members may return to court repeatedly. Most of these family issues require the courts to reach out to community services if there is to be any hope of success. Services can be fragmented in that the same family may have different case workers from the child welfare agency, community health center, juvenile delinquency program, and a substance abuse treatment program.[46] The services that may be needed by family courts are: assessment and evaluation, counseling, volunteer, community outreach, and family support services, as well as restitution, probation, diversion, and detention services for courts with juvenile delinquency jurisdiction.[47] If the agencies and courts do not communicate adequately with each other, there may be contradictory recommendations and unnecessary delay.

B. The Family Court Remedy

Courts cannot assume responsibility for all of society's problems, but can serve as the service coordinator of last resort. This is especially necessary in places where caseworkers from many different agencies are assigned.[48] In other places, judges may order additional assessments by experts and require frequent progress reports and case status hearings. Finally, courts may themselves provide some services, such as counseling. For example, drug testing is most effective when conducted on site.[49] Other services may be referred to volunteer resources within the community. Courts may play a preventative role in assisting in the resolution of conflicts before they come to court. To play these roles courts need to consider "family ecology"—that set of institutions, religious organizations, neighborhoods, and associations that influence families and upon which families must rely.[50] Informational kiosks may

46. CHILDREN AT RISK, *supra* note 1, at ch. 8.

47. Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 523 (1998).

48. *See, e.g.*, an example from Cook County, Illinois, in U.S. GENERAL ACCOUNTING OFFICE, JUVENILE COURTS: REFORMS AIM TO BETTER SERVE MALTREATED CHILDREN 9 (Jan. 1999).

49. JEFFREY A. KUHN, TREATMENT-BASED FAMILY DRUG COURT PROTOCOLS (1997).

50. MARY ANN GLENDON, THE TRANSFORMATION OF FAMILY LAW; STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE 308 (1989); *See also* PETER L. BERGER & RICHARD J. NEUHAUS, TO EMPOWER PEOPLE: THE ROLE OF MEDIATING STRUCTURES IN PUBLIC POLICY 2-6 (1977).

provide standardized forms to pro se litigants, and could refer families to other community resources.

C. Questions Remaining

Court intervention into the lives of families always involves the delicate balance between unwarranted intrusion and neglect of responsibility. A new school of thought, "therapeutic jurisprudence" contends that court intervention ought to improve the situation.[51] In the context of family law, the aim of therapeutic jurisprudence would be to protect families from harm, reduce emotional turmoil, promote family harmony, and provide "individualized and efficient, effective justice."[52]

D. The Oregon Solution—Coordination with Social Service Agencies and Community

The Oregon state government launched a service integration initiative in 1991. In Deschutes County, prior collaboration among community agencies made it easier for the court to exercise a coordinating role with services to selected families.[53] In Jackson County, too, strong collaboration among human service agencies existed at the time the family court was established. Jackson County recognized the importance of creating a partnership with the community it serves. The term *community family court* was chosen to represent the commitment to partnerships between the court, community, and service providers.[54] The court not only recognizes that early identification of families in need of services requires both court and human services support, but also holds families accountable for compliance with court mandates and human services requirements. Jackson County has been noteworthy with its establishment of family resource centers that house as many as seventeen agencies in one building. From seven initial sites, Oregon

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51. David Wexler defines therapeutic jurisprudence as " . . . the study of the role of the law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic or anti therapeutic consequences." David B. Wexler, *Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence, in* ESSAYS IN THERAPEUTIC JURISPRUDENCE 8 (David B. Wexler & Bruce J. Winick eds. 1991). *See also* David B. Wexler & Bruce J. Winick, *Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research*, 45 U. MIAMI L. REV. 979, 989 (1991).

52. Michael A. Town, *The Unified Family Court: Therapeutic Justice for Families and Children* (Mar. 11, 1984), *quoted in* Barbara Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective, in* ABA SUMMIT, *supra* note 6, at D-13.

53. *See* Stephen N. Tiktin & Ernest J. Mazorol III, *Family Court Coordination of Human Services, Deschutes County, Oregon* 35 FAM. & CONCIL. CTS. REV. 342 (1997).

54. THE FIRST JUDICIAL DISTRICT, FAMILY LAW ADVISORY COMMITTEE FINDINGS AND RECOMMENDATIONS (1998).

now has thirty-nine "one-stop" community centers where multiple agencies serve families.

Community "buy-in" is important to generate support and enthusiasm and to have the community believe that the court is theirs. For example, a photographer who volunteered time to help put siding on a youth facility will certainly be more receptive to taking photos of the facility for news stories. Advisory committees of stakeholders and community members is very important to building public trust and confidence in the court system.

The nature of services courts can offer depends upon the services available in the community. Judges and service providers need to meet regularly to review the types of services available.[55] Judges may not only help identify services currently available, but work with social service agencies and treatment providers to establish services that do not currently exist.[56] Presiding Judge Murphy of the Circuit Court of Cook County presents a vision where " . . . courthouses can become centers of resources that will help citizens help themselves."[57]

V. Are Community Family Courts the Answer?

Clearly, the need for coordinating cases involving families has been demonstrated. The quality of decisions and the consistency of court orders is bound to be better if information is readily available. Some economies of scale will result from processing multiple cases involving family members, but the primary reason for coordination is to improve outcomes, promote early and effective interventions, and integrate the court and community services available to families in crisis. At the same time coordination provides the opportunity for the monitoring and enforcement necessary to make the family as well as the service providers accountable.

Unified family courts were created to meet the need for coordination and better service delivery to families. No single paradigm or innovation, however, is appropriate to all situations. Unified family courts are most appropriate to areas that have a large enough case volume to justify that degree of specialization, and therefore ought not to be suggested as the appropriate solution to all problems of family law.

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55. Szymanski et al., *supra* note 6, at 25, 35.

56. Edward P. Mulvey, *Family Courts: The Issue of Reasonable Goals*, 6 LAW & HUM. BEHAV. 61 (1982).

57. Sheila Murphy, *Unified Family Courts in Progress: Getting Started/Early Stages*, in ABA SUMMIT, *supra* note 6, at E-3.

Similarly, the Oregon model is very promising, and seems to be the solution for mid-size courts with a moderate volume of family cases, but not ones so large as to warrant a separate court. This solution too has prerequisites. One of the most important is the willingness to experiment with the model and adapt it to local court situations. Oregon has been a leader in innovation and credit is due to the legislature for encouraging experimentation.[58] The second important requisite is the leadership provided by the court itself, from the Chief Justice of the Supreme Court to presiding judges and trial court administrators, there is a willingness to work together to improve the way courts deliver services to families. Problems brought to court, especially family court, not only challenge courts, but almost require that courts become more involved in the communities they serve.[59] The third ingredient is the culture of cooperation that exists among human service agencies, child welfare agencies, and service providers. Communities in Oregon accept responsibility for their problems and work cooperatively through their multiple organizations for their resolution.

The Director of the California Department of Social Services summarized: "Courts can't keep kids safe, but communities can."[60] Trying to adapt to ever-changing situations requires courts themselves to always be in the process of becoming. Because the communities they serve are in flux, courts too must be constantly adapting to changing needs of the public for both service and public safety.

58. According to Macy, "Oregon can boast startling success in sustaining a far-reaching change process." C. H. MACY, THE OREGON OPTION: A FEDERAL-STATE-LOCAL PARTNERSHIP FOR BETTER RESULTS (The Annie E. Casey Foundation 1997), *as noted in* CREATING HIGH-PERFORMANCE GOVERNMENT ORGANIZATIONS 44 (Alliance for Redesigning Government, Mark G. Popovich ed. 1998).

59. *See* Gary B. Melton & Brian L. Wilcox, *Changes in Family Law and Family Life: Challenges for Psychology*, 44 AM. PSYCHOLOGIST 2003-04 (1989).

60. E. Anderson, *The Impact of Welfare Reform*, talk given at the conference on Beyond the Bench IX Conference, San Francisco, December 1997; *cited in* Rubin, *supra* note 38, at 179.

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A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium

JEFFREY A. KUHN*

In October 1990, the National Council of Juvenile and Family Court Judges conducted "a first of its kind" symposium that addressed the topic of unified family courts. Teams of three to five judges, court professionals, legislators, and service providers from over twenty states attended the program to identify and offer to state courts a series of recommendations for implementation of a model family court. The product of this symposium, Recommendations for a Model Family Court,[1] also known as the "Redbook," has been heavily relied upon during the last seven years by persons all over the country who have sought to improve the justice system's response to children and families by creating a unified family court.

Since 1990, those who have worked within or toward the development of unified family courts have learned more about these very complex courts. However, our most valuable lesson is not one of substantive knowledge gained or technology developed. Rather, it is that we seem to be onto something good for children and families, something that helps people secure basic necessities and leaves them with the tools necessary to do so long into their respective futures. This something is a unified family court, the underlying principle of which is the

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1. SANFORD N. KATZ & JEFFREY A. KUHN, RECOMMENDATIONS FOR A MODEL FAMILY COURT: A REPORT FROM THE NATIONAL FAMILY COURT SYMPOSIUM (1991).

practice of therapeutic justice.[2] Therapeutic justice concentrates on empowering families with skills development, assisting them in resolving their own disputes, enhancing coordination of court events within the justice system, providing direct services to families when and where they need them, and building a system of dispute resolution that is more cost efficient, user-friendly, and time conscious.

What have we learned about our efforts to provide therapeutic justice to children and families within unified family court? This article will examine our findings by reviewing key recommendations made in the 1990 *Recommendations for a Model Family Court (Redbook Recommendations)* and offering commentary reflecting the experiences of judges, court and agency managers, service providers, academics, or educators with the unified family court during the last seven years.

I. Objectives of Unified Family Courts

The 1990 Symposium recommendations translate the objectives of a unified family court to high quality of justice, timeliness, and cost efficiency. To meet these objectives, *Redbook Recommendations* included the undertaking of a workload study to determine adequate staffing levels, centralizing facilities, engaging in efficient case management practices, and using experienced and well-trained judges and staff.

A. Workload Studies to Determine Adequate Staffing Levels

While a workload study to determine judge and staffing needs in the trial courts is a common tool for court administrators and managers, we have learned only recently that workload studies in unified family courts require the development and application of weighted caseload standards due to the broad-based jurisdiction of this court.[3] For instance, unified family court administrators have discovered that matters involving the termination of parental rights require more intensive case management and trial practices than family court domestic violence proceedings in which protective orders are sought.[4] Therefore, family court jurisdictions that indicate larger than average caseloads in

2. The term "therapeutic justice" was first coined by Senior Family Court Judge Michael A. Town of Hawaii's Family Court in a paper delivered to the Chicago Bar Association on March 11, 1994. The term has its origins in "Therapeutic Jurisprudence," first used by Professor David Wexler at the University of Arizona in the early 1990s.

3. *See* STATE OF NEW JERSEY, ADMINISTRATIVE OFFICE OF THE COURTS, FAMILY DIVISION CASE WEIGHTING/STAFFING RATIO STUDY (Final Report 1996).

4. *Id.* at A4.

termination of parental rights matters may require more case management and trial bench time to bring such cases efficiently to disposition and, ultimately, adoption or reunification. By the same token, family courts having an inordinate volume of domestic violence protective order hearings may require comparable judge and staff resources if the same family court has considerably less volume of termination of parental rights cases. Therefore, we have learned that effective staffing assessments require comparative time and task studies for judges and staff reflecting the subject matter of cases before the family court. Only such carefully designed studies can determine unified family court workload standards accurately.

Absent the ability to perform this "weighted" workload analysis, best practice standards for certain types of cases may be relied upon in order to determine judge and staff needs. For instance, the National Council of Juvenile and Family Court Judges provides guidelines for the adjudication of child dependency matters.[5] Substantive standards for preparation and conduct of emergency removal, adjudicatory, and dispositional hearings can assist the family court in determining the need for judges and staff based on reasonable estimates of time related to each task.

While desirable in the context of therapeutic justice, workload standards developed in this manner will be based on absolute best practices and will indicate a high level of judge and staff need. Because such resources are rarely available in a fiscally austere public service environment, it may be prudent to conduct alternative workload studies based on existing and projected caseloads, divided by numbers of judges and staff assigned to handle those cases. This approach assumes that family case historical data suggests acceptable clearance of present caseloads, utilizing acceptable case management practices.

B. Centralization of Facilities

The Redbook Recommendations call for a separate family court facility that would provide increased public access, efficient use of resources, and maximized opportunity for the use of a comprehensive, automated base of information.[6] In general, the idea of a centralized facility in which all family court and appurtenant services can be accessed remains desirable. More recently, increased emphasis has

5. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MODEL RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995) [hereinafter MODEL RESOURCE GUIDELINES].

6. KATZ & KUHN, *supra* note 1.

been directed to the component parts of the family court facility, including physical dimension requirements, adequate security, and accommodation for ever-advancing technology.[7]

Historically, courts having jurisdiction over legal matters relating to children and families were often relegated to the least desirable, smallest space available in the courthouse. Only recently have state court systems recognized the need for minimum family court space requirements.[8] While recognized experts in child development and child witness law and practice have long understood the need to provide developmentally appropriate facilities for children,[9] only recently are new family court facilities being designed with smaller courtrooms, child size furnishings, and less intimidating surroundings.[10] As mediation and divorce education have grown in popularity, family courts have become enlightened about the importance of providing clean, comfortable, and confidential settings to families in order to promote meaningful negotiation.[11] As family courts have moved toward the development and implementation of drug court components, the provision of private and sanitary facilities for drug testing have been recognized as a necessity.[12]

Due to the highly emotional and volatile nature of family court proceedings, we have learned that practice and provision of adequate security measures cannot be a secondary consideration. Among the many service providers with whom the family court must develop a cooperative relationship is the police or sheriff's agency that provides security to the court.

Customary security procedures for all trial courts should be practiced in the family court, including the use of magnetometers, barrier protection in courtrooms and public counters, and parking area security. Customary security practices notwithstanding, we have learned that family court requires additional, extraordinary security precautions. Extra vigilance has become necessary in domestic violence cases in order to prevent the perpetrator from either attacking or communicating with the victim in the public areas and courtroom. It is important to prevent such communications prior to a domestic violence hearing to avoid potential manipulation of the victim by the perpetrator. Witnesses may also need such protection, particularly if they are family members. Moreover, precautions should be taken to ensure the victim is permitted to exit the courtroom several minutes before the perpetrator upon the issuance of an order of protection.

7. TIMOTHY F. FAUTSKO ET AL., PLANNING FOR THE DEVELOPMENT OF A FAMILY COURT IN KENTUCKY 37-44 (1997).

8. *Id.* at 39.

9. *See* JOHN E.B. MYERS, CHILD WITNESS LAW AND PRACTICE 417 (1st ed. 1987); *see also* I. ROSS, CHILD DEPENDENCY BENCHBOOK (1st ed. 1994).

10. FAUTSKO, *supra* note 7, at 40. Also, the dependency court division of the Los Angeles County, California, Superior Court worked with the Disney Company in the early 1990s to develop a child-friendly court facility containing child size furnishings and developmentally appropriate decor and entertainment.

11. *Id.* at 39.

12. JEFFREY A. KUHN, TREATMENT-BASED FAMILY DRUG COURT PROTOCOLS (1997).

Provision of adequate security measures for victim/witness and child waiting or day care areas is important to promote feelings of comfort and safety for children. Parents or guardians who leave or pick up their children at such facilities in the family court should be subject to close scrutiny to confirm identification and custodial status.

C. Efficient Case Management Practices

We have learned that effective caseflow management in the family court requires the application of contemporary case management techniques including Differentiated Case Management (DCM) and maximization of alternative dispute resolution (ADR) techniques.

The concept of managing cases based on their expected complexity so they may be moved through the court system as efficiently as possible has not been applied to all family court cases until the last two to three years. Moreover, when DCM began to appear as a case management tool in this forum, it was initially confined to domestic relations matters, assigning such cases a management track based on whether a divorce petition or complaint was uncontested, had minor, unresolved disputes, or was expected to result in major litigation between particularly adversarial parties.

Despite the rather limited history of DCM in the unified family court, the Jefferson County family court in Louisville, Kentucky, along with several other key family courts around the country, has carved out a role for DCM. To this end, there are three key features of DCM that should be considered by family courts in developing case management practices:[13]

1. Development of multiple case processing tracks with different events and time frames that reflect the range of case processing characteristics and requirements presented by the caseload, e.g., simple, standard, or complex.
2. Unnecessary court appearances should be eliminated. Improved organization of court events should ensure that each scheduled event occurs at a time and in a manner that moves the case to

13. U.S. DEP'T OF JUSTICE, DIFFERENTIATED CASE MANAGEMENT, BUREAU OF JUSTICE ASSISTANCE FACT SHEET (Nov. 1995)[hereinafter DIFFERENTIATED CASE MANAGEMENT].

prompt and quality disposition. That is, preliminary events should be conducted only when necessary and not as a matter of usual practice. Only events that contribute to disposition and the well-being of the families involved should be scheduled.

3. Cases should be closely monitored to assure they are not lost in the system. Monitoring should occur regularly to ensure that important guidelines such as the Model Resource Guidelines for dependency/abuse/neglect matters as developed by the National Council of Juvenile and Family Court Judges are observed.[14]

Benefits to be expected by implementation of DCM within unified family courts include greater scheduling certainty and more efficient use of resources, increased coordination and cooperation among the court and agencies involved in the case and improved quality of justice, i.e., therapeutic justice.

Four factors must be in place within the family court to implement an effective differentiated case management program:

1. Commitment of the judges, prosecuting attorneys, public defenders, and the practicing bar to develop a unified family court system that differentiates among case types for case processing purposes and pledges as a priority, the protection of children and families;
2. Leadership at the highest levels of the family court and court system, generally;
3. Commitment on the part of the family court and the agencies that participate in the family court system to develop an intake and screening mechanism to assess cases at time of receipt and assign them the appropriate track; and
4. Assessment and modification of the appropriate court information management system to support the operation, monitoring and evaluation of DCM in the unified family court.[15]

Figure 1 indicates a generic family court case management table which includes a centralized Family Court Service or Resource Center.

Alternative dispute resolution (ADR), particularly mediation practice, in the unified family court has expanded in dramatic proportion in the last seven years. Divorce education for divorcing parents and their children has become commonplace. Many family courts, indeed, many state courts without family courts, presently require some level of participation in mediation sessions by parties seeking

14. MODEL RESOURCES GUIDELINES, *supra* note 5.

15. DIFFERENTIATED CASE MANAGEMENT, *supra* note 13. Fundamental DCM principles were considered by the author in developing DCM recommendations specific to a unified family court.

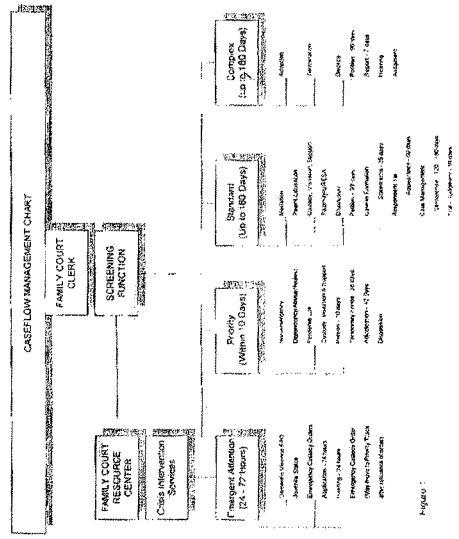


Figure 1

a divorce.[16] The concept continues to expand not only in the matrimonial area of family court practice, but also into juvenile justice and child protection matters that have been traditionally off limits to alternative dispute resolution practices.[17] In venturing into these areas of the law we have become more experienced, if not astute, at working with the stakeholders in these systems, who are often dubious about using alternative dispute resolution processes in areas of child protection, juvenile rehabilitation, and domestic violence.

Building relationships with these key persons has become vitally important. Where "opposition" in the context of unified family court may have meant insurmountable barriers to development in 1990, in 1997 we now know that we must work with that "opposition" as allies to create opportunities for information sharing and problem solving. Efforts that have proven successful in New Jersey include:

- building a requirement into the mediation process that the mediator meet and confer with attorneys representing the parties -- in such meetings, the focus can be on refocusing behavior to meet the needs of the family involved;
- conducting regular meetings between family court judges and staff involved in various alternative dispute resolution programs of the court to discuss common issues and problems and to build trust in the process;
- developing standardized procedures in courts where they do not exist to facilitate stabilization of the mediation program;
- sponsoring regular meetings between judges and system stakeholders to discuss and educate concerning practice issues;
- facilitating regular meetings between family court staff and outside stakeholders to exchange issues and ideas and develop relationships;
- providing stakeholders with written materials, guides, or manuals concerning the service available, including procedures, appropriate use, and evaluation;
- establishing an advisory committee composed of judges, court staff, and appropriate stakeholders for the purpose of providing oversight to the use and expansion of mediation in the family court;

16. *See* Ann Milne, *Mediation: A Promising Alternative for Family Courts*, 42 JUV. & FAM. CT. JOURN. 61 (1991). As many as 33 states require mandatory participation in divorce mediation.

17. The practice of using citizen volunteer panels, called juvenile conference committees, to resolve minor delinquent conduct issues has existed in New Jersey's Family Court since its inception in 1984. Family group conferencing programs in child protection cases, first practiced in New Zealand's Family Court, are gaining popularity. The Family Court in Hawaii presently operates a family group conferencing program.

- keeping records of cost-benefit ratios that include cases mediated, cases settled in mediation, and their relative costs compared to costs in cases that proceed to trial, as well as post-judgment activity with ADR compared to post-judgment activity after trial and other evaluative data, as necessary;
- working collaboratively to define roles and responsibilities with outside agencies including juvenile probation and the local child protection agency which is part of the executive branch of government;
- using educational activities within the community to create interest in and support for alternative dispute resolution programs; and
- encouraging mediators and supporting staff to become active in local community organizations that are child and family-focused.

Once relationships with stakeholders have formed and begun to work effectively, we have discovered that seeking feedback from clients and constituents concerning the effectiveness of ADR programs tends to engender confidence in the quality and usefulness of the program. While that feedback may be critical, the benefit gained by asking for input will, in itself, prove useful since participants feel included in the developing process.

D. Experienced and Well-Trained Judges and Staff

In 1990, symposium conferees agreed that judges who serve within the family court should be experienced and well-trained in family court matters.[18] Experience has proven the merit of this recommendation. Family court matters remain the most difficult, emotional, and volatile of all court matters. In 1997, there existed an even greater need to train judges and staff on the ever-increasing complexities of the law that address family protection and relationships. We have learned, as well, that by its imprecise and highly emotional nature, family court is a breeding ground for high stress, frustration, feelings of helplessness, and burnout. While coping with the burnout factor is, at best, an inexact science, the utilization of several practices, as discussed below, may be helpful in minimizing or preventing such effects.

Added incentives, apart from other divisions of the trial bench, may assist in this regard. Among commonly discussed incentives is the idea of positive pay differential and extraordinary retirement benefits for family court judges.[19] This differential need not be direct monetary

18. KATZ & KUHN, *supra* note 1, at Recommendation No. 7.

19. FAUTSKO, *supra* note 7, at 26

compensation, but might include extra vacation time or "family court leave" which could be devoted to related academic pursuits.

Relaxation of traditional limitations on accepting speaking engagements and community involvement should be considered. By its nature, family court requires of its judges a larger role than that of fact finder. A family court judgeship should include community activism in its job description to help mobilize community resources and to raise the veil of secrecy and confidentiality that is a frequent and convenient excuse for refusing to give information to the public. Time off the bench and in the community can frequently be as important as time on the bench for the family court judge.

Frequent involvement in education and training programs for judges, not only as student, but as teacher, assists in reducing burnout by providing the family court judge with a new sense of importance and identity with his and her fellow family court judges as they share and trade experiences that will likely assist them on the bench when they return home. Participation in statewide associations of family court judges and in national family court conferences is also critical and should receive institutional support.

Allowing the family court judge to act as an agent for change by providing testimony at legislative hearings and communicating in a reasonable manner with the media frequently results in increased self-esteem and a greater respect for the difficult work of the judge in the family court.

We have also learned that burnout and stress may be minimized by providing family courts with sufficient resources to fulfill their mission. These resources include the provision of an adequate number of well-trained staff as well as the substantive resources necessary to provide families with a spectrum of services that can be ordered by the family court judge.

II. Function of Unified Family Courts

In 1990, National Family Court Symposium conferees agreed that a one judge to one family or direct calendar approach to case management was the cornerstone management tool for unified family courts.[20] Controversial at the time, this concept continues to be a frequent subject of debate in discussions concerning unified family court. While the one judge to one family idea remains unsettled, we have learned that the functional aspects of the court are not limited to this case management concept. Indeed, we have discovered that "teams" of family court

20. KATZ & KUHN, *supra* note 1, at Recommendation No. 10.

staff may be a better alternative to the one judge to one family idea. These teams are groups of staff which are responsible for processing and managing an assigned number of matters covering all family court cases from case initiation through disposition. Moreover, we have discovered that the appropriate use of technology must be a functional priority of family courts. And, as we have continued our discussions about family court system functionality, we have discovered a need to evaluate critically the performance of family courts so that we might learn whether these complex systems deliver what they promise, and continue to refine and improve them in response to such evaluations.

A. One Judge to One Family

Many jurisdictions considering a unified family court aspire to the goal that all matters involving parties with a significant domestic relationship be heard by one judge in order to coordinate disposition.[21] The most immediate problem they encounter is the historic definition of "family." By necessity, the definition must be dynamic. For purposes of family court, the family might be the nuclear family, unmarried cohabitants, stepchildren and parents, foster children and parents, guardians and custodians, or parties with a continuing sexual relationship who are not cohabitating and their children. While the prospect of accepting the dynamic family for case management purposes seems daunting, we have discovered there is less need for a precise, stable definition than might appear at first glance, because the purpose of the definition is based in case management function. Therefore, unified family court sites can legitimately develop the definition of each family to suit the case management objective.

Having defined the family, the one judge to one family case management practice must aspire to conform to several other generally accepted principles to be successful:

- the factual and legal issues of each case should be similar;
- the cases should be at similar stage of development or can be conveniently calendared;
- the parties are closely related or are substantially the same;
- case familiarity will assist, but not bias, the family court judge;
- considerable potential for conflicting orders exists unless all matters are assigned to one judge.[22]

21. *See* UTAH FAMILY COURT TASK FORCE, FINAL REPORT TO THE UTAH JUDICIAL COUNCIL 27 (1994).

22. These criteria are based on the one judge/one family case management practice conducted in the Family Court of Monmouth County, New Jersey, from 1990 through 1992.

While rural courts tend to function as de facto one judge to one family courts, we have learned that mid-size and urban courts are seldom capable of abiding by these principles for two reasons. First, sheer volume of family court cases renders one- judge-to-one-family mechanically improbable, if not impossible. Assume a unified family court brings within it at least four major jurisdictional bases including matrimonial, domestic violence, juvenile delinquency, and child protection. The emergent nature of many family conflicts that fall within these jurisdictional bases creates regular interruption in trials and frequently prevents the application of differentiated case management techniques to family court matters. The result is repeated delay, inability to try cases continuously from beginning to end and regular compromise of the constitutional rights to speedy trial, due process, and confidentiality extended to the parties before the court. Second, it is fiscally improbable that most jurisdictions can add judges and staff resources that offer a solution to high volume family court calendars. Simply put, there are not enough judges in the family court to achieve the one-judge-to-one-family goal on a consistent and effective basis.

A promising and perhaps, more practical, alternative to the one-judge-to-one-family case management practice appears to be the "one-team-to-one-family" approach to managing family court cases. Within New Jersey's family court, for example, a major effort has been underway for several years to implement the concept of self-directed teams of professional court staff to manage all cases connected to the same family.[23] Private sector experience has demonstrated that companies effectively organized in teams have improved the quality of service, reduced operating costs, responded faster to technological advances and increased staff commitment to the organization.[24]

Family court teams are typically composed of professional court staff with backgrounds in court administration and management, family and juvenile law, family counseling, assessment and screening function, and crisis intervention expertise. The team receives initial case management and processing education as well as education concerning the dynamics of adult education and cross-training. Team members work together closely to become competent in a variety of functions so that they might fill in for one another, as necessary.

The responsibility of the team is to aggressively manage each family court case by providing intake, screening, assessment, calendar coordination, and case monitoring services to the parties and to the

23. ADMINISTRATIVE OFFICE OF THE COURTS, STATE OF NEW JERSEY, FAMILY DIVISION WHITE PAPER (1993).

24. STEVE BUCKHOLZ & THOMAS ROTH, CREATING THE HIGH PERFORMANCE TEAM (1987).

family court judges. Judges, as well, are assigned to individual teams to assist with calendar coordination and case monitoring. When successful, this approach means that all matters related to the same family unit are coordinated by the family court team which is familiar with the case history of the entire family.

There are several proven advantages to the one-team-to-one-family case management function. Team members work together to improve their operations, handle day-to-day problems and plan and control their work. Parties to family court proceedings receive the benefit of a coordinated response to their cases. Family court judges gain the benefit of case coordination and familiarity with family dynamics to aid in their decision making without limiting their ability to try cases continuously without interruption.

B. Utilization of Technology

While emerging technology represents vast potential for family court information management systems, family courts have made comparatively little progress in adopting this technology. The benefits of this technology now go beyond simple "automation" or reduction in manual processes, but make knowledge accessible more quickly to judges and court staff, who in turn use their time more efficiently. Where before our challenge was to implement an information system to keep track of basic statistics, our challenge today is to manage the introduction of new technology in such a manner which takes into account a variety of competing factors, including: the immediate and long-range needs of the family court; the rapid rate of technological change and resulting obsolescence; and the direct and indirect costs of developing and installing new technologies.

Given the number and variety of technological initiatives that are possible today, it is important to view potential family court technological innovation through the development of a strategic technology plan. This "Family Court Technology Plan" should, at a minimum, provide for cornerstone information system functionality, courtroom data entry, outside agency access, utilization of video technology, and public access technology.

The importance of an information management system that serves as a cornerstone to caseflow management tracking in the family court cannot be overstated. This system must be a cooperative venture by all family courts within the jurisdiction to encourage standardization and greater availability of information. Specific functions should include:

- automatic docketing and indexing of new cases;
- identification of parties involved in cases and their relationship within each case (for cross-referencing and other purposes);
- immediate printing of complaints, petitions, protective orders, and notices;
- automated calendar management including scheduling and calendaring of court appearances for each judge;
- recording of interim/final dispositions and other adjudications;
- extensive on-line inquiry regarding cases and parties;
- generation of statistical and case management reports.[25]

By building an information management system for the family court of this magnitude, court personnel will be able to serve the public more efficiently and effectively. For instance, notices for court appearances might be printed on-demand and overnight for next day mailing. Because many different types of notices may be needed in family court, printing of these notices will save hundreds of hours of preparation time and will provide the public with professional, uniform notices. Moreover, the production of master calendars through the information management system will not only represent time savings, but the flexibility to manage calendars more efficiently. This will benefit all participants in the system including attorneys and their clients, and state employees called as witnesses in addition to court personnel. Financial savings from the more efficient use of the time of such people as state social workers and police officers can be considerable.

The ability to enter data into the family court case management information system simultaneous to the occurrence of events in the courtroom has emerged only recently as a new technological concept to be embraced by family courts.[26] In-courtroom data entry allows for the recording of family court dispositions, noticing of parties, scheduling/rescheduling of hearings, and generation of orders by a bench clerk in the courtroom while the proceeding is in progress. Instantaneous printing of notices and court orders can improve the ability of the family court to contact necessary parties on a more consistent and timely basis.

Courtroom data entry requires the availability of a computer terminal in the courtroom together with the requisite hard wiring to accommodate the hardware. This function also requires the family court

25. STATE OF NEW JERSEY, ADMINISTRATIVE OFFICE OF THE COURTS, MANAGEMENT OVERVIEW OF COURT INFORMATION SYSTEMS (1997).

26. STATE OF NEW JERSEY, ADMINISTRATIVE OFFICE OF THE COURTS, NEW JERSEY SUPREME COURT COMMITTEE ON EFFICIENCY II, SUBCOMMITTEE REPORT ON TECHNOLOGY, 25-30 (1996) [hereinafter SUBCOMMITTEE REPORT ON TECHNOLOGY].

information management system to be designed in such a way to permit data entry easily and quickly, so that courtroom proceedings are not delayed by the entry process.

By its broad-based jurisdiction, we have learned that numerous other agencies interact with the family court on a regular basis and that by providing necessary information to those agencies, family court will further enhance its ability to function effectively. The Family Court Technology Plan should therefore include provisions to provide on-line inquiry access for family court matters to those agencies, including the prosecutor, public defender, child protection agency, probation agency, and the various agencies that provide direct service delivery to court-involved children and families. Among information that can be accessed on an inquiry-only basis are current records and history of domestic violence including protective orders, current family court and child custody status records, current child protective orders, child custody orders, paternity orders, and child support orders.[27] The extent of agency access capability should be limited based on security profile definitions. Security profile information can be customized for each potential user and should be based on access levels as defined by the administrative body of the family court.

Video teleconferencing is cost-effective and efficient technology that should be considered for inclusion in the Family Court Technology Plan.[28] This innovation allows for communication by video through hard-wire, fiber optics, or satellite. Parties can see visual images of each other while communicating during court proceedings that can be conducted off-site at attorney's offices or designated locations. While the technology is nearly twenty-five years old, its popularity as a court management tool has emerged only recently.[29] Possible uses for family court include detention hearings, mental health hearings, mediation sessions, or probation interviews. The technology can also be utilized for internal, administrative uses such as judge/team meetings or other administrative conveniences.

Conferees at the 1990 National Symposium were clear that family courts should be user-friendly, full access systems for the public.[30] Again, technological advancement now provides us with the opportunity to support this recommendation. A family court technology plan should therefore include a plan for the enhancement of public access to the family court via technology. This enhancement might occur

27. FAUFSKO, *supra* note 7, at 44.

28. SUBCOMMITTEE REPORT ON TECHNOLOGY, *supra* note 27, at 52.

29. *Id.*

30. KATZ & KUHN, *supra* note 1, at Recommendation No. 2.

through the use of automated, user-friendly software programs that are made available to the public on computer terminals within the public areas of the family court facility. Commonly referred to as "kiosks," these computer stations can provide information such as courthouse directions, daily judge calendars, instructions on how to complete and file family court documents on a *pro se* basis, how to secure interpreter services, how to access family-related services and answers to frequently asked questions concerning what are commonly called "walk-in" issues.[31] While this technology may seem unnecessary, jurisdictions that have experimented with such programs have discovered this service to be effective among parties who do not understand the procedures and rules of the justice system, many of whom are not represented by counsel.[32]

C. *Performance Evaluation of Family Courts*

Although interest in unified family courts has increased since the 1990 Symposium, reformers and stakeholders in these systems have become increasingly concerned over the apparent absence of any mechanism to evaluate the effectiveness of family courts. Court and legislative leadership request, with increased frequency, evidence that family courts deliver what they promise before mandating their creation or investing in them. Therefore, family court performance evaluations have become a necessity, particularly for larger scale programs.

The absence of quality performance evaluation programs for family courts might be attributed to the lack of expertise of those implementing the courts to perform such evaluations. To this end, the expertise necessary to perform a successful evaluation of a family court system may require identification of an expert resource outside the court. Certain fundamental considerations, however, should be reviewed by family court judges and managers when developing evaluation of family court performance.

Family courts are likely to be subject to either "summative" or "formative" evaluations.[33] A summative evaluation reviews the bottom line

31. SUBCOMMITTEE REPORT ON TECHNOLOGY, *supra* note 26, at 57. The Maricopa County Superior Court in Phoenix, Arizona, was the first court jurisdiction to experiment successfully with the "kiosk" concept.

32. *Id.* The Maricopa County project represents these positive outcomes through telephonic interviews between the author and staff from the Arizona Supreme Court in April 1996.

33. RICHARD A. BERK & PETER H. ROSSI, THINKING ABOUT PROGRAM EVALUATION (1990); JOAN L. HERMAN, LYNN L. MORRIS & CAROL T. FITZ-GIBBON, EVALUATOR'S HANDBOOK, *cited in* Sanford L. Braver, M. C. Smith & Stephanie R. DeLuse, *Methodological Considerations in Evaluating Family Court Programs*, 35 FAM. & CONCILIATION CTS. REV. 1 (1997) [hereinafter Braver et al.].

objectives of the family court and determines whether those objectives have been met.[34] In contrast, a formative evaluation will review the operations of the family court and provide suggestions for improving performance.[35] Therefore, it is important to be mindful of the nature of the particular family court system subject to evaluation before choosing the method of evaluation. If the family court system has a specific experimental or pilot term, a summative evaluation will determine whether the pilot project was a success and, in all likelihood, whether it will continue, expand, or cease to exist. When developing a pilot family court project, it is important to select the mode of evaluation beforehand so that pilot project objectives can be determined accordingly. If the family court system to be evaluated has been permanently created by state constitutional amendment, legislative fiat, or court rule, a formative evaluation process will prove desirable. In this manner, evaluation can be continuous and will prove helpful in improving the overall effectiveness of the unified family court operation.

Each of these evaluation types can vary widely by methodology, but the evaluator needs to know the goals of the family court. Because of the diversity of stakeholders in family court systems, family court goals should be identified based on the discipline of the stakeholder. For instance, goals of the system as identified by judges will be different from those identified by funding entities. Goals of mediators will be different from those identified by mothers' and fathers' advocacy groups. These goals can be identified simply and inexpensively through surveys or exit questionnaires tailored to the respondent.

Exit interviews of system stakeholders requires effort beyond surveys and questionnaires but can be effective for identifying more ambitious goals such as attitudinal change and increased knowledge.[36] More intensive efforts may require review of records to determine long-term goals such as improved child support compliance, decreased incidents of domestic violence, increased placement of displaced children in adoptive homes or decreased incidences of serious and violent crime among juveniles.

Another approach is to conduct one or more follow-up interviews with litigants at the conclusion of a family court event or following provision of a family court related service. This follow-up effort will provide for early measurement of program success based on a comparative analysis between early questionnaires and interviews and those conducted at the conclusion of the litigant experience.

34. Braver et al., *supra* note 33.

35. *Id.*

36. *Id.*

There are several caveats to keep in mind in identifying family court system goals. First, it is important to be realistic about what the court can do given its time frame and the influences beyond its control.[37] Second, focus groups may assist in developing consensus on the most important goals of the family court.[38] Third, it is important to determine whether implementation is proceeding as planned.[39] This effort will assist in diagnosing minor problems that are preventing attainment of the overall goal, such as misinterpretation of a provision within a policy or procedure manual. Fourth, if system goals include cost effectiveness, it will be important to collect financial information as a basis for comparison with nonfamily court systems.[40]

The precise tools for determining family court system outcomes will depend on which goals are identified by the processes discussed above. Instruments with known reliability and validity should be used whenever possible.[41]

However, because little valuative performance work has been done on family court systems to date, it may be necessary to design a new measure which, although not tested for reliability and validity, may become quickly accepted for family court system performance evaluation in many jurisdictions. If neither the time nor expertise is available to develop an evaluation instrument specific to unified family court, at least three traditional instruments of evaluation should prove reliable.

The exit questionnaire is the most common method used to evaluate programs. It may not, however, be the most effective. Questions such as, "Did you like the way you were treated in family court?" tend to be directed more toward customer satisfaction than system performance. If customer satisfaction is a performance goal, form client satisfaction surveys can be used. Other cautions include the risk of a higher response rate by those who are more satisfied with their experience, generally. In order to avoid this positive bias, a specific time might be set aside for all persons to complete the survey instrument so that persons who had both good and bad experiences will provide important feedback.

Examination of official records will assist in determining levels of family court performance such as time to disposition, frequency of post-judgment return, decreased time in placement resulting in permanent adoption, increases in special needs adoptions and recidivism rates of juvenile offenders. Record reviews will not reflect adequacy of customer service or other measures of social desirability in the family court system. Also noteworthy is the frequent problem of data accuracy and integrity. Data that appear to be accurate, may turn out to contain inaccuracies not discovered until after data collection is complete.

The follow-up survey is another important data collection source.[42] This instrument can be longer than the initial exit survey, particularly if mailed, and the questions can be more pointed. However, a response rate of around 20 percent would be considered typical.[43] Response rates might be improved by sending advance notice of survey delivery, providing a self-addressed, stamped envelope for return of the completed instrument or providing a token cash payment of one dollar or something similar with the instrument. Telephone and personal interviews, although more costly, are considered to be the most accurate means of conducting follow-up efforts.[44] Follow-up efforts should be conducted approximately three to six months after the family court experience.[45] This lapse in time will allow possible outcomes such as changed behaviors, adjustment of the family members and maintenance of the changes initiated by the family court to manifest themselves.

Assuming that requisite data has been secured through the instruments and means described above, a comparative analysis is necessary to determine the level of performance of the family court system. A "static group design" is among several means that may provide an accurate sense of family court performance.[46] In this analysis, family court outcomes will be compared to those of another jurisdiction that does not have a family court system. Experienced evaluation researchers underscore the difficulty of establishing that the two jurisdictions are equivalent, in areas other than the existence of a unified family court system in one.[47] However, if the family court exists within a state that does not have statewide unified family courts, a very similar parallel might be drawn based on demographic criteria between the family court jurisdiction and the nonfamily court jurisdiction.

For family court jurisdictions in which historical data provides a large enough sample, evaluators may wish to consider a "pre-test post-

37. BERK & ROSSI, *supra* note 33.
38. *See generally* RICHARD A. KRUEGER, FOCUS GROUPS, A PRACTICAL GUIDE FOR APPLIED RESEARCH (2d ed. 1994).
39. Braver et al., *supra* note 33.
40. *Id.*
41. J. L. Lebon, *Acceptability as a simple measure in mental health program education*, 10 EVALUATION AND PROGRAM PLANNING 191-95, *cited in* Braver et al., *supra* note 33.

42. Braver et al., *supra* note 33.
43. *See* DON A. DILLMAN, MAIL AND TELEPHONE SURVEYS (1978).
44. *Id.*
45. *Id.*
46. Laurie Kramer & Christine A. Washo, *Evaluation of a Court-mandated Prevention Program for Divorced Parents: The Children First Program*, 42 (2) FAMILY RELATIONS 179 (1993).
47. *Id.*

test" research design which provides for comparative analysis of data that may have been collected prior to the implementation of the family court against data collected on the same parties within the family court.[48] While some would argue that passage of time might contribute to positive outcomes within the family court system, if data is acquired from both pre- and post-test in the same session, time is substantially less of a factor.[49]

Still another manner by which comparative analysis can be conducted is through the use of the "randomized control group."[50] Again, in states where family courts exist on a less-than-statewide basis, participation in family court can occur by random assignment. In this scenario, pre-generated docket numbers are assigned either to the traditional court of jurisdiction or to the family court. In this manner, any systematic differences that emerge will be attributable to the family court experience. Resistance to this research design may be demonstrated from judges and legislators who will be concerned about the equal protection ramifications of providing special services to one segment of the population and not providing special services to a similarly situated group. By designating the family court system as a pilot or special project, this argument can be diffused frequently, especially if viewed as a step toward providing better services to all families in the jurisdiction.

A final and promising approach for affecting comparative analysis of unified family court performance involves the "staggered start" or "phase-in" approach.[51] Assume that in a prospective family court jurisdiction, twelve judges are available to sit on the family court bench. Rather than initiate the court all at once, begin by placing three randomly chosen judges on the bench and assign all of their cases to the experimental program. After a predetermined period (perhaps eight months), assign another group of three judges to the family court, and so on. This approach has several advantages. First, equal protection is not withheld from any obvious group. Second, because resources are not always readily available to completely establish the family court at the level of resources desired, this phase-in allows for a more gradual absorption of resources into the system. Third, the validity factor of the design itself has substantial integrity because of the built-in replication effect by virtue of the

48. Braver et al., *supra* note 33.
49. *Id.*
50. *Id.*
51. Thomas D. Cook & Donald T. Campbell, *Quasi-experimentation: Design and Analysis Issues for Field Settings*, *cited in* Braver et al., *supra* note 33.

phase-in.[52] The caution in choosing this methodology is the rather intensive data collection and tracking that is required through each phase. For this reason, each element to be phased-in should not include more than three judges at one time. The Jefferson District family court in Louisville, Kentucky offers one example of a family court that has analyzed its performance on a "phased-in" basis.[53]

Not to be forgotten are the fiscal implications of conducting a family court performance evaluation. Experts in conducting systems evaluations estimate that new programs budget 5 to 10 percent of their operations budget to perform the evaluation.[54] Family court administrators should take care to include requests for adequate appropriations to conduct systems evaluations when family courts are funded as pilots or have sunset clauses attached to their existence. Other sources that can assist with program evaluation include local universities, the State Justice Institute, and certain discretionary grant programs available through the U.S. Department of Justice.

Depending upon intended recipients of program findings, it is important to clearly communicate outcomes to the stakeholders in the family court. The final report should be couched in terms that provide viable recommendations for program improvement rather than being a blanket endorsement or condemnation. The report should summarize the findings of the performance evaluation, should identify the goals of the family court, and should explain where the system is with respect to reaching those goals. The technical portion of the report, while important to provide as a basis for conclusions drawn, should be secondary to the discussion of goals.

III. Resources for the Unified Family Court

1990 Symposium Conferees overwhelmingly believed that a unified family court should be a special court capable of facilitating the coordination and management of the numerous adjunct agencies that provide services to children and families.[55] By enabling the family court to serve as the cornerstone agency to manage and coordinate service delivery, conferees believed the unified family court would have tremendous potential for the delivery of services to the family as an entire unit. The recent emergence of the drug court concept neatly illustrates this holistic treatment objective, as discussed at the end of this section.

52. Braver et al., *supra* note 33.
53. Performed by the Survey Research Center of the University of Kentucky, May 1993.
54. Braver et al., *supra* note 33.
55. KATZ & KUHN, *supra* note 1, at Recommendation No. 20.

A. Services in the Family Court

The unified family court is a justice system that is in a unique position to provide substantial social services to children and families. After seven years, it is still believed to be more than a justice system whose mission is confined to resolving legal disputes. Ideally, the unified family court should provide families with the skills and access to services necessary to enable them to resolve subsequent disputes constructively and with minimal need for court intervention. We have learned that it is critical to provide a vehicle which enables services to be delivered to families at the very beginning of their contact with the justice system.

Because numerous agencies represent the array of services that families might require, the pooling of budgetary resources to assemble a central dispositional or family resource and service center has proven successful.[56] Such a family service center might have these responsibilities:

- provide referral services to facilitate direct provision of services by agencies attached to the service center or agencies outside of it;
- conduct and contract for mediation services, divorce education programs, and other forms of alternative dispute resolution for all jurisdictional aspects of the family court;
- provide screening and intake services for domestic violence and abuse and neglect matters including assistance in preparation of applications for protective orders, treatment and counseling;
- conduct continuous assessments of service delivery requirements and provide that information to agency administrators, legislators, and others who control appropriations;
- solicit community input by encouraging the formation of community alliances that can assess the needs of the particular community with respect to the role of the family court;
- develop, recruit for, and manage volunteer service programs such as CASA, supervised visitation volunteers, volunteers in mediation or divorce education, and myriad others.

Figure 2 graphically represents a Family Resource and Service Center.

56. The most noteworthy example of a family resource center is located in Reno, Nevada. The "Children's Cabinet" acts as a hub from which families are directed to either in-house or outside service providers. The Cabinet is administrated and managed by the local family court in partnership with county social service agencies. Contact Family Court Judge Charles McGee in the Second Judicial District Family Court in Reno for additional information.

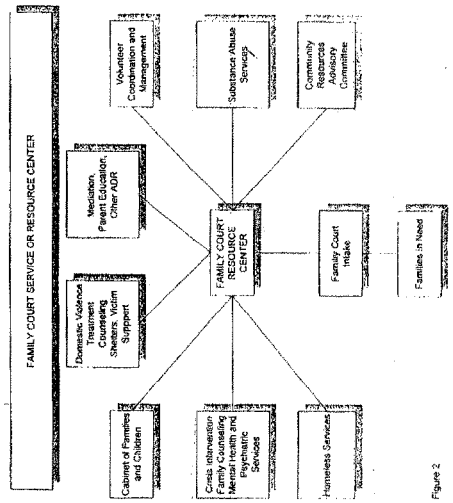


Figure 2

Continued experience with families in the court system has taught us the need for establishing and operating an extremely well-organized and managed service component of the unified family court. The ability to provide appropriate services to families early in the evolution of their crises leads consistently to early resolution, settlement, and successful diversion of family court matters. This component must assume responsibility for aggressive service delivery and management techniques through highly trained and competent personnel. If these functions are overlooked or not performed well, the family courts will become more expensive courts doing business as usual.

B. Drug Courts as a Resource in the Unified Family Court

Because unified family courts involve the entire family in justice system intervention, family court judges and administrators have learned that family courts are a natural environment for the development of a drug court component. The drug court program is a comprehensive strategy linking family members with community treatment resources to work with juvenile drug offenders and other family members with drug abuse issues. Its goals are: (1) to reduce offender rates of alcohol and drug abusing children; (2) to maximize rehabilitative efforts of the unified family court system; and (3) to maximize rehabilitative efforts by the treatment community.

Family court is a particularly well-suited location for drug courts because the involvement of the entire family is critical to effective intervention in this environment. It is particularly critical to the treatment of juvenile offenders who have substance abuse problems. Because substance abuse is a family issue (meaning that other family members are affected by or contribute to patterns of abuse),[57] a child's problems may reflect or exacerbate the family's problems. Regardless of how dysfunctional a family may appear, the family remains the primary attachment for most children. Effective parenting and family support are important influences to the substance abusing child. To the extent necessary, family members who have substance abuse problems can also be referred for treatment from the family court.

The elements of a drug court component within a unified family court should include:

- initial screening for potential participants by the family court case reception team;
- assessment and evaluation by treatment provider resources as aligned through the family court resource or service center;

57. Kirns, *supra* note 12.

- scheduling of orientation and status conferences between the family members and the family court judge;
- preparation of contracts with family members in consultation with the treatment provider;
- family court tracking of family members through the treatment process;
- family court communication and outreach to the school system in order to secure regular progress reports;
- family court team preparation and presentation of progress reports at status conferences with family court judges;
- family court team preparation of program schedules; and
- data gathering and analysis.[58]

Drug court program activities should be monitored by a family court judge assigned to the program. The judge's responsibility should include monitoring the progress of children and families involved in the family court's drug court program during the treatment process. The family court judge should require weekly, bi-weekly, or monthly status conferences in the courtroom. Reports generated by the family court team should contain summary information collected from progress reports submitted by relevant agencies. At the family court status conference, the judge should review family progress including level of cooperation and drug test results. Sanctions should be imposed for noncompliance.

When family members have completed their treatment plans, recommendations for discharge should be reviewed by the family court judge. The extent of family recovery, including reports of progress in academic and vocational activities, should be reviewed. Drug testing should regularly occur at least three months beyond discharge. The family court should acknowledge completion of the program by conducting a special graduation ceremony for the family in which the judge participates.

IV. Conclusion

In the last seven years we have learned that unified family courts are about providing therapeutic justice to children and families. We have learned that to provide this enlightened type of justice we must take steps toward developing and managing unified family courts that ensure adequate staffing levels and appropriate, centrally located, and secure facilities. We must aspire to the more contemporary of time

58. *Id.*

management practices including differentiated case management practices and maximizing opportunities for the utilization of alternative dispute resolution mechanisms. We must provide extraordinary educational opportunities to the judges and staff of our family courts and take extra steps to provide family court service incentives and prevent undue stress and burnout as a corollary effect of serving in the most difficult part of the justice system.

Moreover, it is incumbent upon proponents of unified family courts to implement the most effective method for coordinating multiple matters involving the same family. Experience tells us the one-team-to-one-family approach to case coordination appears to be that method. We are at a crossroads in the family court system regarding our use of technology. Practical-based functionality of automated information systems should be a key factor in deciding on the path we follow. We are at a similar point in determining appropriate mechanisms for performance evaluation of our unified family court systems. Public resources are becoming more scarce as courts and legislatures feel pressure to become even more fiscally conservative. We must now prove to policymakers, not only the therapeutic qualities of unified family courts, but the fiscal wisdom of a justice system that invests in early intervention, prevention, and treatment as a means to secure the future of children and families.

Finally, we have confirmed our thinking in connection with the services and resources that are necessary to meet the goal of therapeutic justice. We have learned a good deal more, however, about how the delivery of those services should be organized and structured so that families are assured of receiving needed services in a cost-efficient and timely manner. We have also discovered the unified family court as a perfect environment for incorporation of a drug court component in which the entire family becomes involved in treatment and rehabilitation for substance abuse issues.

Lest we lose sight of what our ultimate objective should be, we have learned that a key responsibility of the unified family court is to prevent family involvement with the justice system at any level. In that spirit, court personnel, lawyers, and others involved with Unified Family Courts should promote parent education. We should direct special attention toward development of skills that prevent our children from involvement in family court altogether. One approach to parent education is detailed in Figure 3.

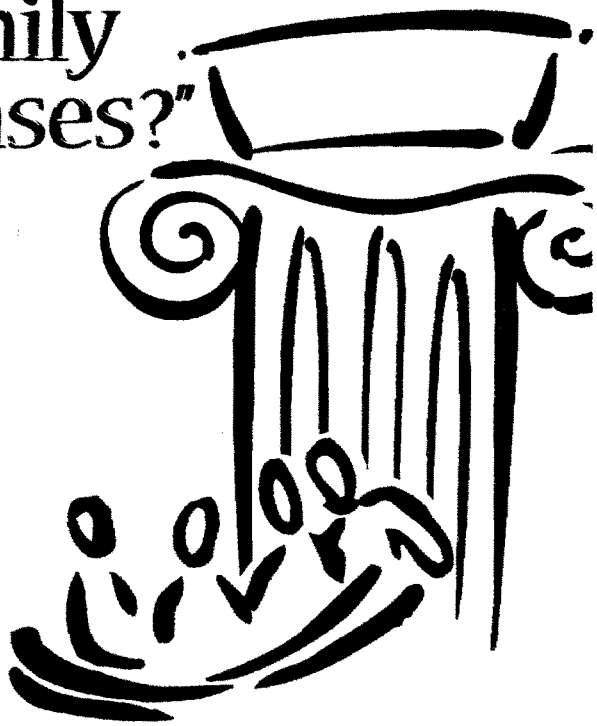
Figure 3

Ten Ways to Keep Your Child Out of Court

1. **Know Your Child's Friends:** Encourage your child to bring friends to your home.
   Remember: the more time your child and his/her friends spend at your home, the more supervision you have over your child's activities.
2. **Visit Your Child's School:** Let your child and the school authorities know that you're interested and involved in your child's education. As you become more aware of your child's environment during the day, the better prepared you are to deal with him/her effectively during the evening.
   Remember: your child spends a significant amount of time in the school setting (approximately 8 hours that you neither control nor direct).
3. **Set Aside A Time Each Evening When You and Your Child Discuss the Day's Activity:** This will keep you in tune with your child's thoughts and activities.
   Remember: the life of an adolescent is constantly changing. You will be in a better position to deal with issues you understand.
4. **Encourage Your Child To Discuss With You Any Matters of Concern or Interest:** Emphasize that there is no matter too small or insignificant for a child to discuss with you.
   Remember: children can be extremely sensitive to criticism and betrayal. So don't laugh at their concerns or violate their confidences.
5. **Give Your Child A Hug Each Day and Tell Him/Her How Glad You Are To Be His/Her Parent.** If this is difficult for you, then try and understand why. Ask yourself honestly, if you like your child and if you enjoy having your child as a part of your life.
   Remember: your child will learn how to express love and affection primarily from you. A hug and smile go a long way.
6. **Set Consistent Standards of Behavior For Your Child:** Let them know that there are socially acceptable and socially unacceptable behaviors. Make sure that your child has a clear understanding of your expectations.
   Remember: if you do not set clear-cut guidelines and interpret life's experiences for your child, someone else will!
7. **Reward and Discipline Your Child:** Let your child know that there are consequences for acceptable and unacceptable behaviors.
   Remember: if you fail to reward and discipline your child and establish respect for authority in your home, then your child will very likely not demonstrate respect for other authority figures, such as schools, law enforcement, etc. If you fail to discipline your children, it could cost them their freedom or their life.
8. **Set A Good Example:** Make sure your child sees you displaying the type of behavior you would have them demonstrate.
   Remember: if you practice what you preach and preach what you practice, your child will learn and observe consistent behavior.
9. **Worship With Your Child:** Make sure that your child knows that there is an order to the universe and there is a force greater than the child or you to which we are accountable. Does this mean that you and your child must regularly attend an established place of worship? Not necessarily so, but teach your child the source of the values and attitudes you want your child to respect.
10. **Share a Dream:** Help your child understand that a dream shared today can be a hope for the future. Establish goals with your child and in so doing you help them to understand to just what extent they can control their destiny.
    Remember: it is better to have a daydream than a nightmare. Aspirations for the future are the things of which successes are made.

Thanks are extended to the Honorable Michael A. Town, Circuit Judge in Honolulu, Hawaii and to the Honorable James Payne, Juvenile Court Judge in Indianapolis, Indiana for permission to reprint this slightly modified segment.

"How are Courts coordinating family cases?"



SJI State Justice Institute

similar to D.C. — judges have general caseload + limited # of family law cases.

Deschutes County, Oregon

The Oregon courts come the closest to presenting a one-family/one-judge approach ideal in that one judge may handle all civil and criminal proceedings involving family members. All of Oregon's general jurisdiction circuit court judges are designated as family court judges. They carry a general caseload, but also are responsible for coordinating a limited number of family law cases—up to 25 family-related cases, civil and criminal. The judges become responsible for family members' domestic violence, dissolution, drug/alcohol, criminal, and children's matters. The judges have handled dual proceedings such as a concurrent criminal child abuse jury trial and a nonjury trial as to whether this child was abused and in need of the court's protective orders or not. The same judge and the same prosecutor handle the concurrent proceedings. Another dual hearing involved a change of a child's custody from a prior dissolution proceeding and a determination of child abuse in a juvenile proceeding.

criteria for family law case.

Criteria for designation as a family court case are not hard and fast. The family court clerk, upon receipt of a delinquency or abuse and neglect filing, searches local and statewide court databases for currently active family cases. There is particular interest in "bundling" criminal filings, active dissolution, and active or recent domestic violence protection and stalking orders with these filings. An alternate case finding method conducts a search upon an indication of concern, expressed by a justice system or school official, or even relatives or neighbors, about a family. The judge determines whether to accept the clerk-proposed family court case. A family may be accepted for coordinated judicial handling, but only families with children are eligible for the subsequent process of possible court-coordinated service delivery.

Mrs. MORELLA. I'd like to ask Ms. McKinney then, as an attorney, herself, whether she sees that there would be a need for further enhancement of the status of Family Court judges.

Ms. MCKINNEY. Well, I think that increasing the quality and giving more resources to the Family Court, as a whole, would be a great incentive to drawing Family Court judges into it. The judges right now, the way the system is set up, simply don't have the kind of support and resources they need to really make the system function.

My group has not taken an official position on this, but, in terms of the suggestions by the Council for Court Excellence, I think all of those are excellent suggestions.

I also think that there is a big difference between someone signing up for saying, "Yes, I think I would like to be a Family Court judge," and committing to 3 years, versus committing to 5 years. I think the difference in those two commitments could discourage a number of people who would otherwise be excellent Family Court judges from taking that leap. I think it is a huge time commitment, and, while we need people who are willing to do that, you don't want to shrink the pool so small that you exclude a lot of really qualified people from becoming judges.

Mr. WELLS. If I could add, Mrs. Morella, currently there is no criteria that includes family law practice in selecting judges in D.C. We have over 74,000 members of our local bar, 250 very-qualified attorneys work in child—representing children in abuse and neglect cases. I don't know of one attorney from what we call the "CCAN Bar"—Council for Child Abuse and Neglect—that has ever been nominated or selected to be a judge in D.C. Court.

If you selected people to serve in our court that had experience in this area, it would seem natural that they would choose to serve on this bench.

Mrs. MORELLA. Thank you, Mr. Wells. I notice that they also appear to agree with you, our panelists.

Very briefly, Mr. Harlan, because my time has expired.

Mr. HARLAN. I just want to strongly support that.

Mrs. MORELLA. Yes.

Mr. HARLAN. In the past several years that I have been looking at the appointment of judges, virtually all of them have come out of the U.S. Attorney's Office, with one or two exceptions, and that may not be a good training ground for family judges.

Mrs. MORELLA. Thank you, Mr. Harlan. That is a good point.

Ms. Norton.

Ms. NORTON. I suppose I should move on to Ms. McKinney. Mr. Wells has said the judges aren't appointed from family law practice. One of the things we would certainly hope is that the new pool of judges would include judges from family law practice who would come and say, "I want to be on this court," and who would be appointed from outside, who would be appointed to the court. So I'd like to ask you, as a member of the Family Court Bar, do you believe the 3 year or the 5 year or any other number of years would encourage or discourage members of the Family Court Bar from applying or encourage them to apply to be on the court?

Ms. MCKINNEY. Well, based on my conversations with many of my colleagues over the past couple of months, I would say that

having a 3-year extendable term would encourage a lot of people to apply. I think if you make it a 5-year term there are going to be a number of people who are discouraged by that.

And I would point out that it's not something that is within our control. Just a month ago three names went over to the President to be selected to fill one judge position in Superior Court. Two of the three had family law experience. The one who was selected to take the judge's position did not. So it is a——

Ms. NORTON. So it's not true that D.C. hasn't put forward people without——

Ms. MCKINNEY. That's correct.

Ms. NORTON. Let's make that clear.

Ms. MCKINNEY. That's correct.

Ms. NORTON. If we had the right to choose our own judges, we would now have judges on the Family Court who had Family Court experience. It's not a big jump. She just testified that three names were sent to the President of the United States and he chose, what, the U.S. Attorney?

Ms. MCKINNEY. Yes.

Ms. NORTON. To be the court—I mean, I don't think that's a stretch at all. One of the reasons why I feel so uncomfortable involved in this process is I don't know what I'm talking about. My job is to be a Member of Congress. I spend most of my time on that and national matters. That's why I find your testimony so—but I must say, if these are people who have been in Family Court practice, why would they need—why wouldn't they come forward with 3 rather than 5 years experience?

Ms. MCKINNEY. Well, I think you have to look at the difference between being a family lawyer and being a Family Court judge. As a family lawyer, I have some ability to control my case load. I have some ability to say, "I'm overloaded. I can't take this really difficult, challenging case right now. I need to send it to one of my colleagues." You don't have that as a judge.

The vast majority of our cases as practitioners settle, and it is getting these cases and helping these people put their lives back together and mostly settling the cases that is the rewarding piece of my job.

If I then go and become a family court judge, all I see are the cases that can't settle, whether it is because somebody is mentally ill or somebody is drug addicted or there are just these endemic problems within the family that make them virtually impossible to solve, and as a judge that's all I see every single day. That's very different from what I do right now.

Ms. NORTON. Well, I don't know. I don't know. Nobody has done a survey to tell me what it is across the country. We do look within our region, and there has been some testimony that it is less than 3 years in the region. I tell you the only thing that concerns me—I come to this an atabula rosa. I know very little about family law and I know very little about abused children in our city. I see very few of them. I see very few mothers on crack. They don't come to the meetings. They don't come to the town meetings.

What does bother me is this case load. What does bother me is 1,500 coming in every year. That doesn't tell me how many are in the system.

And what I can relate to personally without knowing what it is like to sit day and day is the emotional—not the physical taxing. I'm used to hard work. Lawyers are used to hard work. But the notion that I'm playing God up here bothers me—that she's 16 years old, she's still on crack, maybe she'll be off by 18, maybe I should wait, but maybe the child gets to be 4 years old and it's all over. I am bothered by the talmudic decisions that have to be made. And, while we all act as if this is somehow, you know, just dealing with cases, unlike the Sister, I don't have that sense that what I'm doing is already—is always what God would want me to do.

Therefore, I do think that the notion that these are emotionally taxing cases where people are deciding decisions not for the guilty or the innocent, as with somebody who has committed a crime, or as two grown-up people who want a divorce, but two people who may look like they are equal in every sense except that one needs a chance and the other probably will want to be with a parent ultimately if that parent had been given a chance.

So I don't know, and I don't pretend to know yet what the answer is. I do want to lay out what concerns me and why I can't approach these issues with this sense of rightness the way I do a civil rights case or the way I do an environmental case.

I would like your notion about—I'd like to ask about these magistrates and commissioners, because here the court comes and says, "Oh, I'll make everybody a magistrate." Now, that's going to cost money, and therefore you won't find me hopping on board just to make everybody a magistrate.

As I understand it, the commissioner has to have the consent of the parties to enter a final order, whereas a magistrate is a quasi-judge, in effect, and can issue orders without the consent of the parties.

Now, the only thing that interests me about this is that I want this to happen to the Family Court.

Now, why should I want it to happen in the whole court? And I understand that at least some of you have testified that we should have magistrates in the whole court. I want to know functionally why it is important that everybody have the right to issue orders when our concern here is with family matters, alone.

Ms. McKINNEY. Well, I think what I would say to that, Congresswoman, is that you are talking about an issue of court resources, and if we need, for example, more magistrates in the Family Court, you don't want the chief judge to be prevented from pulling from the already-experienced hearing commissioners into the Family Division.

As it is set up right now, if we had Family Court magistrates and then hearing commissioners, if we needed more magistrates we'd have to go through the process of appointing them, or if we had an emergency and a magistrate was ill and out for several months, you couldn't then just pull someone from civil or one of the other dockets and move them into that magistrate's position, whereas if all of the, say, less-than-judicial level—less-than-judge level judicial officers were the same characterization, you could move them in and out.

But there's one other thing I'd like to say about the judicial burnout, just to give you an example of how this works. There is a judge

in Montgomery County, where I also practice, who spent—she actually helped set up the Family Division of the Montgomery County Circuit Court and has presided over it for 3 years. She was a family lawyer, she was a family magistrate for many years, and then a District Court judge. She spent 3 years in the Family Division of Montgomery County Circuit Court. And I know her well. She's a wonderful judge and advocate for children and families. But she says, "I need a break." And she'll go out of the Family Division and she'll sit somewhere else for a couple of years, and then she'll come back and she'll bring with her renewed energy, more experience, new ideas, and a fresh perspective, and that is something that the Superior Court really does right is bringing in people.

We really do benefit from the fresh perspective and from the experience that the judges have on the other dockets, and that's something that I'd like the Congress to keep in mind when they're debating this legislation.

Ms. NORTON. Thank you, Madam Chair.

Mrs. MORELLA. Mr. DeLay, pleased to recognize you. And thank you for sticking with this hearing all day.

Mr. DELAY. Thank you, Madam Chair. I find this fascinating.

First of all, Madam Chair, I would like to point out before this hearing ends I'd like to thank Mr. Bob Gutman, who is a private child advocate who has tirelessly promoted the establishment of the Family Court in the District for many, many years and has sat also through this entire hearing, and probably has got sores on his tongue from biting his tongue so many times during this hearing.

I wanted to point out to the Chair and to this committee that in this hearing it is amazing to me that only the lawyers and the judges and those connected to the Bar are supporting the Superior Court's position. Every 1 of the child advocates groups, the whole list here in your Consortium—21 different organizations—support the draft that we are proposing here.

It is interesting, Ms. McKinney, how did you come up with the number of years three?

Ms. MCKINNEY. Well, I think if you look at some other jurisdictions—if you look at Chicago, they have 2 years. Montgomery County has 18 months. Baltimore has 1 year. P.G. County has 2 years. I think throughout the country it varies wildly, and we——

Mr. DELAY. Why did you pick three?

Ms. MCKINNEY. Well, we discussed it amongst the lawyers in our group, and I talked to many, many of my colleagues, and we did talk to judges in various jurisdictions, because our interest is in having judges who are not burned out, who are not desensitized. And I will say that desensitization is almost a bigger problem than burnout. Judges who see too many of these cases start to apply a cookie-cutter approach to all of them, and that's not what is in our clients' best interest. We want judges who can look at every single case as a new and fresh item.

Mr. DELAY. I'll bet Mr. Harlan wouldn't even agree with that because he's gone to other parts of the country and probably hasn't found that, or he wouldn't have written the best practices that he wrote. And what your position is is the vast majority of this country. There are only five States that have 3 years or less. There are 15 States that have 6 years or less. There are two States that have

12 years or less. And there are three States that have life. And you don't find the burnout that you describe in those States.

Ms. MCKINNEY. But I think you have to be careful about comparing apples to oranges. D.C. is one of only five that has a Family Division that has a comprehensive jurisdiction. For example, in Virginia they have the Juvenile and Domestic Relations Court. It is a lower court. Anything there can be appealed to the Circuit Court. And when it goes to the Circuit Court it goes to one of—whatever judge is up. All the divorces in Virginia go to whatever judge is up. There's no specialization in Virginia. So I think you have to be careful when you're citing statistics to make sure you're comparing apples to apples.

Mr. DELAY. I am comparing apples to apples, ma'am, because I have looked at the entire Nation and you've got a judge sitting right over there that's sitting on the bench 12 years and he's not burned out. He's quite the activist. And when you say that judges are judges and not social workers, you make my case. The problem is we have a system in the Superior Court of D.C. to have judges that are not activists for the interests of these children, and you picked—I think you picked 3 years because it was your judge's proposal, their proposal, and that is why you are supporting it, because you are supporting the judges in the Superior Court. Is that not true?

Ms. MCKINNEY. Well, I think what I would say is that our interest as the representatives of the people who are going to be affected by this legislation happen to coincide with the court on a number of these issues. I think they would be the first to tell you that we have been a tremendous thorn in their side over the years. So I'm sure they would be amused to hear that, your characterization.

But I have to disagree with your characterization of how the judges in Superior Court are. It simply is not the case that they aren't activists trying to do what is best for these children. They are, but they are faced with daunting limitations.

When you have, for example, the mother who refuses to go for her forensic examination, well, that means the judge has a lot less information to make decisions on. The judge can't—it makes no sense for the judge to order someone to—the marshals to take that mother and drag her to a forensic exam. It simply makes no sense.

Mr. DELAY. Makes no sense for the judge to enforce the law in his order?

Ms. MCKINNEY. It's not that—no. In terms of what the result will be, forcing someone to go through a psychological examination is not going to give the court any results that are useful. That's my point.

Mr. DELAY. You and I just have a fundamental disagreement in what motivates people, because, quite frankly, your characterization that people will sign up for 3 years but they won't sign up for 5 makes no sense whatsoever, because if you truly want to be a family law judge and you come from a pool that is made less—that is elevated, quite frankly, in the Superior Court—because right now you say that three applicants and the U.S. attorney was picked from two family law because you have no pool. Nobody wants—that is the system as it exists now, and we're trying to change that system to be an incentive for people to carry out a ca-

reer in family law. You can't carry out that career right now, and naturally you don't have—even the President knows anything about reaching into a pool and trying to entice family law lawyers to be judges. Currently, you are enticing any lawyer to be part of a Superior Court, and the lawyer might be assigned to Family Court and feel oppressed, if you will, by the assignment to serve on a Family Court bench. But if the lawyer is truly a dedicated person that wants to deal with the family law, he/she can be recruited, and, frankly, I would want, if I were a lawyer, I would want the assurance that I'd have at least 5 years on the Family Court Bench with options to continue further.

Ms. MCKINNEY. Well, I think, though, that you have to look at that example that I just gave you. No one can question the dedication of this Montgomery County judge to children and families. But what she is saying is after 3 years, "I need a break." And we all know that. The members of the Bar all know how difficult it is. We are the ones who sit in D.C. Superior Court day after day and see what is going on. We know how tough it is. So we know that you have to give people an opportunity to come onto the court and know that for 3 years they will be committed and they will be sitting there, and if at the end of 3 years they're not tired, they're not fatigued, they will stay. And we hope that it will be the case that, because the resources are there and the court is reformed, that you'll find a lot of people who do stay for 10 and 15 years.

Mr. DELAY. Well, that's one person you're pointing out versus all the hundreds of Family Court judges across this country that don't feel that way, and thousands, probably. It just doesn't fit. And I don't know what that judge's personal problems were, and I won't get into it—but, Sister Murphy, could you tell me—you mentioned it in your testimony—the problems we have with the Interstate Compact that you mentioned in your testimony?

Sister MURPHY. Well, the Interstate Compact papers are a real thorn in our side. For one thing, we are an emergency placement for children. The State of Maryland recently decided that though they told us a year ago we did not have to be involved in this because it was almost impossible, has changed their tune, so now we are facing that.

The thing that upsets us the most is that children who had been cleared many times to be adopted or go into foster care in a different State, can wait 4 to 6 months for the Interstate Compact papers, which delays placement for those children that much longer. And that is probably the biggest thing.

We have a Metro system that covers a metropolitan area. Nobody questions that. We have other systems in the metropolitan area and nobody questions it. Why can't children be placed back and forth in at least that metropolitan area—D.C., Maryland, and Virginia? We're working for the same thing, we should cut down some of these problems to make things flow more smoothly for children.

I sit here and listen to everybody talking about burnout, but I have been watching children and mothers and families being destroyed throughout the 40 years that I have been working in this business——

Mr. DELAY. Are you burned out?

Sister MURPHY [continuing]. I have never felt burnout. I feel anger and other things, but I have never felt burnout. So if we have a judge who feels burned out from helping kids, then I say he or she ought to just get out of the whole system. But it just upsets me to no end to think that we're sitting here worrying about judges' burnout when children are dying every year. Read the Washington Post. We have children that float back into St. Ann's for the second and third time after more abuse. I'm sick of the whole mess, truthfully.

Mr. DELAY. I don't know that I can say it better than that, Madam Chair.

I want to come back to this 3-year—Mr. Harlan, you wrote a very good paper and your testimony is excellent. I appreciate it. But I'm very curious, because I know what has been going on in this town for the last couple of months, why you picked 3 years. Did someone call you and advocate 3 years?

Mr. HARLAN. No, they did not. We picked a minimum of 3 years.

Mr. DELAY. Yes.

Mr. HARLAN. I think our testimony would focus on the word "minimum," as well. If you decided or if the courts decided they wished to adopt a 5-year program, we'd say that would be fine. We just don't believe anything shorter than 3 years will work, and that's the way we approached it.

Right now it is quite a bit shorter. Three years is a huge improvement, you know. It may be that we need to take that kind of step to make the step toward the progress we want to achieve and see how it goes, but we did emphasize a minimum of 3 years.

Mr. DELAY. OK. I don't want to take the chairman's time any longer. I have plenty more, but that's fine. That's fine.

Mrs. MORELLA. I would be satisfied with a 4-year term and for Members of Congress. [Laughter.]

I thank you all for your testimony, but you have been in social work, I think, Mr. Wells, for about 6 years, and have you—I mean, Sister Josephine has not experienced burnout but has been angered, but how about you after 6 years as social work.

Mr. WELLS. I was a child protection social worker for 6 years, and that's true, but part of what motivated me to move to where I am now is seeing what was happening in our child welfare system, and, in particular, the kind of things that I hope will motivate a judge that focuses on these cases will see that when you have repeated cases that—I know Sister Josephine sees children that come into her facility where she wants to hang on to them for a little while, heal them, and help see that they can get along their way, but she gets very frustrated and angry if they start growing up in her facility.

Often our court is the safety net. It's the bottom line. Someone has to catch these children. And if you send these cases around the courthouse or if you don't pick up the trends, the children are backing up at St. Ann's and they're beginning to grow up in that 50-bed institution, then that safety net does not exist. And with the turnover in social workers, with the turnover in the other parts of the system, it is the judges that pick up those patterns.

We've had Judge Arthur Burnet on our adoption calendar for 3, 4 years. It used to be the adoption calendar went every 3 months

to a different judge and we were doing between 23 and 40 adoptions a year of children out of foster care. Judge Arthur Burnet has been on this for, I guess, going on 4 years, and now we are doing less—almost 300 adoptions a year. And I hope I said earlier that we are doing less than 60 per year. So that it's not hypothetical, the impact it has when a judge provides a consistent application of the law and becomes creative, becomes an advocate, and sees that when children are getting stuck in the system, to help break through those logjams.

We need judges as advocate partners in being able to reform the child welfare system, and when they move off the bench we lose them.

Mrs. MORELLA. Yes. And, Sister Josephine you did give us a list of the frustrations that you face with these youngsters day after day. I don't know whether you want to prioritize what the No. 1 concern is that you have, but I notice that among the ones that you listed they deal with social workers, they deal with lawyers, they deal with kind of an indifference again to the importance of the child who is at the bottom of it. But if you would give us what you consider to be the most important thing that we should look at in terms of reform it would be helpful.

Sister MURPHY. Well, I personally feel that we should look at, as we always say, the best interest of the child. Certainly I think we all contribute to the problems of children, and I think we have to work together to solve some of the problems of children in the courts and everywhere else. I think all of the folks connected are important—the social worker, the lawyer, the judges, those of us who work with them in care, the foster parents—and we have to listen to what is right for the child.

It always seems to me that in many of these areas we get taken up with what is best for other people. In the legal system many times with our children at St. Ann's decisions and based on what is best for the mother. I had a social worker present in one case to discharge an infant baby. The mother comes in and you know she's high on drugs, but they're still going to release this baby? Yes, they're going to release this baby, and I realize if they don't, mother will lose her housing? I mean, those are the kinds of things and it's always the children who get lost in it.

I fail to understand why it is so impossible for judges to come to grips with terminating parental rights. They don't think about those children who are out there suffering the abuse over and over again. They don't think of the children who are getting older and older in the system and that nobody is going to want to adopt them because they act out so much. We have so many children who act out sexually at St. Ann's who nobody wants to adopt because they have been sexually molested for so many years. We have girls in our home at St. Ann's—one child who is 17 years old had been a paid prostitute from age 6 to support her mother's drug habit. So why can't a judge make a decision to determine parental rights if this mother has been on drugs for umpteen years. As I said, this one mother had been in 19 drug treatment programs. They were going to return this baby to her. Why can't the courts decide to terminate parental rights? That is probably one of my most frustrating things. That's why I fought for that law to be passed, which

hasn't done much good. It is true the adoptions have increased, and I am grateful for that, but I still don't think they are terminating parental rights quickly enough. I don't think they are looking at the reasons that law gave why you don't even have to bother about waiting. You could terminate parental rights almost on the spot. Children are murdered, and yet they allow more children in the house. We can have three children badly abused from a family, but if mother has another baby, she keeps that baby. The law says she can keep it until she does something to it. So everybody sits back and waits until it happens. A child came in the other week with a fractured skull, another one with a broken wrist. So just wait until they do something harmful to the child and then they place them. Those are the frustrating points to me.

Mrs. MORELLA. Do they ask for your opinion or do they give you an opportunity, or is it just, "We automatically want it returned to the mother because she will lose her check," or we think that this is ultimately what would happen?

Sister MURPHY. That can be one of the reasons.

Mrs. MORELLA. But, I mean, do they consult with you? Do they ask you? Do they say——

Sister MURPHY. No. We have at times written to the judges, and I have even gone down and testified. On one occasion two of us—two of the Sisters—went down with the social worker, who was feeling the way we were, and spoke to that judge. We pointed out all the things that had happened to these children in their home, but the child was released back to that family.

I think in my testimony I said we had the lawyer come out because I felt so strongly about that child; 2 days later, that child went home. And the only thing you can get from the Social Service Department is, "Well, it's a court order. Anything that is a court order you have to obey." So it is very frustrating.

Mrs. MORELLA. Thank you for the work that you do, too, day in and day out.

Ms. Norton.

Ms. NORTON. Thank you very much.

Well, I agree with you, Sister Josephine, about essentially erring on the side of the child, as painful as that is, rather than keep a child, and for a very long time, despite the notion of best interest of the child, it seems—it appears that it is very hard to believe, especially since some of these mothers are very young, that you ought to make that decision. It's very reluctantly that I have come to the conclusion that we really have no choice now. We are paying for erring on the side of the parent, it seems. There's somebody standing before you that can invoke your pity and you see all the hope there. I do agree with you. I think the floating back and forth goes a lot beyond the courts.

I must say it now, and I hope everybody hears me: we have been talking about the court. That floating back and forth has much more to do with Child and Family Services than it has to do with the court. When the court finally has to get in it again, it is, of course, because the mission of the Child and Family Services to provide the services if the child is put back—for example, Brianna Blackman. This child never should have been put back in the first place, but as we did the investigation of that case we found that

the mother appears to have been borderline retarded, had never been provided the services, herself, and had found herself somebody to live with. This mother might have been completely benign. It is alleged that the murder was done by somebody she was living with. But Child and Family Services never took this borderline retarded mother, who might, living with somebody else, have been able to take care of a child if there was somebody else there.

So I must say we can talk about this court all we want to, but we are handing—we are spending money on the court and it is overdue. The District is about to spend a great deal more money on Family and Child Services, but what it is getting back has more to do with the problems you have raised than anything we could possibly do with this court, because in many ways the court is forced—we believe it is forced into what it is doing because Child and Family Services is not going to provide—can't provide an alternative parent, can't find another foster home, and unless they, in fact, essentially accomplish revolutionary change, I can't believe that we are going to see much difference, even given the time we have spent on the court.

I don't even want to go through the burnout. All of that is such conjecture about how many years. My good friend who has had to leave—and he stayed so long he deserves all of our gratitude—who is so dug into the number of years is a wiser man than I am a wise woman. All I'm guided by, I'm guided by one thing, one thing. I don't know about the judges. I haven't talked to whether they get burned out. I know who do not stay on the job—social workers, people who have gone to school, studied, know full well when they take this job they are dealing with the most troubled people in the society come and they go, and they go so fast that it makes your head spin. And that's the only evidence I know, because we have had before us Child and Family Services, because I got a bill passed through here that required any receivership to practice best practices, and we got the figures in the record about the turnover in social workers. So maybe the judges are iron men and iron women and they can stay in there for as long as you want them to, but I am very worried about taking all discretion from people and deciding that if we just tell them in iron numbers what to do it will all come out in the wash. That is not my experience.

As for—and I have to say on the record the notion that only lawyers want it to be 3 years and all the people who really care about children want it to be 5 years, I just need to say—and I'm sorry Mr. DeLay isn't here—I began—he began with a very fixed notion, had to be 15 years, had to bargain him down, based only on the numbers. I began saying, "I don't know." And I still don't know. But I think it is wrong to say that only people who spend their time as lawyers would think that there is a minimum number that's less than 5 years. That is wrong. Nobody deserves that here and I will not tolerate it. And just let me put on the record who also said 3 years—the testimony of the Council of the District of Columbia, who knows our children better than anybody else, said 3 years. The Mayor said 3 years. And none of them were dug in so they said, "It must be 3." They just said in their sense is that's right. You know what? That's only my sense. I don't know if it is right. I do know that I despite dogmatism, particularly when it

comes to dealing with children and families, and especially children and families which are not like your children and families because they're not like my children and families. They're a lot more troubled than any children and families I run up against. So I'm going to approach this with great care.

Now, I have a question that I just want to be clear, because it is my last question for Mr. Harlan, when he talks about the minimum numbers of judges and he talks about flexibility. Normally I'm for flexibility. What we're trying to do here is to close up some of the holes. For example, the reason we say "one judge/one family" is we don't want somebody to decide, and the hole gets bigger and bigger, and then we find that one judge/one family isn't there at all any more.

In that regard, for example, I have not heard answered here—I think a question was put on whether or not, at least for purposes of abiding by the child and family—I'm sorry, Adoption and Safe Family Services Act, if somebody, a family was close to the goal of permanency, as mandated by that act, perhaps at least then the judge ought to be able to stay with the child.

I just want to make sure we don't have unintended consequences written into the act when we know better.

I was very concerned about the things that the judge—his examples. And I need to have answers to that, because he had some examples that didn't even go to permanency—went to where children may not ever be permanently, where somebody may be suicidal, for example. I don't want to take responsibility for saying, "The thing says there are no exceptions to one family/one judge." That is the one principle that we all agree upon, but I am very reluctant to say that if there is a child or family that nobody has been able to deal with but you are keeping them alive, you wouldn't dare change judge and say, "I'm sorry, my 3 years are up. This is a nice judge. I will make sure that I brief the judge." I wouldn't take the responsibility to somebody who is despondent over that, so I'm a little worried about the inflexibility that God is sitting up here and God knows what to do and he is telling you all what to do and it is going to work out this way, just trust in me. Don't trust in me here, because I'm not that sure.

And so I am concerned about the exceptions. I won't—you know, I won't do the law school hypothetical that is in me on each of you, but I will say to you I do not believe that Judge King's examples were answered. Yet, what I think we have to do is to keep from—we have to keep from developing a loophole. We have to have such a strict standard that the judge's discretion—and I think in the bill he has none now, does he? I see you are indicating no, that he has no discretion. I am not—at the moment I am not willing to take responsibility for that. I'm not willing to say that permanency is not a reason to say, "Look, we've got 2 more months to go. You know more than anybody else. It would take me at least that long to even learn what that case is about, so I'm not willing to be that inflexible." And I'm not willing to say that if we have a child we don't have any—that the child is sent back here time and time again, and neither St. Ann's nor anybody else has been able to do anything with this child, but the child somehow relates to this judge, that judge shouldn't be an exception. I just—I mean, we

don't do that anywhere in the judicial system, and I'm very reluctant.

What I need your help on is, if any of you feel my reluctance that an ironclad rule like that might produce an unintended consequence, you can help us by suggesting, if any notion of exception is to be written into the law, how to make it so tight that there would simply not be discretion except in the most extraordinary circumstances. I would appreciate your help on that. I recognize that's almost a drafting notion, and unless somebody can suggest language to me now, I would appreciate any thoughts you would have on that. And I would appreciate any thoughts you could give me on the notions that Judge King laid out, the examples he laid out, and I would be willing to submit them to you to ask you then what would you do in these circumstances.

Do you think that such a person might go, whether 5 years or 3 years, should leave the judge? After all, a judge who has been there, let us say, for 5 years could have gotten the case last month, could have gotten the case last year, could have gotten the case 6 months ago, or could have had it for 5 years.

I mean, if we want to sit down and really get analytical about this, I can spin your head. Instead of doing that, instead of trying to think of each and every circumstance that could possibly appear before a judge, we need to have language that, to the best of our human capacity, would allow us to maintain rigidly one person/one case without doing harm because we, ourselves, have been all knowing.

On minimum number of magistrates and judges, do I take your testimony at page 4, Mr. Harlan, because you say—you strongly suggest that the appropriate level of judicial manpower be set on an annual basis by the judge. Do you mean over and above the minimum number of Family Court judges, because you suggest that if the Family Court case load drops—you are an optimist, Mr. Harlan—drops, that other divisions might—in a real sense, I think that's what we are trying to avoid, taking from the Family Court the number of judges and putting them some place else on the theory that this is such an important area of the law that it simply needs to have the same number of judges there always, and, if anything, may need more judges. Can you envision the notion that—I mean, let me put it to you this way: if the Family Court case load dropped, you could then handle Family Court cases more quickly. Wouldn't it be better to do that than to take those judges and use them elsewhere?

Mr. HARLAN. Quite frankly, the determination of how many Family Court judges is required on an immediate, in the first step, is what the 90-day plan is all about. Now——

Ms. NORTON. So we're going to have to fund judges, you see, for this.

Mr. HARLAN. I understand. I understand. But, looking down the road, when the chief judge comes before this committee and the Appropriations Committee to talk about the court's funding, it would seem to us that the chief judge, with the goal of adhering to the Adoption and Safe Families Act of 1997 as far as the pace of process here, that the chief judge would be in the best position to know how many Family Court judges are required to achieve the goal.

Looking down the road, you know, if the system gets better, fewer children are entering the system because let's assume that there's some remedy to the crack cocaine epidemic that caused the big spike that he described. I have no idea what will happen in the future, but hopefully things might get better and we might not need as many Family Court judges going forward.

All we're saying is that the chief operating officer of that court should have the ability to determine what that need is, translate that need into the number of judges required, and be subject to your oversight and subject to the appropriations process funding. That's all we're saying.

Ms. NORTON. Does that include more judges?

Mr. HARLAN. Pardon me?

Ms. NORTON. Does that include more judges?

Mr. HARLAN. Sure. Of course. If it gets worse, they would need more judges, whatever the situation is.

Ms. NORTON. Well, how do we determine—this bill has to be passed before the appropriations if we are to really do our job, and we will need more judges to make this anything but a joke.

Mr. HARLAN. Undoubtedly that's true at this time, but rather than having the cases spread out, they will be concentrated. That means pulled out of the other, let's say, 59 or 70 judges. Let's say there are 19 judges going to the Family Court. There will be some load shifting that way that has to be accounted for, so that non-family court judges that are currently hearing child abuse cases are no longer going to hear them. There can be fewer judges needed to handle the civil and criminal processes.

So, the workload balancing is one of the needs to be studied each year. It changes. That's all we're saying. I mean, you've got a 90-day program for him to come up with what he needs to have as far as the appropriation goes for this first period of time. That should be subject to review each year on an annual oversight basis.

Ms. NORTON. Thank you.

Thank you very much, Madam Chair.

Mrs. MORELLA. I want to thank you all. As Sister Josephine said, the bottom line is caring for these children. And I would also appreciate—the subcommittee would appreciate the language that you might be able to craft that would take care of that concept.

We will be submitting some questions to you, also, and hope that you will be able to answer them so that we can come to grips with this.

I notice that even those who thought 3 years would be appropriate, that it did say "minimum," as Mr. Harlan had stated. And so what we are looking for is people who have continuity—who will give continuity to it and reflect the concerns and caring.

I want to thank all of you for being here all afternoon, for your commitment to this project, and hope that you will continue to work with us so we can come up with something that's going to work. Thank you all very much.

Our subcommittee is now adjourned.

[Whereupon, at 4:45 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

FAMILY DIVISION TRIAL LAWYERS ASSOCIATION

James J. Roberts, President
Lawrence H. Huebner, Co-Vice President
Betty E. Sinowitz, Co-Vice President
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STATEMENT OF JAMES J. ROBERTS, BETTY E. SINOWITZ, AND HARRY GOLDWATER
PRESIDENT, CO-VICE PRESIDENT, AND TREASURER

OF THE

FAMILY DIVISION TRIAL LAWYERS ASSOCIATION

BEFORE

THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM

HOUSE OVERSIGHT SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

REGARDING

REPRESENTATIVES MORELLA, DAVIS, DELAY, AND HOLMES NORTON'S DISCUSSION DRAFT OF MAY 21, 2001 ENTITLED, "DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001"

Tuesday, June 26, 2001, Noon
Rayburn House Office Building

(Written testimony of July 2, 2001)

Chairwoman Constance A. Morella, Congressman Thomas DeLay, Congressman Thomas Davis, and Delegate Eleanor Holmes Norton, members of the House Oversight Subcommittee on the District of Columbia of the U.S. House of Representatives Committee on Government Reform. We are James J. Roberts, Betty E. Sinowitz, and Harry Goldwater, and we have prepared this statement on behalf of the Family Division Trial Lawyers Association (FDTLA). Previously, FDTLA had communicated with members of the House of Representatives and Senate who are most concerned with the operations of the District of Columbia and its Courts.

Thank you for initiating this very important hearing to address the District of Columbia Superior Court's plan to reform its Family Division to ensure the protection of our abused and neglected children. As officers of FDTLA and as citizens of the District of Columbia, we fully support the Family Division Reform Plan authored by Chief Judge Rufus G. King, III and the Associate Judges of the Superior Court of the District of Columbia. We welcome the special interest of the drafters of this legislation and their colleagues.

FDTLA is a voluntary association of approximately 130 court-appointed attorneys who represent abused and neglected children and their family members, juveniles, and mentally retarded and mentally ill adults in Superior Court of the District of Columbia. Our clients are the District of Columbia's most defenseless and vulnerable citizens in need of professional legal services.

FDTLA strongly advocates the maintenance and improvement of the unified Family Division that currently exists within the construct of the Superior Court of the District of Columbia. FDTLA vigorously opposes the establishment of a separate Family Court. FDTLA officers and members are working with the Superior Court to suggest reforms, some of which have already been implemented.

Since our members practice every day in the Family Division of the Superior Court, FDTLA has a keen interest in current efforts to bring about positive changes in the Family Division. We are working with the Court, the legal community, Congress, and community groups concerned with abuse and neglect and foster care issues, examining both positive and negative aspects of the current system.

Chief Judge Rufus G. King, III brings commitment, intelligence, and energy to his recent appointment. Under Chief Judge King and Presiding Judge Reggie Walton and Deputy Presiding Judge Anita Josey Herring of the Family Division, FDTLA representatives, as well as judges, hearing commissioners, government attorneys, social workers, and administrative court personnel have met over the past several months to scrutinize the Family Division's current operations and embark on an intensive effort to develop a program that will rectify problems which had developed.

FDTLA supports Chief Judge King's reform plan and the appropriation of additional and sufficient financial resources to change the existing Family Division. An increased budget will enable Chief Judge King to implement his plan in the following ways:

1. Adding additional judges and magistrate judges for adjudicating abuse and neglect cases and termination of parental rights and adoption matters, as well as for the domestic relations, paternity and child support, mental health and mental retardation branches of the current Family Division.

2. Increasing the terms for judges and magistrate judges in the Family Division to three years, with at least one year per calendar. All current hearing commissioners shall be re-designated as magistrate judges. Magistrate judges will serve in all divisions of the Superior Court.

3. Utilizing a collaborative team approach, whereby judges, magistrate judges, court staff attorneys and social workers, and better trained support staff would provide a new approach to case management and the ongoing review of abuse and neglect matters.

4. Enlarging the use of court mediation services for abuse and neglect and other family law cases, as deemed appropriate on a case-by-case basis.

5. Implementing a better coordination system for scheduling hearings, trials, and reviews of open cases in order to cut down court waiting time, so that both attorneys and social workers can spend more time monitoring their cases and securing services for their clients.

6. Modernizing the computer system to enable more effective tracking of cases and coordination of all cases involving the same families in the court system, the child welfare system, the police department, the Office of the Corporation Counsel, and other agencies.

7. Providing extensive and ongoing training in abuse and neglect law and policy for judges, magistrate judges, attorneys, social workers, and administrative personnel. FDTLA has recently planned and participated in the joint CFSA, Office of the Corporation Counsel and Superior Court Moot Court training program.

8. Allocating larger courtrooms and hearing rooms; providing family friendly waiting rooms for witnesses, parties, and children involved in family law cases; and assigning designated conference meeting rooms for attorneys, social workers, and mediators who work with families and children.

9. Filling vacant file room positions in the clerks' offices and adding more administrative support staff for file rooms and courtrooms.

10. Increasing the hourly pay rate for court-appointed lawyers to $ 75.00 per hour with a cap of $3,500 per case, with higher caps for cases involving multiple children from the same family, and increasing the hourly pay rate for investigators to $ 25.00 per hour.

FDTLA strongly asserts that children already traumatized by abuse and neglect deserve the full and serious attention of the most experienced, committed, and competent judges who have acquired expertise and perspective handling a wide range of cases in many areas of jurisprudence. The current system of rotating judges should be continued, albeit with changes made less frequently. Determinations concerning the removal of children from their parents, placements of children with relatives or foster parents, return of children to their birth parents, termination of parental rights, and adoption; institutionalizing children; and the other difficult decisions must be made by judges who are not experiencing burnout resulting from their exclusively hearing cases involving human tragedy.

The present inclusion of the Family Division within the Superior Court is the best model. It has much merit. This model integrates family matters into the overall structure of the court system, thereby maintaining equality of commitment with the criminal, civil, tax, and probate divisions. Judges

rotate among all divisions giving equal time, attention, and commitment to whichever division they are assigned.

Currently, 59 Superior Court judges and about 15 senior judges, regardless of their current court assignment, conduct periodic reviews of 75-90 cases per year, thus presiding over approximately two abuse and neglect matters per week. If a separate family court were created, each of some nine judges on such a court would need to review nearly 500 abuse and neglect cases per year, in addition to presiding over initial hearings, status hearings, trials, show cause hearings, and emergency hearings. This is an unworkable and unrealistic proposal.

In other jurisdictions with separate family courts, the family court is frequently referred to as the "kiddy court." Such courts are frequently staffed with new judges who are learning the ropes before they are assigned to the "real" court. Other jurisdictions have found it convenient to cut costs in their budgets by staffing this "kiddy court" with magistrates and commissioners, rather than with judges, thereby saving the "real judges" for the "real court" with "real problems." Jurisdictions, such as New York, which have separate family courts, are now advocating the establishment of unified courts similar to the one existing now in the District of Columbia. Congress will be better advised to study this similar metropolitan jurisdictions prior to introducing legislation creating a separate family court.

Although many government leaders decry big government and call for less bureaucracy and lower taxes, the proposed creation of a separate and distinct "Family Court" will cost tens of millions of dollars in the first year alone.

FDTLA opposes the creation of a separate stand-alone family court entity for the following reasons:

1. Merely creating a separate family court will not address the important need for systemic reform in the operations of the Child and Family Services Agency (CFSA), the Metropolitan Police Department, the U.S. Attorney's Office, and the Office of the Corporation Counsel. These government agencies are in transition and are in need of further reforms.

2. In addition to the massive additional costs to establish and maintain a separate family court, a separate court is likely to have difficulty in recruiting and retaining highly qualified judges and magistrate judges to work in what is likely to be regarded a "lesser" or "kiddy" court.

3. A separate entity will add massive construction costs and duplicative administrative expense for personnel, equipment, and maintenance.

4. A separate family court may siphon already limited judicial resources from the Superior Court.

5. The time involved in the establishment of a separate court would serve to defer the resolution of long-standing, pending cases.

6. A separate court would interfere with the operation of the existing domestic violence branch which provides an innovative, unified approach to civil and criminal proceedings involving intra-family violence.

Concerning the draft legislation, FDTLA urges that all references to a "Family Court" be changed to "Family Division." (See conforming amendments to Chapters 9, 11, and 16 of the District of Columbia Code.)

FDTLA will now critique selected sections, and make comments and/or provide suggested language.

1. Section 1. Short Title. Change to: "This Act may be cited as the 'District of Columbia Family Division Act of 2001.'"

2. Section 2. Redesignation of Family Division as Family Court of the Superior Court

(a) Change to: "The Superior Court shall consist of the Family, Civil, Criminal, Probate, and Tax Divisions of the Superior Court."

(c) Change to: "The Chief Judge of the Superior Court shall designate one of the judges assigned to the Family Division of the Superior Court to serve as the presiding judge of the Family Division of the Superior Court."

3. Section 3. Appointment and Assignment of Judges, Number and Qualifications.

(b) FDTLA urges that sitting judges of the Superior Court be appointed to the Family Division. FDTLA also vigorously supports three year terms in the Family Division. FDTLA also supports voluntary one year extensions.

(c) Term of Service

Paragraph (1), In General : Delete "or 5".

Paragraph (2), Assignment for Additional Service: Change to: "After the term of service of a judge of the Family Division . . . expires; at the judge's request, the judge may apply to the Chief Judge for additional service in the Family Division for a period of one year. The judge may apply for additional one year terms consistent with section 431(c) of the District of Columbia Home Rule Act.

Paragraph (3) Permitting Service on Family Court for entire Term: Delete entire paragraph. Judges should not be asked to volunteer to serve their entire fifteen year term assigned as judges in the Family Division.

(d) Reassignment to Other Divisions: Change to: "The Chief Judge may assign a judge of the Family Division to another division of the Superior Court." FDTLA believes that requiring reassignment only after a showing that the judge is acting contrary to the best interests of the individuals and families who are served by the Family Division is not necessary. Judges should not be put on trial. The integrity of the court would be adversely affected if there were a formal determination that a judge should not continue his or her assignment in the Family Division. Furthermore, the Chief Judge's role in managing judicial resources would be unnecessarily constrained.

(c) Transition to Appropriate Number of Judges. This provision should include the assignment of ongoing abuse and neglect review cases to all associate and senior judges who are willing to take training in family law issues and request such assignments. This would ensure diversity and decrease what would be a caseload of 4500 review cases for some nine Family Division judges. The full term of office of all newly appointed Superior Court judges shall be fifteen years. After three years' service in the Family Division, a judge will be reassigned to another division, including the Civil, Probate, Tax, or Criminal Divisions, or he or she may request one year extensions of the Family Division assignment.

4. Section 4. Improving Administration of Cases and Proceedings in Family Court, Section 11-1103, Standards of practice for appointed counsel: Change to: "The Superior Court shall establish practice guidelines for attorneys appointed as counsel in the Family Division of the Superior Court."

Section 11-1104 (b) Retention of Jurisdiction over Cases should be changed to permit the review of all open cases by all judges of the Superior Court, providing the judges agree to attend specialized judicial training in family law. Judges may also choose not to hear review abuse and neglect cases.

Section 11-1104(c) Training Program, Paragraph (1), In General: Change to: "The Chief Judge of the Superior Court and the Presiding Judge of the Family Division shall carry out an ongoing program to provide training in family law and related matters for judges of the Superior Court and appropriate non-judicial personnel, and shall include in the program . . . "

Section 11-1104(d) Accessibility of Materials, Services, and Proceedings; Promotion of "Family-Friendly" Environment, Paragraph (2), Location of Proceedings. Change to: "Cases and proceedings in the Superior Court of the District of Columbia's Family Division shall be

held at Superior Court for the District of Columbia. FDTLA believes that convening hearings and other proceedings in neighborhood locations would be impracticable and unsafe. Security is an important issue at the Superior Court for the District of Columbia. To disperse proceedings to other locations around the District of Columbia would create a grave security risk for all parties, judicial officers and court staff. It is impractical to require members of the Bar to travel back and forth through the city to attend hearings. It would be extremely difficult for attorneys to schedule hearings in other locations and still maintain their law practices. Furthermore, the leasing of additional space and security would be expensive for the Court and would only generate monies for community contractors.

Section 11-1106. Reports to Congress. FDTLA would change the opening paragraph, as follows: "Not later than 90 days after the end of each calendar year, the Chief Judge of the Superior Court shall submit a report to Congress on the general activities of the Family Division during the year." The remainder of the opening sentence and subparagraph (1) through (5) shall be deleted. Congress should not micro-manage the Court. Court resources would be better spent on court projects. If the Chief Judge's report does not contain sufficient information, committee members could request written responses to their specific inquiries or could convene hearings.

(b) Plan for Integrating Computer Systems. FDTLA encourages that access to confidential information be limited to maximize the privacy and constitutional rights of individuals and families.

(c) Clerical Amendment. Change 11-1103 to "Practice guidelines for appointed counsel."

6. Section 6. Establishment and Use of Separate Magistrate Judges.

(b) Selection.

Change sentence two to: "Such procedures shall contain provisions for public notice of all vacancies in magistrate judge positions and for the establishment by the Court of an advisory merit selecting panel, composed of lawyers and non lawyers, including certified and/or retired social workers specializing in child welfare matters who are residents of the District of Columbia and who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions. FDTLA is concerned that the selection procedure ensures that the appointments of friends, relatives, or political allies will be minimized.

(c) Qualifications (3) change to: "for the five years immediately preceding the appointment has been engaged in the active practice of law in the District of Columbia or has been on the

faculty of a law school in the District of Columbia." Delete the remainder of the sentence.

(c) Qualifications (4) change to: "has not fewer than seven years of experience in the practice of family law."

(c) Qualifications (5) change to: "is a bona fide resident of the District for at least one year immediately prior to appointment, and retains such residency during service as a magistrate." Citizens of the District of Columbia should have their family matters heard by residents of the District. This legislation should not be a vehicle for attracting new residents to the city. We believe that sufficient numbers of excellent family law practitioners and law school faculty already reside in the District and are eligible to apply for magistrate judge positions.

(f) Maximum Age for Service. FDTLA suggests using the age requirements used in Federal Courts.

(g) Suspension and Removal. Change to: "The Board of Judges may suspend, involuntarily retire, or remove a magistrate judge, during the term for which the magistrate judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability that interferes with the ability to perform the essential functions of the position without reasonable accommodation (See Americans with Disabilities Act). Suspension, involuntary retirement, or removal requires the concurrence of two-thirds of the judges of the Superior Court in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and an opportunity to be heard shall be furnished to the magistrate judge pursuant to procedures established by the rules of the Superior Court. The standard of proof shall be clear and convincing evidence."

(i) Code of Conduct. Change to: "Magistrate judges shall be employed on a full time basis by the Court and may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court."

(j) Functions.

(2) Change to: "Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, magistrate judges shall conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the Family Division of the Superior Court, as assigned by the Chief Judge of the Family Division."

(3) Change to: "Any matter involving an allegation of contempt shall be certified to a judge of the Superior Court."

(k) Review. Refer to Rule D of the Family Division Rules.

(l) Location of Proceedings. Delete this paragraph. (See above.)

(o) Board of Judges. Change to: "For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action of the Board of Judges shall require a two-thirds majority vote."

FDTLA recognizes that there have been problems in the protection and permanent placement of children in the child abuse and neglect system. It is important to note that it is the Child and Family Services Agency (CFSA), not the D.C. Superior Court, that failed to adequately protect children, properly monitor temporary placements for children, recruit adoptive parents, and place children in permanent homes. CFSA has been the agency under a Federal Court receivership, not the D.C. Superior Court.

Now, however, the Superior Court, under the leadership of Chief Judge King, is taking a leadership role in developing long-term solutions to the difficulties that trouble the Family Division. FDTLA trusts that the Court's reforms will result in a less expensive, faster, more flexible, and more comprehensive response to meeting the pressing legal needs of the District of Columbia's most vulnerable citizens. Addressing complex management issues, limited judicial resources, and working with other branches of government will do more to meet these needs.

FDTLA urges Congress to continue its interest in resolving the problems of the D.C. Superior Court and in providing it with adequate financial resources to accomplish the reforms planned for the Family Division.

FDTLA proposes the following statutory changes to accomplish faster and reasonable compensation for court-appointed family law practitioners.

I. Section 16-2326.1 Compensation of attorneys in neglect and termination of parental rights proceedings shall be amended as follows:

(a) (1) Except as provided for by subsections (b) and (e), an attorney representing a person who is financially unable to obtain legal counsel in a neglect proceeding or appointed to serve as counsel or guardian ad litem for a child who is the subject of a neglect proceeding shall, at the end of the representation or at the end of a segment of the representation, be compensated at a rate not less than the hourly rates established in D.C. Code, sec. 11-2604. (Note: FDTLA would amend that section as noted below.)

(2) The attorney may make a claim for expenses reasonably incurred during the

course of the representation.

(3) The Superior Court should issue an Administrative Order granting payment of all vouchers from 1995 to the present that have yet to be submitted or were submitted and denied. Attorneys will submit previously denied vouchers and other submissions within one year of the effective date of the Administrative Order. These vouchers must be paid. The Administrative Order will provide proper notice of new voucher deadlines for attorneys.

(4) Attorneys and investigators are deemed to have all the rights and privileges of a contractor under common law and D.C. statutes.

(b) Compensation payable pursuant to this section shall be submitted to the following limitations and payment guidelines:

(1) for all abuse and neglect and juvenile proceedings from initial hearing through disposition, the maximum compensation shall be $3,500 per year (increased from $1100 per year);

(2) for all subsequent proceedings other than a termination of parental rights, the maximum compensation shall be $3500 per year (increased from $1100);

(3) for proceedings to terminate parental rights, the maximum compensation will be $3500 (increased from $1500);

(4) for appeal of trial court orders, the maximum compensation shall be $2500 per case (increased from $750);

(5) attorney fee requests under the statutory limit must be paid in full. Reductions shall be made only for demonstrated cause which shall include written detailed findings of fraud, misrepresentation, or mistake, and after the attorney has been provided with a detailed letter from the judicial officer identifying any contemplated reductions and why full payment is not warranted.

(c) (1) A separate claim for compensation and reimbursement shall be made to the Superior Court of the District of Columbia for representation before that Court, and to the District of Columbia Court of Appeals for representation before the District of Columbia Court of Appeals;

(2) Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case

from any other source;

(3) Attorneys shall be compensated for services performed, including conferences with their client, on weekends and during evening and nighttime hours, and for time and mileage for travel;

(4) Vouchers must be submitted within 180 days of the disposition, case year, or case closure date. There is no prohibition against the submission of interim vouchers. Vouchers submitted after 180 days may be denied as untimely unless counsel can show a family, personal, or professional emergency necessitating the post-180 day submission. Attorney requests that are denied due to timeliness issues shall be appealable directly to the Chief Judge of the Superior Court of the District of Columbia.

(d) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(e) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, the person may do so without prepayment of fees, costs, or security and without filing the affidavit required by D.C. Code sec. 11-2604.

(f) (1) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request compensation for services in an ex parte application.

(2) Upon a finding, after appropriate inquiry in an ex parte proceeding, that investigative, or other services are necessary, but are not available through existing court resources, and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(3) Compensation to be paid to a person for services rendered under this subsection shall not exceed $500 unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess is approved by the presiding judge in the case.

(g) Compensation for attorneys appointed to represent parties in neglect proceedings and costs of investigative and other services shall be paid pursuant to procedures established by the Superior Court of the District of Columbia.

2. Section 11-2604. Payment for representation shall be amended as follows:

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the

representation or any segment thereof, be compensated at a fixed rate of $75 per hour. Such attorneys shall be reimbursed for expenses reasonably incurred.

(b) For representation of a defendant before the Superior Court or the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to any attorney shall not exceed the following maximum amounts:

(1) $3500 for abuse and neglect, with higher maximum amounts where there are multiple children, and termination of parental rights cases;

(2) $2500 for appeals of abuse and neglect and termination of parental rights cases;

(3) $3000 for misdemeanor cases, including mental health and mental retardation cases;

(4) $5000 for felony cases;

(5) $3000 for post-trial matters if the underlying case was a misdemeanor, or $5000 for post-trial matters if the underlying case was a felony.

FDTLA encourages members of Congress to review the District of Columbia Appropriations Bill 2001, House of Representatives Report 106-786. This report chronicles congressional concern regarding D.C. Superior Court's failures to consistently or promptly pay court-appointed attorneys.

On behalf of our clients who are citizens of the District of Columbia, FDTLA thanks you for the opportunity to present our comments. FDTLA would be happy to provide answers to any questions that you may have. FDTLA is disappointed at not having had the opportunity to testify at the public hearings regarding the District of Columbia Family Court Act of 2001. FDTLA continues to volunteer its services to Congress as a resource for future hearings or meetings regarding this legislation.

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Dated: July 2, 2001

U.S. SENATOR PAUL STRAUSS
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STATEMENT OF PAUL STRAUSS

UNITED STATES SENATOR (DC-SHADOW)

ELECTED BY THE VOTERS OF THE DISTRICT OF COLUMBIA

BEFORE

THE DISTRICT OF COLUMBIA SUBCOMMITTEE,

GOVERNMENT REFORM

REGARDING

THE DISTRICT OF COLUMBIA

SUPERIOR COURTS PROPOSED REFORM

OF ITS FAMILY DIVISION

12:00pm Tuesday, June 26, 2001

Room 2154 Rayburn House Office Building

Chairman Morella, Congresswoman Norton and members of the District of Columbia Subcommittee on Government Reform. I am Paul Strauss, the shadow United States Senator elected by the voters of the District of Columbia, and an attorney who practices in the family court division of our local courts. In that capacity I have probably made over 500 appearances in our family court, representing children families in the Abuse and Neglect System.

I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. The subject of this hearing is extremely important to me and to my constituents of Washington DC. It involves the physical, emotional and psychological health and welfare of our children, and their need to be protected by a strong, well-structured and experienced judiciary. I testify today in support of the Family Division Reform Plan, developed by the Chief Judge and the Associate Judges of the Superior Court of the District of Columbia. Furthermore, I would like to emphasize my personal opposition to the discussion draft now being circulated and my dissatisfaction in regards to the possible separation of the family court from the District's home rule system, which has been called for by the House Majority Whip Tom Delay (R-TX.)

The issue before this committee is two-fold in nature. The first issue surrounds the need to adhere to home rule principles in governing the District of Columbia. These principles pertain to the respect for local control and decision making maintained under the umbrella of the District's home rule charter, and to respect the decision making process apparent in our local judiciary. The second issue of even greater importance concerns the protection of our community's most vulnerable members. These issues

involve a choice between the strengthening of the District of Columbia's current court structure rather than its complete deconstruction.

These beneficial models, which work so well in given states, will provide valuable guidance to the District of Columbia. However, it does not necessarily follow that the exact same arrangements will serve the specific socio-demographic and economic needs of the diverse population situated within the District of Columbia. As you know, the District contains an overwhelmingly urban population and we are not provided the same level of resources bestowed upon State governments. Due to the current political status of the District any change to our judiciary, such as the proposed Family Court, must be carefully implemented by the local professionals who understand and appreciate the needs of the population.

The Family Court is an institution that must protect the Districts most vulnerable citizens – its children, as well as provide countless other more mundane legal functions common to every jurisdiction. The safety of children should not and will not be compromised due to political agendas.

Let me state for the record, that there have been many times when Congress has attempted to substitute its personal and political judgments for the democratically expressed wishes of the District of Columbia citizens. I have spoken out against those efforts, and criticized those who would violate our democratic rights for the sake of political expediency. I sincerely hope that any such criticism concerning this matter today is misplaced.

It is clear that the House Majority Whip, and his colleagues who are pushing the idea of more independent and separate family court, do so not to impose any

particular ideology on our judiciary, but based on their own beliefs regarding the best interests of our children and legal process.

There is no Democratic or Republican way to adjudicate cases of Child abuse and neglect. The District of Columbia's non-state status makes it a necessity that any reform must come with the assistance of this body. While I have often resented the actions of a D.C. sub-committee, which controls the structure the District of Columbia's government and judiciary, today I welcome your input and involvement. Our legitimate desire for self-determination does not mean that Congress should ignore this important issue.

An important component of the Courts' proposal offers judges of the Family Court a fixed three to five-year term with the option of continuing service beyond that time period. It is my belief – based on my own experience – that Judges who hear nothing but child abuse and neglect cases are susceptible to an unusual amount of emotional stress due to their exposure to the horrific nature of these cases, which often involve great brutality visited amongst helpless innocents. I can appreciate and sympathize with these hardships; I too found that, after years of litigating multiple trials involving abused and neglected children, the emotional toll could be quite significant. The Court's present proposal allows judges the opportunity to volunteer for such assignments thus allowing them to seek out the special challenges in one or more of the family court sectors, but also involves a plan to avoid burnout and frustration. There should not be a compromise concerning the tenure of judges. To acquire the most qualified judges their tenure should be no longer than 3 years. If the tenure provided is 4 or 5 years in length, the District

risks appointing inexperienced and unqualified authorities to protect our children, and this is a gamble that we are not willing to take.

The Family Division Trial Lawyers Association (FDTLA) opposes many of the provisions contained in the discussion draft of the District of Columbia Family Court Act of 2001, which separates the Family Court from the rest of the judiciary. All of the major components of the Superior Court's reform initiative depict sound modes of achieving enhanced protection to abused and neglected children. The comprehensive plan demonstrates the most efficient and effectives means of implementing a Family Court. Rather than duplicate administrative efforts, the plan concentrates upon team management tactics, continual training procedures, judicial specializations, and a multi-disciplinary approach to case resolution which emphasizes coherent lines of communication.

After thoroughly reviewing the discussion draft, I too oppose many of its requirements. It is obvious that the District of Columbia cannot afford to squander already limited resources to establish a separate entity. Additional administrative and costs, extended deadlines, and the lack of seasoned judges, would all serve to hinder, not help, the innocent victims who now await closure to their unwarranted turmoil. Most importantly, the Courts plan calls for the extra resources needed to create real reform. Without the dollars to back up our good intentions, any structural changes are meaningless. The adequate appropriation envisioned will not only provide real reform, but the infusion of funds will advance the quality and implementation of the Family Division of the D.C. Superior under its current leadership. Without the requested additional resources – any plan will surely fail.

The proposed bill presents several fundamental concerns that I believe must be addressed. These reservations surround the tenure of judges, the number of judges, the provision of a special master, and the monitoring and evaluation of the potential family court.

More resources and discretion are needed for the development and the implementation of the Family Court to occur. All of the stakeholders involved in this issue, from Congress to DC Council members, must understand and appreciate the fact that experienced, well-respected and knowledgeable members of the District's judicial community constructed the initial proposal for the Family Court, therefore we must adhere to their suggestions and follow their lead.

I urge you in the strongest possible terms to support the Courts restructuring plan and to allocate the financial support to make it a success. A strong Family Court, united within the existing Superior Court, will improve the quality of life and enhance justice.

Finally, before I conclude let me just take a moment to thank Ms. Kathleen Sullivan of my staff for all her assistance in preparing this testimony on this important issue. As you are aware, the appropriations bill severely limits the financial resources available to my office, and we depend on the hard work of a very dedicated and under compensated staff. On behalf of the citizens of the District of Columbia I thank you for the opportunity to make these comments, I would be happy to answer any questions you may have at this time.

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