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Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court

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ARTICLES

FASHIONING AN INTERDISCIPLINARY FRAMEWORK FOR COURT REFORM IN FAMILY LAW: A BLUEPRINT TO CONSTRUCT A UNIFIED FAMILY COURT

BARBARA A. BABB*

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I am—I make no secret of it—a reformer . . . I see grave defects in some of the ways in which courts operate, defects that I believe can be eradicated, but that will never be intelligently dealt with unless they are publicized. On the other hand, I have no fatuous notion that the judicial process can be made perfect. It is a human process, involving inherent human failings and weaknesses. Yet its substantial betterment is nevertheless possible. Indeed, to better it, requires a recognition of its unavoidably human, fallible, character. The illusion that it either is, or can be, super-human constitutes one of the chief hindrances to its substantial reform.

Jerome Frank
Courts on Trial

INTRODUCTION

Family law¹ cases focus on some of the most intimate, emotional, and all-encompassing aspects of parties' personal lives.² Adjudication of these cases challenges the "human" component of the court process in a manner unmatched by court involvement in almost any other area of law.³ The

1. Family law in this Article means a comprehensive approach to family law subject matter jurisdiction, including: jurisdiction over cases involving divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; and withholding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. See DEL. CODE ANN. tit. 10, §§ 921-928 (Supp. 1996). See also D.C. CODE ANN. § 11-1101 (1995), §§ 16-2301 to 16-2365 (1997); HAW. REV. STAT. §§ 571-11 to 571-14 (1993); NEV. REV. STAT. ANN. § 3.223 (Michie Supp. 1995); N.J. STAT. ANN. § 2A:4A-24 (West 1987); R.I. GEN. LAWS § 8-10-3 (Supp. 1996); and S.C. CODE ANN. § 20-7-736 (Law Co-op. 1985 & Supp. 1996).

2. See Steven H. Hobbs, *In Search of Family Value: Constructing a Framework for Jurisprudential Discourse*, 75 MARQ. L. REV. 529, 530 (1992). Hobbs describes the character of family law jurisprudence:

Each case is the real-life drama of a family working out what is valuable and important to it, while at the same time remaining within the bounds of the law. When our lives interact with the law, a discourse arises about who we are, what our hopes and dreams are for our family, how we form companionate relationships, and how we view raising children.

Id.

3. See Michael J. Albano, *Children—The Innocent Victims of Family Breakups: How the Family Law Attorney, the Courts, and Society Can Protect Our Children*, 26 U. TOL. L. REV. 787 (1995). Albano summarizes the predominant negative atmosphere of family law adjudication:

The litigants do not want to be there, and usually believe that someone has taken advantage of them. Judges do not want the assignment, not because other cases are more important, but because the cases drain them both physically and emotionally. The remainder of the legal profession looks down on family law cases.

Id. at 787. See also Naomi R. Cahn, *Family Law, Federalism, and the Federal Courts*, 79 IOWA L. REV. 1073, 1091 (1994). Cahn comments on state courts' handling of family law matters:

volume and scope of family law cases in contemporary American society, as well as their indeterminate nature both individually and systematically, exacerbate the difficulty of their resolution.⁴

[T]he judicial system present in most states . . . contributes to the demise of the family unit. 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 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. Also, "too often courthouse resolutions resolve only the legal conflicts, leaving unaddressed the underlying personal relationship and psychological disputes."⁵

Complicating this situation is the fact that almost half of all family law litigants are not represented by attorneys,⁶ primarily due to the liti-

[S]tate courts have developed specialized methods for handling domestic relations cases, including family court-related social services agencies. Yet complete, unquestioned deferral to the expertise of these courts may not always be warranted. The exact nature of their expertise has been questioned, and state family law courts have been criticized for their failure to develop sufficient mechanisms to handle family law cases. Not only do many judges dislike serving on the family courts, but also, judges in many state domestic relations courts rotate through a family calendar, remaining for only one year before moving on to a criminal calendar. Even within the family calendar, there will be cases ranging from adoption to domestic violence to equitable distribution at divorce.

Id. (citations omitted).

4. See H. TED RUBIN & VICTOR EUGENE FLANGO, COURT COORDINATION OF FAMILY CASES 7 (1992). See also ST. JUSTICE INST., STATE COURT CASELOAD STATISTICS ANNUAL REPORT 1992 (1994), cited in Amy Stevens, *The Business of Law: Lawyers and Clients*, WALL ST. J., July 1, 1994, at B6 (revealing that family law cases constitute about thirty-five percent of the total number of civil cases handled by the majority of our nation's courts, a percentage which constitutes "the largest and fastest growing part of the state civil caseload"). Cf. JOHN HUBNER & JILL WOLFSON, SOMEBODY ELSE'S CHILDREN: THE COURTS, THE KIDS, AND THE STRUGGLE TO SAVE AMERICA'S TROUBLED FAMILIES 141 (1996) (acknowledging the disproportionate effects of socioeconomic status and race in some aspects of family law adjudication by finding that "cases involving families from the higher social strata rarely come to trial because the family has financial resources") (emphasis in original); Monrad G. Paulsen, *Juvenile Courts, Family Courts, and the Poor Man*, 54 CAL. L. REV. 694, 701 (1966) ("Because juvenile courts and family courts serve large numbers of the poor, the poor experience, in full force, the troubles raised by the problems of those courts.").

5. Paul A. Williams, *A Unified Family Court for Missouri*, 63 UMKC L. REV. 383, 383-84 (1994) (citation omitted) (quoting Ann L. Milne, *Family Law From a Family System Perspective—The Binary Equation*, 21 PAC. L.J. 933, 934 (1990)) (detailing Missouri's recent legislative efforts to create a unified family court).

6. See Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123, 124 (1993) (citation omitted). See also ADVISORY COUNCIL ON FAMILY LEGAL NEEDS OF LOW INCOME PERSONS, INCREASING ACCESS TO JUSTICE FOR MARYLAND'S FAMILIES 49 (1992) (finding that in 1991, only about 20% of low-income litigants in family law cases likely received legal assistance); Karen Czapskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, FAM. L.Q., Summer 1993, at 247, 273-74 (indicating that

gants' inability to afford private counsel or to secure free legal services. As a result, the issue of access to the courts for family law adjudication also presents a compelling problem.⁷

The "crisis in family law"⁸ has triggered the need for court reform in this area. Organized bar associations at the local, state, and national levels have addressed court reform in family law with increasing frequency. One concept receiving consideration in family law court reform is the notion of a unified family court.

[A unified family court is] a single court system with comprehensive jurisdiction over all cases involving children and relating to the family. One specially trained and interested judge addresses the legal and accompanying emotional and social issues challenging each family. Then under the auspices of the family court judicial action, informal court processes and social service agencies and resources are coordinated to produce a comprehensive resolution tailored to the individual family's legal, personal, emotional, and social needs. The result is a one family-one judge system that is more efficient and more compassionate for families in crisis.⁹

Based on its study of the unmet legal needs of children and their families, the American Bar Association has recommended the establish-

women comprise the majority of poor people); James Podgers, *Chasing the Ideal*, A.B.A. J., Aug. 1994, at 56, 58 (discussing the lack of access to legal services and to the justice system for persons at and above the poverty line).

7. See Murphy, *supra* note 6, at 123.

8. *Id.* See Richard L. Marcus, *Of Babies and Bathwater: The Prospects for Procedural Progress*, 59 BROOK. L. REV. 761, 762-67 (1993) (defining the court crisis rhetoric to include the litigation explosion image, the need for control over litigation by means of court rules, and the seeming indifference of the litigation process to the merits of a case); Donald B. King, *Accentuate the Positive—Eliminate the Negative*, 31 FAM. & CONCILIATION CTS. REV. 9 (1993). The author argues for court reform in the family law area:

Our present family law court system is one with which neither litigants, attorneys, nor judges are happy. . . . [A]n entirely new process is necessary to handle these most difficult cases in a more sensitive and responsive way, a process geared toward helping litigants already traumatized by the breakup of their marriage, not one that treats them as incremental parts on a mass production assembly line. Because the law compels citizens ending their marriages to go through the judicial system, government has a duty to provide a system that can handle the task in a way that helps its citizens, not one that leaves them worse off financially and emotionally than when they entered it, not one that costs so much that only the wealthy can afford it, and certainly not one that has become so complex that few lawyers, fewer judges, and no legislators understand it. We should have a system that helps those we require to use it.

Id.

9. Williams, *supra* note 5, at 384 (citations omitted).

ment of unified family courts in all jurisdictions.¹⁰ Through a two-year project funded in late 1996 entitled "Communities, Families, and the Justice System,"¹¹ the American Bar Association is helping to establish unified family courts in six cities.¹² A recent national conference of bar presidents also has called for the creation of unified family courts.¹³ This notion of specialized subject matter courts,¹⁴ such as unified family courts, already has resulted in the creation of business courts,¹⁵ adult drug courts,¹⁶ juvenile drug courts,¹⁷ teen courts,¹⁸ domestic violence courts,¹⁹ and custody courts.²⁰

10. See A.B.A. 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 A.B.A. PRESIDENTIAL WORKING GROUP]. See also Williams, *supra* note 5, at 384.

11. R. William Ide III, *ABA News Center—From the Chair*, UNIFIED FAM. CHRON., May 1997, at 2.

12. See *Unified Family Site Update*, UNIFIED FAM. CHRON., May 1997, at 1. See also Patricia G. Barnes, *It May Take A Village . . . Or a Specialized Court to Address Family Problems*, A.B.A. J., Dec. 1996, at 22.

13. See Mary Wechsler, *Unified Family Courts*, THE CONFERENCE CALL, Summer 1995, at 1.

14. See Jeffrey W. Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67, 69-71 (1995) (defining specialized courts as courts with specialized, restricted subject matter jurisdiction in a single area of law, even where the subject matter jurisdiction is not exclusive, and advocating the benefits of specialized state courts in areas of excessive litigation).

15. See *id.*; Ad Hoc Committee on Business Courts, *Business Courts: Towards a More Efficient Judiciary*, 52 BUS. LAW. 947, 961 (1997) (reporting on the high success rate of established business courts and recommending the creation of such courts in jurisdictions with a high volume of complex commercial cases); Margaret M. Eckenbrecht, *A Commercial Venture*, A.B.A. J., Jan. 1996, at 35 (reporting that fifteen states have or plan to have business courts to handle complex commercial cases).

16. See James R. Brown, *Drug Diversion Courts: Are They Needed and Will They Succeed in Breaking the Cycle of Drug-Related Crime?*, 23 NEW ENG. J. CRIM. & CIV. CONFINEMENT 63, 84, 93-98 (1997) (describing the goals of drug courts generally and the operations of drug courts in Miami, Florida, and Boston, Massachusetts); William D. McColl, Comment, *Baltimore City's Drug Treatment Court: Theory and Practice in an Emerging Field*, 55 MD. L. REV. 467, 468, 470 (1996) (reviewing a drug court operating in Baltimore, Maryland, one of at least 35 such courts operating in the United States whose purpose is to attempt to treat or rehabilitate addicts rather than to punish them, and finding that the guiding philosophy for drug treatment courts is primarily therapeutic or medical in nature); Michael J. Sniffen, *University Study Finds Drug Courts Working for Nonviolent Offenders*, THE DAILY REC. (Baltimore), May 10, 1996, at 10 (reporting that an American University study revealed a decreased recidivism rate of less than 4% for nonviolent drug offenders who were ordered into treatment for their addictions rather than incarcerated).

17. See Marilyn Roberts, Jennifer Brophy & Caroline Cooper, *The Juvenile Drug Court Movement*, FACT SHEET #59 (Office of Juv. Just. and Delinquency Prevention), Mar. 1997, at 1, 2 (discussing the development and operation of juvenile drug courts).

18. See Allison R. Shiff & David B. Wexler, *Teen Court: A Therapeutic Jurisprudence Perspective*, 4 CRIM. LAW BULL. 342, 343 (1996) (reporting that more than 150 teen courts exist nationwide where teens who commit their first misdemeanors appear in a court setting controlled by their peers as an alternative to juvenile court and with the goals of effective intervention and decreased recidivism).

Grappling with the subject of court reform in family law presents complex and daunting challenges.²¹ The traditional adversarial nature of court systems is inappropriate for the resolution of family legal matters. As Professor Menkel-Meadow has stated,

[t]he binary nature of the adversary system and its particular methods and tactics often may thwart some of the essential goals of any legal system. . . .

....

Modern life presents us with complex problems, often requiring complex and multifaceted solutions. Courts, with . . . their "limited remedial imaginations," may not be the best institutional settings for resolving some of the disputes that we continue to put before them.²²

Court involvement in family law necessitates that the parties frame social problems as legal issues and that the court assign fault or blame, thereby complicating any solution that is mutually acceptable to the litigants.²³ Moreover, court reform is hampered further by how judges and legislators historically have attempted to impose their personal sense of morality in the determination of family legal issues rather than to decide

19. See Art Barnum, *DuPage Total Crimes Drop, But Robberies Increase 49%*, CHI. TRIB., Apr. 27, 1997, at 1 (referring to the opening of a special domestic violence courtroom due to an increase in the number of domestic violence cases); Christopher Downey, *New Bronx Courtroom Seeks to Speed Resolution of Domestic Violence Cases*, N.Y.L.J., Jan. 22, 1992, at 1 (describing a specialized court designed to process criminal domestic violence cases more quickly in an effort to assist victims). See also Brown, *supra* note 16, at 99 (arguing that drug courts can operate as prototypes for domestic violence courts, another form of specialty court offering intensive treatment of offenders).

20. See Christina P. Burnham, *Connecticut's Child Custody Court*, FAM. ADVOC., Spring 1997, at 43, 43-45, 62 (detailing the recent creation and success of Connecticut's Regional Family Trial Docket as a potential settlement mechanism for the resolution of complex custody cases through full-day and interdisciplinary pretrial conferences with a team of two special masters, one family law attorney, and one family therapist).

21. See Jean Koh Peters, *Jose and Sarah's Story: The Usefulness of Roleplay in an Ethically-Based Evaluation of the Present and Future Family Court*, 21 PAC. L.J. 897 (1990).

22. Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 5-7 (1996) (arguing that the adversary system is inadequate to satisfy many important dispute resolution goals, such as determining facts and learning the truth). See also King, *supra* note 8, at 10. King provides a description of the adversary system:

[T]he adversary system is a monster with a life and a momentum of its own that too often places the case beyond the control of the parties, their attorneys, and the judges. The system creates an accusatory atmosphere that destroys communication and cooperation. The adversary system works well for litigants who will never see each other again, but it is too slow, too expensive, and too impersonal and does not help divorcing spouses who will have to remain in contact with each other for years because of children or support obligations.

Id.

23. See Ralph Cavanagh & Austin Sarat, *Thinking About Courts: Toward and Beyond a Jurisprudence of Judicial Competence*, 14 L. & SOC'Y REV. 371, 395 (1980).

cases based upon the realities of families' lives.²⁴ Such processes have contributed to ineffective family justice. Family law adjudicatory systems thus must transform in order to resolve disputes in a manner consistent with the dramatic changes in family structure and family function in America over the last few decades.²⁵

This Article evaluates how America's courts adjudicate family law matters and advocates systemic change by offering an interdisciplinary ecological and therapeutic approach²⁶ to the creation of unified family courts. The proposed model structure equips the courts with a dispute resolution system that helps judges and other court professionals understand and address the many influences on human behavior and family life,

24. See Gary B. Melton & Brian L. Wilcox, *Changes in Family Law and Family Life: Challenges for Psychology*, 44 AM. PSYCHOLOGIST 1213, 1214 (1989). See also Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835, 854-55 (1985) (suggesting that courts decide family law cases based on policy considerations such that the decisions then affect the family roles and relationships). See generally Robert Rubinson, *The Polyphonic Courtroom: Expanding the Possibilities of Judicial Discourse*, 101 DICK. L. REV. 3, 4 (1996) (stating that "[judicial] opinions are typically monologues which reject exploration of complex issues of meaning in favor of the simple exercise of justifying a result") (citation omitted).

25. See Lee E. Teitelbaum, *The Family as a System: A Preliminary Sketch*, 1996 UTAH L. REV. 537, 539-40. Teitelbaum summarizes changes in family structure and family function:

[T]he sharp decline in marriage rates during the 1970s and 1980s is a striking phenomenon—especially coupled with the concomitant sharp increase in nonmarital cohabitation. A substantially increasing rate of premarital sexual relations has been documented, resulting in an increase in nonmarital childbearing among young women. And although rates of marital dissolution are not very much higher than they were at the end of the nineteenth century, the causes of family disruption have changed dramatically. The rate of dissolutions caused by death of a husband or wife has declined sharply, but it has been matched (indeed, somewhat overmatched) by an increase in divorce rates that now reaches half of all marriages contracted during the 1970s. . . .

. . . The assumption by public agencies of substantial, if partial, responsibility for "family" functions, and the perception that families no longer discharge important social functions, are themselves important aspects of change. Another important, and related, area of change concerns the legal and normative approach to families. The decline in the perceived functional importance of families and the positivization of law—that is, the reassignment of regulatory responsibility from families and other social systems to specialized bodies of law and organizations not based on kinship—have had significant implications for how we understand the family and, consequently, for family law and policy.

Id. at 539-40 (citations omitted). See also Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 777-80 (1997) (detailing changes in the structure and function of the American family in the past few decades); Gary B. Melton, *Children, Families, and the Courts in the Twenty-First Century*, 66 S. CAL. L. REV. 1993, 1994-2002 (1993) (describing the transformation of family life in the United States during the last thirty years).

26. See Babb, *supra* note 25, at 807 (describing an ecological and therapeutic approach to family law jurisprudence as one which "enables judges to develop a holistic assessment of the family's legal and social needs and to devise more comprehensive legal remedies"). See also *infra* Part III (explaining and discussing an interdisciplinary ecological and therapeutic approach to the creation of unified family courts).

thereby resulting in more pragmatic and effective dispositions of contemporary family legal issues.

Part I of the Article reviews existing family law adjudicatory schemes by means of a systems analysis, a methodology designed to manage complicated issues in a manner subject to objective verification.²⁷ Systems analysis allows a structured review of court operations. This type of analysis determines the parts of the system, examines the relationship of the parts to the whole, and evaluates how to ensure that the system's functioning is more efficient, consistent, and improved.²⁸ The author presents a comprehensive overview of the results of her nationwide survey determining how each state's courts handle family law matters, including an assessment of the court structure, the subject matter jurisdiction, the term length of judges, and the case assignment method. The survey results, revealing a striking amount of variety and inconsistency in how America's courts process family law cases, illustrate the dramatic need for "a fundamental rethinking and restructuring of the legal system."²⁹

Part II provides a theoretical perspective on court reform and analyzes the salient issues relevant to family law adjudicatory system reform. These issues include a philosophy of court reform, managerial considerations incidental to the court reform process, the value of specialized courts and specialized judges, and the roles of other court system professionals.

Part III proposes a design to create a unified family court based upon an interdisciplinary ecological and therapeutic approach to family law adjudication.³⁰ The ecology of human development,³¹ a social science research paradigm, provides the framework to construct the court. Incorpor-

27. See Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479, 480-81 (1997) (describing systems analysis methodology and some examples of systems projects, particularly in the fields of debtor-creditor and bankruptcy law). See also Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1 (1997) (advocating a systems approach to child custody decisionmaking based upon a nonjudgmental consideration of the child in the context of the family and the family's interaction); Teitelbaum, *supra* note 25, at 537-41 (describing the family as an interactive economic, moral, and educational system in its internal operations and its relation to society).

28. See LoPucki, *supra* note 27, at 487.

29. Brooks, *supra* note 27, at 5. See also Edward P. Mulvey, *Family Courts: The Issue of Reasonable Goals*, 6 LAW & HUM. BEHAV. 49, 50 (1982) ("[T]rue adoption of a family perspective by the legal system will involve more than a mere semantic shift.").

30. See Babb, *supra* note 25, at 801-07 (proposing a paradigm for family law jurisprudence that utilizes an interdisciplinary ecological and therapeutic perspective for family law decisionmaking).

31. See generally URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* (1979); *infra* Part III.A (explaining the ecology of human development).

ration of therapeutic jurisprudence³² as the underlying goal of the court's operation provides an organizational philosophy around which to design the system's components. The proposal details the structure, jurisdiction, staffing, procedure, and function of this court. This archetypic unified family court, which considers a family's problems in a comprehensive and coordinated manner, should serve as a blueprint for nationwide family law court reform. Adopting this model can promote dispute resolution outcomes which enable individuals and families to address more effectively their underlying family legal issues and to improve their functioning.

I. SETTING THE STAGE FOR COURT REFORM

A. A HISTORY OF THE FAMILY COURT

"'Family court' is a term with no agreed meaning."³³ Many courts call themselves "family courts" without fully considering the implications of that term, while others consolidate their treatment of family legal matters without specifically calling themselves "family courts."³⁴ The notion of a family court suggests a separate court or a separate division of a state court of general jurisdiction that exercises comprehensive subject matter jurisdiction³⁵ over all legal issues related to children and families.³⁶ Defined most simply, a family court is a single forum within which to adjudicate the full range of family law issues,³⁷ based on the notion that court ef-

32. David Wexler conceptualizes therapeutic jurisprudence as follows:

Therapeutic jurisprudence is the study of the role of 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. Such consequences may flow from substantive rules, legal procedures, or from the behavior of legal actors (lawyers or judges).

David B. Wexler, *Putting Mental Health Into Mental Health Law: Therapeutic Jurisprudence*, in *ESSAYS IN THERAPEUTIC JURISPRUDENCE* 3, 8 (David B. Wexler & Bruce J. Winick eds., 1991) (citation omitted).

33. LINDA SZYMANSKI, THERESA HOMISAK & E. HUNTER HURST, III, *POLICY ALTERNATIVES AND CURRENT COURT PRACTICE IN THE SPECIAL PROBLEM AREAS OF JURISDICTION OVER THE FAMILY* 6 (1993). *Accord* Robert W. Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*, *JUV. & FAM. CT. J.*, 1993/Vol. 44:1, at 7.

34. *See* William C. Gordon, *Establishing a Family Court System*, *JUV. JUST.*, Nov. 1977, at 9. *See also* Robert E. Shepherd, Jr., *The Unified Family Court: An Idea Whose Time Has Finally Come*, *CRIM. JUST.*, Fall 1993, at 37, 37-38 (discussing the variety among family courts regarding their subject matter jurisdiction and indicating that the meaning of "family court" is unclear).

35. *See supra* note 1 (defining comprehensive subject matter jurisdiction).

36. *See* SANFORD N. KATZ & JEFFREY A. KUHN, *RECOMMENDATIONS FOR A MODEL FAMILY COURT I* (1991).

37. *See* SZYMANSKI ET AL., *supra* note 33, at 1.

fectiveness and efficiency increase when the court resolves a family's legal problems in as few appearances as possible.³⁸

Historically, the concept of a family court evolved about the same time as the juvenile court movement.³⁹ While Chicago inaugurated the first juvenile court in 1899,⁴⁰ society's concern with the effects of a broader range of family legal proceedings on families' lives led to the creation of another category of specialized courts as a means to improve

38. See *id.* at 5.

39. See Herma Hill Kay, *A Family Court: The California Proposal*, 56 CAL. L. REV. 1205 (1968). See also RUBIN & FLANGO, *supra* note 4, at 63; Leonard P. Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases*, 27 SANTA CLARA L. REV. 201, 205-06 (1987) (distinguishing family courts, which provide primarily a private dispute resolution service for the litigants, from juvenile courts, which involve the court's child protection function through both child abuse and neglect and juvenile delinquency jurisdiction). While an analysis of the juvenile justice system is beyond the scope of this Article, investigation and evaluation of that system abounds. See, e.g., Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991) (describing changes experienced by the juvenile court, along with factors contributing to those changes, and advocating the abolition of the juvenile court); Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C. L. REV. 927 (1995) (advocating the complete abolition of the juvenile justice system and calling for the creation of a unified criminal justice system); Bruce A. Boyer, *Jurisdictional Conflicts Between Juvenile Courts and Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents*, 54 MD. L. REV. 377 (1995) (analyzing the potentially conflicting relationship between the juvenile court system and child welfare agencies regarding child-related decisionmaking and suggesting a conflict resolution technique to address this situation); Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, JUV. & FAM. CT. J., 1992/Vol. 43:2, at 1 (describing comprehensively the history and functions of the juvenile court and arguing for its continuation and improvement); Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691 (1991) (examining contemporary juvenile courts by analyzing jurisdictional, jurisprudential, and procedural reforms); Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965 (1995) (analyzing juvenile courts through cases studies and analyzing proposed legislative initiatives representing states' responses to juvenile crime); Gary B. Melton, *Taking Gault Seriously: Toward a New Juvenile Court*, 68 NEB. L. REV. 146 (1989) (arguing, on the basis of social science knowledge, for the creation of an entirely new juvenile court to protect juveniles); Michael Kennedy Burke, Comment, *This Old Court: Abolitionists Once Again Line Up the Wrecking Ball on the Juvenile Court When All It Needs Is a Few Minor Alterations*, 26 U. TOL. L. REV. 1027 (1995) (addressing claims of juvenile court abolitionists and suggesting new procedures to correct juvenile justice system inadequacies); John N. Kane, Jr., Note, *Dispositional Authority and Decision Making in New York's Juvenile Justice System: Discretion at Risk*, 45 SYRACUSE L. REV. 925 (1994) (evaluating legislative and policy changes to New York's juvenile justice system and proposing solutions to improve decisionmaking in this system); Cynthia R. Noon, Comment, *Waiving Goodbye to Juvenile Defendants, Getting Smart vs. Getting Tough*, 49 U. MIAMI L. REV. 431 (1994) (examining Florida's juvenile justice system and suggesting the reduction of juvenile crime by focusing on its sources); Michael Riley, *Corridors of Agony*, TIME, Jan. 27, 1992, at 48 (studying the operation of the Baltimore City Juvenile Court in Maryland as a representative of similar courts across the country and documenting the extreme nature of the system's problems).

40. See HUBNER & WOLFSON, *supra* note 4, at 5, 69.

court performance.⁴¹ Beginning in 1914, in Cincinnati, Ohio, courts with jurisdiction over both children's and families' cases began to appear. They also appeared in other selected cities, including Des Moines, Iowa; St. Louis, Missouri; Omaha, Nebraska; Portland, Oregon; Gulfport, Mississippi; and Baton Rouge, Louisiana.⁴²

In 1959, three working groups collaborated to produce the Standard Family Court Act ("the Act"), designed to assist states interested in creating family courts.⁴³ These drafters defined the purpose of the Act as follows:

The purpose of a family court act is to protect and safeguard family life in general and family units in particular by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their interpersonal relationships, in a single court, with one specially qualified staff under one leadership, with a common philosophy and purpose, working as a unit, with one set of family records, all in one place, under the direction of one or more specially qualified judges.⁴⁴

The Act described the family court as a tribunal that could, if necessary, deviate from traditional adversary procedures to resolve family conflicts, while decreasing litigants' hostility.⁴⁵ In addition, a significant feature of family courts as defined in the Act was their ability to integrate child and family legal proceedings in an effort to administer justice more efficiently in these cases.⁴⁶ This followed from the belief that a court with a comprehensive view of all of a family's legal problems could resolve that family's legal issues more quickly and capably than could a system requiring the family to appear in several different tribunals for adjudication of similar matters.⁴⁷

41. See SZYMANSKI ET AL., *supra* note 33, at 3.

42. See RUBIN & FLANGO, *supra* note 4, at 63.

43. See *id.*

44. Committee on the Standard Family Court Act of the National Probation and Parole Association, *Standard Family Court Act—Text and Commentary*, 5 NAT'L PROBATION & PAROLE ASS'N J. 99, 106 (1959) [hereinafter *Standard Family Court Act*].

45. See RUBIN & FLANGO, *supra* note 4, at 64.

46. See *id.* at 65. See also Roscoe Pound, *The Place of the Family Court in the Judicial System*, 5 NAT'L PROBATION & PAROLE ASS'N J. 161, 164 (1959). Pound defines the need for integrated handling of child and family legal proceedings:

Treating the family situation as a series of single separate controversies may often not do justice to the whole or to the several separate parts. The several parts are likely to be distorted in considering them apart from the whole, and the whole may be left undetermined in a series of adjudications of the parts.

Id.

47. See RUBIN & FLANGO, *supra* note 4, at 65.

The articulated purpose of the Standard Family Court Act presumed that judges with a particular qualification and expertise in child and family legal matters would hear these cases and would provide continuity for the determination of a single family's case. The Act acknowledged the need to assist these judges by providing the family court with a case management system capable of containing the family's entire court records in an easily accessible database.⁴⁸

After the Act's publication, several states created statewide family courts. Rhode Island began its family court in 1961, New York began a separate family court in 1962, and Hawaii established its family division in 1965.⁴⁹ Over the next several decades, Connecticut, Delaware, South Carolina, New Jersey, and Vermont established statewide family courts.⁵⁰ During this same time period, other states passed legislation creating permissive family courts in certain areas within their geographic jurisdictions.⁵¹ In addition, some states began the family court process by expanding their juvenile courts to include determination of other family issues, thereby transforming them into family courts.⁵²

As early as 1959, then, with the publication of the Standard Family Court Act, policymakers offered a valuable court reform proposal structured to allow one court the opportunity to consider and to resolve all of a family's related legal problems. Drafters of the Act foresaw the expertise of the judges sitting in this court and the social services available to the families as features necessary to improve the lives of individuals and families.

48. See *id.* See, e.g., SZYMANSKI ET AL., *supra* note 33, at 11. The authors discuss FACTS (Family Automated Case Tracking System), a modern, computerized statewide case management system operating in New Jersey:

[This case tracking system is] designed to be easily accessible to judges and staff, as well as court and non-court agencies, by remote terminals tied into the computer-based system.

This system contains a family file of all information developed as a result of previous and pending court appearances of each family member. This file provides the court with information about the strengths, weaknesses, and capabilities of the family as a unit.

Id. (citation omitted). See also RUBIN & FLANGO, *supra* note 4, at 11-12, 36 (discussing the operation of FACTS).

49. See RUBIN & FLANGO, *supra* note 4, at 63-64. See also *infra* Appendix A; Kay, *supra* note 39, at 1225-32 (detailing an early family court proposal for California emanating from the California Governor's Commission on the Family).

50. See RUBIN & FLANGO, *supra* note 4, at 64. See also *infra* Appendix A.

51. See RUBIN & FLANGO, *supra* note 4, at 64. See also *infra* Appendix B.

52. See Shepherd, *supra* note 34, at 37.

B. CONTEMPORARY FAMILY LAW ADJUDICATION WITHIN AMERICA'S COURTS

In order to assess whether our nation's court systems have achieved the laudable goals articulated in the Standard Family Court Act of 1959, or whether those systems must change again to resolve more effectively family legal matters, one must examine how courts currently address the many challenges presented by family law decisionmaking. A review of the author's survey results of how each of the fifty states and the District of Columbia presently adjudicates family law matters, depicted in Appendices A through D, guides this analysis. The survey was conducted through telephone interviews with court personnel in the fifty states and the District of Columbia from 1995 through 1997. In the interviews, the author sought to: (1) identify for each jurisdiction which court or courts decide family law matters; (2) understand each system's goals by assessing how comprehensively the system defines family law adjudication; and (3) determine each system's function by describing judicial and case assignment methods employed in the system.⁵³

1. *Court Structure for Family Law Decisionmaking*

The survey begins by identifying for each jurisdiction both the court or courts that decide family law matters and the structure of those courts.⁵⁴ Does the system provide a separate, distinct forum to determine family legal matters, or do several tribunals exist within each system to resolve these issues? Is the family law adjudicatory system a separate court, a separate component of an existing trial court, or a part of the court's general civil trial docket? The results of this analysis reveal both whether the court system offers a coordinated approach to family law adjudication and whether the system ascribes a sense of importance to the processing of family law cases.

At present, only eleven jurisdictions in the United States determine family law matters for the entire jurisdiction within a separate family court or within a separate family division or department of an existing trial

53. See LoPucki, *supra* note 27, at 497-505 (explaining in detail each step of a multi-step process of systems analysis methodology as applied to legal systems). See also *infra* Appendix E (detailing the survey questions asked of court personnel).

54. See, e.g., Cahn, *supra* note 3, at 1097. Cahn comments on the relative importance that court systems ascribe to family law cases: "Family law has a comparatively low status in the hierarchy of cases, in both federal and state courts, and domestic relations cases are perceived as involving 'burdensome, fact-bound and often protracted . . . disputes.'" *Id.* (citation omitted).

court.⁵⁵ Among these eleven jurisdictions, five states have a completely separate and distinct family court.⁵⁶ Five other jurisdictions handle family law matters within a separate division of a trial court,⁵⁷ and one state assigns family law cases to a separate department of a trial court.⁵⁸

Fourteen states, on the other hand, manage family law cases within a separate family court or within a separate family division of an existing trial court only in selected areas of the state.⁵⁹ Among these fourteen states, two states have created separate family courts in those limited geographic areas,⁶⁰ nine states have created family divisions within existing

55. These jurisdictions are Delaware, District of Columbia, Florida, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Vermont, and Washington. *See* DEL. CODE ANN. tit. 10, §§ 901-1077 (1974 & Supp. 1996); D.C. Code Ann. § 11-902 (1995); *In re* Report of the Comm'n on Family Courts, 588 So. 2d 586 (Fla. 1991); HAW. REV. STAT. §§ 571-1 to 571-87 (1997); MASS. GEN. LAWS ch. 215, §§ 1-63 (1989 & Supp. 1996); N.J. STAT. ANN. §§ 2A:4A-20 to 2A:4A-91 (West 1987 & Supp. 1997); N.Y. FAM. CT. ACT §§ 111-1211 (McKinney 1987 & Supp. 1997); R.I. GEN. LAWS §§ 8-10-1 to 8-10-45 (1985 & Supp. 1997); S.C. CODE ANN. §§ 20-7-736 to 20-7-780 (Law Co-op. 1985 & Supp. 1996); VT. STAT. ANN. tit. 4, §§ 451-467 (Supp. 1997); WASH. REV. CODE ANN. §§ 26.12.010 to 26.12.240 (West 1997). *See also* Appendix A.

56. These states are Delaware, New York, Rhode Island, South Carolina, and Vermont. *See* DEL. CODE ANN. tit. 10, §§ 901-973 (Supp. 1996); N.Y. FAM. CT. ACT §§ 111-1211 (McKinney 1983 & Supp. 1997); R.I. GEN. LAWS §§ 8-10-1 to 8-10-45 (1985 & Supp. 1996); S.C. CODE ANN. §§ 20-7-736 to 20-7-780 (Law Co-op. 1985 & Supp. 1996); VT. STAT. ANN. tit. 4, §§ 451-467 (Supp. 1997).

57. These jurisdictions are the District of Columbia, Florida, Hawaii, New Jersey, and Washington. *See* D.C. CODE ANN. § 11-902 (1995); *In re* Report of the Comm'n on Family Courts, 588 So. 2d 586 (Fla. 1991); HAW. REV. STAT. §§ 571-1 to 571-87 (1997); N.J. STAT. ANN. §§ 2A:4A-20 to 2A:4A-91 (West 1987 & Supp. 1997); WASH. REV. CODE ANN. §§ 26.12.010 to 26.12.240 (West 1997).

58. This state is Massachusetts. *See* MASS. GEN. LAWS ch. 211B, § 1 (1989 & Supp. 1996).

59. These states are Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Wisconsin. *See* ALA. CODE § 12-17-24.1 (1995); Telephone Interview with Cheri Kester, Office of the Colorado State Court Administrator (Apr. 10, 1997); KAN. STAT. ANN. § 20-438 (1995); LA. REV. STAT. ANN. §§ 13:1401 to 13:1410 (West 1983 & Supp. 1997); MISS. CODE ANN. §§ 43-23-1 to 43-23-55 (1993 & Supp. 1997); MO. REV. STAT. §§ 487.010 to 487.190 (Supp. 1997); NEV. REV. STAT. §§ 3.0105-3.5000 (Supp. 1995); Telephone Interviews with Delores Saaverda, Clerk of the New Mexico Court (May 7, 1996), and Fern Goodman, Staff Attorney, Administrative Office of the New Mexico Courts (Mar. 27, 1997); Telephone Interviews with Doug Stephens, Project Manager of Ohio Family Court Feasibility Study (May 8, 1996; Apr. 24, 1997); Telephone Interviews with Sheila Sewell, Deputy Director of the Oklahoma Administrative Office of the Courts (May 7, 1996; Mar. 27, 1997); OR. REV. STAT. § 3.405 (1995); 42 PA. CONS. STAT. ANN. § 951 (West 1981); TEX. GOV'T CODE ANN. § 24.601 (West 1988); Telephone Interviews with Ron Witkowiak, Wisconsin District Court Administrator (Aug. 28, 1995), and Cindy Hapka, Office of Wisconsin District Court Administrator (Mar. 20, 1997). *See also infra* Appendix B.

60. These states are Louisiana and Mississippi. *See* LA. REV. STAT. ANN. § 13:1407 (West Supp. 1997); MISS. CODE ANN. § 43-23-1 (1993).

trial courts,⁶¹ two states utilize departments of existing trial courts to hear family law matters,⁶² and one state has separate courts in larger counties and divisions of existing courts in smaller counties.⁶³

Nine states have planned or currently operate pilot family court projects in an effort to explore new ways to handle family law matters.⁶⁴ Seven states among the nine already operate pilot family court projects,⁶⁵ six as divisions of existing trial courts and one as a separate family court.⁶⁶ Two other states must design and implement family courts, having received legislative mandates to do so.⁶⁷ One of these states plans to operate the court as a division of the trial court,⁶⁸ and the other state expects to establish a separate family court.⁶⁹

61. These states are Alabama, Colorado, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Pennsylvania, and Wisconsin. See ALA. CODE § 12-17-24.1 (1995); Telephone Interview with Cheri Kester, Office of the Colorado State Court Administrator (Apr. 10, 1997); MO. REV. STAT. § 487.010 (Supp. 1997); NEV. REV. STAT. § 3.0105 (Supp. 1995); Telephone Interviews with Fern Goodman, Staff Attorney, Administrative Office of the New Mexico Courts (June 5, 1996; Mar. 27, 1997; Apr. 24, 1997); OHIO REV. CODE ANN. § 3105.011 (Anderson 1996); Telephone Interview with Sheila Sewell, Deputy Director of the Administrative Office of the Oklahoma Courts (Mar. 27, 1997); 42 PA. CONS. STAT. ANN. § 951 (West 1981); Telephone Interviews with Ron Witkowiak, Wisconsin District Court Administrator (Aug. 28, 1995), and Cindy Hapka, Office of Wisconsin District Court Administrator (Mar. 20, 1997).

62. These states are Kansas and Oregon. See KAN. STAT. ANN. § 20-438 (1995); OR. REV. STAT. § 3.405 (1993).

63. This state is Texas. See Telephone Interview with Jim Hutchinson, Texas Supreme Court Administration (Mar. 27, 1997).

64. These states are California, Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, and Virginia. See CAL. FAM. CODE §§ 20000-20043 (West 1994 & Supp. 1997); STATE BAR OF GA. COMM'N ON FAMILY COURTS, REPORT AND RECOMMENDATIONS (1995) [hereinafter GA. REPORT AND RECOMMENDATIONS]; Telephone Interview with Joy L. Lee, Court Administrator, Sixth Municipal District, Circuit Court of Cook County, Illinois (Aug. 1, 1997); Kuprion v. Fitzgerald, 888 S.W.2d 679 (Ky. 1994); ME. REV. STAT. ANN. tit. 4, § 451 (West Supp. 1995); 1993 Md. Laws 198, 1996 Md. Laws 13, 1997 Md. Laws 3, and MD. CT. RULE 16-204 (effective July 1, 1998); MICH. COMP. LAWS ANN. §§ 600.1001-600.1043 (West Supp. 1997) (effective January 1, 1998); 1995 N.H. Laws 152; VA. CODE ANN. §§ 16.1-226 to 16.1-348 (Michie 1996 & Supp. 1997). See also *infra* Appendix C.

65. The seven states are California, Georgia, Illinois, Kentucky, Maine, Maryland, and New Hampshire. See CAL. FAM. CODE § 20000-20043 (West 1994); GA. CODE ANN. § 15-5-26 (Supp. 1997); Telephone Interview with Joy L. Lee, Court Administrator, Sixth Municipal District, Circuit Court of Cook County, Illinois (Aug. 1, 1997); Kuprion v. Fitzgerald, 888 S.W.2d 679 (Ky. 1994); ME. REV. STAT. ANN. tit. 4, §§ 1, 451 (West Supp. 1995); 1993 Md. Laws 198, 1996 Md. Laws 13, and 1997 Md. Laws 3; 1995 N.H. Laws 152:2.

66. This state is New Hampshire. See 1995 N.H. Laws 152:2.

67. These two states are Michigan and Virginia. See MICH. COMP. LAWS ANN. § 600.1001 (West Supp. 1997); Telephone Interview with Lelia Hooper, Director, Virginia Family Court Project (May 29, 1997).

68. This state is Michigan. See MICH. COMP. LAWS ANN. § 600.1003 (West Supp. 1997).

69. This state is Virginia. See VA. CODE ANN. § 16.1-241 (Michie Supp. 1997).

The remaining seventeen states do not possess any specialized or separate system to handle family law matters; instead, these states process family law cases as part of the general civil trial docket.⁷⁰

70. These states are Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Utah, West Virginia, and Wyoming. See ALASKA STAT. §§ 22.10.020, 22.15.030 (Michie 1996), ALASKA STAT. § 47.10.65 (Michie 1995), Telephone Interviews with Stephanie Cole, Deputy Director, Administrative Office of the Alaska Courts (July 11, 1995; Mar. 5, 1997); ARIZ. CONST. art. VI, §§ 14, 15, ARIZ. REV. STAT. ANN. § 25-311 (West Supp. 1997), ARIZ. REV. STAT. ANN. § 8-202 (West Supp. 1996), ARIZ. REV. STAT. ANN. § 8-102.1 (West 1989), Telephone Interviews with Mary Lou Quintana, Arizona Division Director (July 11, 1995), and Agnes Felton, Division Director of Arizona Court Services (Mar. 5, 1997); ARK. CODE ANN. § 9-27-306 (Michie Supp. 1995), ARK. CODE ANN. § 16-13-201 (Michie 1994), ARK. CODE ANN. § 9-12-301 (Michie 1993), ARK. CODE ANN. § 28-1-104 (Michie 1987), Telephone Interviews with James D. Gingerich, Director of Arkansas Administrative Office of the Courts (June 23, 1995), and Leslie Steen, Clerk of the Arkansas Supreme Court (Mar. 5, 1997); CONN. GEN. STAT. ANN. §§ 46b-42, 46b-93, 46b-121, 46b-174, 46b-180 (West 1995), Telephone Interviews with Robert Tompkins, Deputy Director of the Family Division, a social services arm of the Superior Court in Connecticut (Aug. 16, 1995), and Paula Campo, Connecticut Family Division Administrator (Mar. 5, 1997); IDAHO CODE § 32-715 (1996), IDAHO CODE §§ 16-2002(a), 20-502, 20-503 (Supp. 1996), IDAHO CODE §§ 16-1602, 16-1603 (1979 & Supp. 1997), Telephone Interviews with Thomas Frost, Legal Counsel, Administrative Office of the Idaho Courts (July 7, 1995), and Jana Saxton, Assistant to Mr. Frost (Mar. 20, 1997); IND. CODE ANN. § 31-6-2-1.1 (Michie Supp. 1996), IND. CODE ANN. §§ 33-4-4-3, 33-8-2-9, 33-8-2-10 (Michie 1992), IND. CODE ANN. §§ 33-5-4.5-1 to 33-5-50-11 (Michie 1992 & Supp. 1996), Telephone Interviews with Jack Stark, Staff Attorney, Division of Indiana State Court Administration (July 17, 1995; Mar. 27, 1997), and Jeff Berkovitz, Director of Indiana Probate and Juvenile Services (July 3, 1997); IOWA CODE ANN. §§ 598.2, 600.3, 602.7101 (West 1997), IOWA CODE ANN. §§ 232.61, 232.109 (West 1994 & Supp. 1997), Telephone Interviews with David Ewert, Director of Iowa Appellate Screening (July 7, 1995; Mar. 20, 1997); MINN. STAT. ANN. §§ 260.019, 260.021 (West 1992), MINN. STAT. ANN. § 260.111 (West 1992 & Supp. 1997), MINN. STAT. ANN. §§ 518.002-518.66 (West 1990 & Supp. 1997), Telephone Interviews with Steve Forestell, Director of Minnesota Judicial Advisory Service (July 27, 1995; Apr. 3, 1997); MONT. CODE ANN. §§ 40-4-104, 40-6-109, 41-3-103, 41-5-203 (1997), Telephone Interviews with Chris Wethern, Staff Attorney, Administrative Office of the Montana Courts (June 29, 1995; Mar. 20, 1997); NEB. REV. STAT. §§ 24-517 (1995 & Supp. 1996), NEB. REV. STAT. §§ 42-348, 43-247 (1993 & Supp. 1996), Telephone Interviews with Joseph C. Steele, Nebraska Court Administrator (June 29, 1995), and Sherry Lampe, Assistant Nebraska Court Administrator (Mar. 27, 1997); N.C. CONST. art. VI, § 1, N.C. GEN. STAT. §§ 7A-517(9), 7A-523, 50-4 (1995), Telephone Interviews with Fred M. Morelock, North Carolina District Court Judge (June 29, 1995), and Betty Wall, Assistant Clerk of the North Carolina Supreme Court (Mar. 20, 1997); N.D. CENT. CODE § 27-20-04 (1989), N.D. CENT. CODE §§ 14-12.1-02, 14-15-01 (1981), N.D. CENT. CODE § 27-20-03 (1974), Telephone Interviews with Sherry Mills Moore, Chair of Ad Hoc Commission on North Dakota Family Law (Aug. 30, 1995), and Keithe Nelson, North Dakota Courts Administrator (Mar. 27, 1997); S.D. CODIFIED LAWS §§ 25-3-1, 25-5A-5, 25-6-6, 26-7A-2 (Michie 1992), S.D. CODIFIED LAWS §§ 25-10-2, 26-7A-1 (Michie 1992 & Supp. 1997), Telephone Interviews with Michael Buenger, South Dakota State Court Administrator (Aug. 30, 1995), and Ken Olander, South Dakota State Court Administrator's Office (Apr. 3, 1997); TENN. CODE ANN. §§ 37-1-103, 37-1-104, 37-1-203, 37-1-205 (1996), TENN. CODE ANN. § 16-15-406 (1994), Telephone Interviews with Jean Stone, Staff Attorney, Tennessee Administrative Office of the Courts (June 29, 1995), and Jona Coppola, Assistant to Director of Tennessee Administrative Office of the Courts (Mar. 20, 1997); UTAH CODE ANN. §§ 78-3a-17, 78-3a-104 (1996), UTAH CODE ANN. § 30-3-16.1 (1995), Telephone Interviews with Brant Johnson, Acting General Counsel, Utah Adminis-

2. Operational Aspects of Family Law Adjudicatory Systems

In addition to comprehending the court's general structure, it is important to examine in more detail the function of a state's family law adjudicatory system. Answering the following questions for each jurisdiction assists with an understanding of the system's goals and performance related to family law decisionmaking. Does the court with subject matter jurisdiction over family law cases have comprehensive jurisdiction to hear a broad range of family legal issues, or is the subject matter jurisdiction limited to certain types of family law cases? How long do judges sit on the family law docket and thereby have the potential to develop a degree of specialization in family law decisionmaking? Are cases assigned in a manner that allows one judge to hear a family law case from beginning to end, or do the litigants appear before several judges for determination of the same or related legal issues, such that all the judges may lack familiarity with the litigants and their family legal matters? This analysis can clarify the extent to which the system offers a comprehensive and coordinated approach to family law decisionmaking.

The family law subject matter jurisdiction of the eleven statewide family law adjudicatory systems varies considerably. Six jurisdictions⁷¹ assign comprehensive jurisdiction⁷² to the courts, thereby enabling the courts to decide a broad range of family legal issues. The remaining five states limit the courts' jurisdiction to hear various aspects of family law cases.⁷³ For example, the New York Family Court does not have jurisdic-

trative Office of the Courts (July 27, 1995), and Cheryl May, Utah Public Information Officer (Mar. 20, 1997); W. VA. CODE §§ 48-2-5, 48-4-14, 49-5-2 (1996), Telephone Interviews with Penny Crandall, Assistant Director for West Virginia Family Law Master Program (Aug. 17, 1995; Mar. 21, 1997); WYO. STAT. ANN. §§ 1-22-104, 5-5-135, 14-1-203, 14-2-106, 14-6-203, 20-2-104 (Michie 1997), Telephone Interviews with Allen Johnson, Senior Staff Attorney, Wyoming Administrative Office of the Courts (July 27, 1995), and Elaine Kirby, Fiscal Specialist for Wyoming Administrative Office of the Courts (Mar. 20, 1997). See also *infra* Appendix D.

71. These jurisdictions are Delaware, the District of Columbia, Hawaii, New Jersey, Rhode Island, and South Carolina. See DEL. CODE ANN. tit. 10, §§ 921-928 (Supp. 1996); D.C. CODE ANN. § 11-1101 (1995), D.C. CODE ANN. §§ 16-2301 to 16-2365 (1997); HAW. REV. STAT. §§ 571-11 to 571-14 (1997); N.J. STAT. ANN. § 2A:4A-24 (West 1987); R.I. GEN. LAWS § 8-10-3 (Supp. 1996); S.C. CODE ANN. § 20-7-736 (Law Co-op. 1985 & Supp. 1996).

72. See *supra* note 1 (defining comprehensive jurisdiction).

73. These states are Florida, Massachusetts, New York, Vermont, and Washington. See *In re Report of the Comm'n on Family Courts*, 588 So. 2d 586 (Fla. 1991); MASS. GEN. LAWS ch. 215, § 3 (1989); N.Y. FAM. CT. ACT § 115 (McKinney 1983 & Supp. 1997); VT. STAT. ANN. tit. 4, § 454 (Supp. 1997); WASH. REV. CODE § 26.12.010 (1997).

tion over a divorce action, although it maintains jurisdiction over support, child custody, and distribution of marital property proceedings.⁷⁴

The eleven jurisdictions with fully operational statewide family courts, divisions, or departments also differ with regard to the length of a judge's term in this setting, as well as with regard to their method of assigning cases to a judge. The length of a judge's term within these systems varies from nine months⁷⁵ to a life term upon appointment to the court.⁷⁶ Five states among the eleven generally assign family law cases to the judges for the duration of the case,⁷⁷ including any motions or modifications related to the case.⁷⁸ One state assigns a particular family to a specific judge, so that each time family members appear in court on any family law matter, they appear before the same judge.⁷⁹ One state's preferred method is to assign a particular family to a specific judge, although each

74. The New York Family Court has jurisdiction over the following: child abuse and neglect proceedings, support proceedings, child custody, distribution of marital property, conciliation, proceedings concerning physically handicapped and mentally defective or retarded children, paternity, termination of custody based on neglect, proceedings concerning whether a person is in need of supervision, and proceedings concerning juvenile delinquency. See N.Y. FAM. CT. ACT § 115 (McKinney 1983 & Supp. 1997).

75. Judges in the District of Columbia sit in the Family Division for nine months. Within the Family Division, judges hear particular types of cases, with assignments made by the chief judge and ranging from ninety days to nine months. See Telephone Interview with Edward Ricks, Director of the District of Columbia Family Division (June 27, 1997).

76. Judges in Massachusetts and Rhode Island serve for life terms. See Telephone Interview with William F. Ryan, Jr., Assistant Court Administrator, Probate and Family Court of the State of Massachusetts (May 7, 1997); R.I. GEN. LAWS § 8-16.1-7 (Supp. 1996).

77. These states are Hawaii, New Jersey, New York, Rhode Island, and Vermont. See Telephone Interview with Richelle Kawasaki, Clerk to Judge Michael Town in Hawaii (Aug. 2, 1995); Telephone Interview with Marie Pirog, Staff Attorney for the New Jersey Family Law Division (May 19, 1997) (In the smallest counties of New Jersey, one judge hears all cases; thus, the one judge/one family model applies. In slightly larger counties, one judge is assigned specifically to the Family Division, and that judge hears all family law cases, again corresponding to the one judge/one family model. In the larger counties, the systems vary. In some counties, individual judges specialize in one aspect of family law and only hear cases on that particular issue, suggesting a one judge/one case approach. In other counties, the cases are assigned on a rotational basis, corresponding to a traditional calendar assignment.); Telephone Interview with Andrea Hoyt, Court Analyst for the New York Office of Court Administration (May 7, 1997); Telephone Interview with Anthony Panichas, Deputy Administrator for the Rhode Island Family Court (May 19, 1997); Telephone Interview with Lee Suskin, Vermont State Court Administrator (May 23, 1997).

78. See Joseph A. Trotter, Jr. & Caroline S. Cooper, *State Trial Court Delay: Efforts at Reform*, 31 AM. U. L. REV. 213, 223, 223 n.55 (1982) (describing this type of case assignment as an "individual" system, "a type of assignment that calls for more accountability for each case by the particular judge to whom the case is assigned).

79. Delaware assigns one judge to all family law proceedings involving the same family. See Telephone Interview with Michael Arrington, Director of Delaware Special Court Services (June 26, 1997).

judicial circuit may adopt its own case assignment method.⁸⁰ Four jurisdictions⁸¹ assign family law cases to judges in the same manner as other civil assignments, on a daily, weekly, monthly, or other regularly scheduled basis,⁸² thus, one judge may not hear a case from start to finish.

Of the fourteen states with separate family courts, divisions, or departments within selected areas of the state, only one state authorizes comprehensive subject matter jurisdiction.⁸³ The term length for a judge assigned to a family law tribunal in one of these fourteen states ranges from two years⁸⁴ to an indeterminate assignment.⁸⁵ Four states among the fourteen assign family law cases to judges in the traditional manner of civil assignment at regular intervals, so that the potential exists for more than one judge to hear aspects of the same case.⁸⁶ Four states assign one judge to a family for all family law proceedings involving the family,⁸⁷ and three

80. The Supreme Court of Florida strongly suggests one judge/one family. See *In re Report of the Comm'n on Family Courts*, 633 So. 2d 14, 17 (Fla. 1994). Each judicial circuit may adopt its own case assignment method, however. See Telephone Interview with Gwen Stewart, Senior Attorney for the Florida Family Court (Apr. 11, 1997).

81. These jurisdictions are the District of Columbia, Massachusetts, South Carolina, and Washington. See Telephone Interview with Christopher Brown, Clerk to Judge George Mitchell in the District of Columbia (July 1, 1996); Telephone Interview with William F. Ryan, Jr., Assistant Court Administrator, Probate and Family Court of the State of Massachusetts (May 7, 1997); Telephone Interview with Mary Schroeder, Deputy Director of South Carolina Court Administration (May 19, 1997); WASH. REV. CODE ANN. §§ 2.08.060-2.08.064 (West 1988 & Supp. 1997).

82. See Trotter & Cooper, *supra* note 78, at 223 & n.54 (terming this type of case assignment the "master" system," with advantages such as "maximum use of available judge time; uniform application of policies; [and] development by judges of specialization in particular departments, i.e., settlement conferences, complex motions, juvenile matters, etc.").

83. This state is Nevada. See NEV. REV. STAT. § 3.223 (Supp. 1995).

84. The judge's term is two years in New Mexico. See Telephone Interview with Fern Goodman, Staff Attorney, Administrative Office of the New Mexico Courts (June 5, 1996).

85. At present, the one judge appointed to the Family Department of the District Court in Douglas County, Kansas, can serve as the Family Department judge as long as she pleases. See Telephone Interview with Kathy Kirk, Kansas Judicial Center (Aug. 4, 1997).

86. These states are Louisiana, Nevada, Ohio, and Oregon. See Telephone Interview with Julie Ray, Family Court Administrator for East Baton Rouge Parish, Louisiana (May 20, 1997); Telephone Interview with Kathy Harrington, Assistant Law Librarian, Office of Washoe County, Nevada, Family Court Judge Scott Jordan (Apr. 10, 1997); Telephone Interview with Doug Stephens, Project Manager of Ohio Family Court Feasibility Study (May 27, 1997); Telephone Interviews with Susanne Kolar, Lead Worker for Oregon Family Law Domestic Relations Department (May 21, 1997; June 26, 1997).

87. These states are Kansas, Mississippi, Oklahoma, and Pennsylvania. See Telephone Interviews with Kathy Kirk, Kansas Judicial Center (May 7, 1996; Apr. 3, 1997); MISS. CODE ANN. § 43-23-1 (1993); Telephone Interviews with Dave Hill, Court Administrator for Tulsa County, Oklahoma, and Robert Martin, Trial Court Administrator for Oklahoma County, Oklahoma, District Court (May 27, 1997); Telephone Interview with Don Harris, Director of Policy, Research and Statistics for the Administrative Office of Pennsylvania Courts (May 28, 1997).

states assign one judge per family in some areas of the state.⁸⁸ Three states follow the one judge/one case method of case assignment, where one judge may complete a case yet may not hear another family law proceeding involving the same family.⁸⁹

Among the nine states that recently have begun the process of implementing pilot or planned family courts,⁹⁰ four states have chosen to offer comprehensive subject matter jurisdiction,⁹¹ and five have assigned limited family law subject matter jurisdiction.⁹² The term length for judges in these courts can vary from one or several days⁹³ to permanent judicial assignments.⁹⁴ Four of the seven states currently operating pilot family court projects assign cases by the one judge/one family method.⁹⁵ One pilot

88. These states are Colorado, Missouri, and Texas. For instance, in Colorado Springs County, Colorado follows the one judge/one family method of case assignment, if possible, while Denver County follows the traditional calendar method. *See* Telephone Interview with Cheri Kester, Office of the Colorado State Court Administrator (Apr. 10, 1997). In Missouri, case assignment varies by circuit. *See* Telephone Interview with Gary Waint, Director of Missouri Juvenile and Family Court Programs (May 20, 1997). In Texas, assignment of cases varies by individual counties. Thus, courts use both one judge/one family and the traditional calendar assignment. *See* Telephone Interview with Jim Hutchinson, General Counsel, Office of the Texas Court Administrator (May 28, 1997).

89. These states are Alabama, New Mexico, and Wisconsin. *See* Telephone Interview with Peg Walker, Director of Research and Planning at the Alabama Administrative Office of Courts (May 20, 1997); Telephone Interview with Belinda Demaree, Office of Judge Anne Kass, presiding New Mexico Family Court Judge, 2nd Judicial District (May 27, 1997); Telephone Interview with Cindy Hapka, Office of Wisconsin District Court Administrator (May 27, 1997).

90. The nine states are California, Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, and Virginia. *See infra* Appendix C.

91. The four states are Georgia, Maryland, Michigan, and Virginia. *See* GA. REPORT AND RECOMMENDATIONS, *supra* note 64, at 5-6; 1993 Md. Laws 198 and MD. CT. RULE 16-204 (effective July 1, 1998); MICH. COMP. LAWS ANN. § 600.1021 (West Supp. 1997) (effective Jan. 1, 1998); VA. CODE ANN. § 16.1-241 (Michie Supp. 1997).

92. The five states are California, Illinois, Kentucky, Maine, and New Hampshire. *See* CAL. FAM. CODE §§ 20010-31 (West 1994 & Supp. 1997); John Flynn Rooney, *5th Municipal District Opens Unified Family Court Project*, DAILY L. BULL., July 22, 1997, at 1; Telephone Interviews with Jim Birmingham, Kentucky Family Court Administrator (May 8, 1996), and Carla Prather, General Counsel for the Jefferson County, Kentucky, Family Court (Apr. 24, 1997); Telephone Interviews with Judge Joyce A. Wheeler, Director of Maine Family Court Pilot Project (Aug. 18, 1995; Apr. 3, 1997); 1995 N.H. Laws 152:2.

93. In Maine, only one judge for each pilot project site sits primarily in the Family Court Pilot Project; other judges usually sit from one to several days at a time. *See* Telephone Interviews with Judge Joyce A. Wheeler, *supra* note 92.

94. In Kentucky, there are nine judges assigned to the Jefferson County Family Court Pilot Project. Four of these positions are permanent assignments to the Family Court Pilot Project. The remaining five judges can rotate out of the Family Court Pilot Project; only one judge has made such a choice since the inception of the project in 1991. *See* Telephone Interview with Carla Prather, General Counsel for the Jefferson County, Kentucky, Family Court (Apr. 24, 1997).

95. These states are California, Illinois, Kentucky, and New Hampshire. *See* Telephone Interview with Julie Lara, Legal Clerk, Santa Clara County, California, Clerk's Office (June 4, 1997);

family court project assigns cases by the traditional manner of assignment at regular intervals.⁹⁶ The remaining two pilot or planned family court projects have not determined how to assign cases.⁹⁷ Two of the planned family courts have chosen to assign one judge to one family for all family law matters.⁹⁸

Seventeen states process family law cases as part of the court system's general civil trial assignment, with no coordinated approach to family law decisionmaking and with no foreseeable plan to alter this system.⁹⁹ In these states, family members can appear in as many as four courts for resolution of various family legal issues.¹⁰⁰ Within these seventeen states, the average number of courts with jurisdiction over family law matters is two.¹⁰¹

C. THE NEED FOR REFORM

This survey of court structure and operation illustrates the attempts some court systems have made to integrate and coordinate their handling of family and child legal proceedings. The survey also highlights the extent to which many adjudicatory systems retain fragmented, limited, and overlapping family law subject matter jurisdiction, therefore hindering the court's ability to address the special issues of family law decisionmaking. The problems that result from this lack of integration are extensive, and

Telephone Interview with Joy L. Lee, Court Administrator, Sixth Municipal District, Circuit Court of Cook County, Illinois (Aug. 1, 1997); FAMILY CT. NEWSLETTER: JEFFERSON COUNTY, PILOT PROJECT, (Jefferson County, Ky., Family Court), Mar. 8, 1991, at 4; Telephone Interview with Craig Briggs, Administrator of New Hampshire Family Division Project (June 2, 1997).

96. This state is Maine. See Telephone Interview with Diane Harvey, Clerk of Administrative Court and Clerk of Maine Family Court Pilot Project (May 28, 1997).

97. These states are Georgia and Maryland. See GA. REPORT AND RECOMMENDATIONS, *supra* note 64, at 5-6; Telephone Interview with Judith Moran, Family Division Case Coordinator, Baltimore City, Maryland (May 1, 1997).

98. These states are Michigan and Virginia. See MICH. COMP. LAWS ANN. § 600.1023 (West Supp. 1997) (effective January 1, 1998); Telephone Interview with Lelia Hooper, Director, Virginia Family Court Project (May 29, 1997).

99. These states are Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Utah, West Virginia, and Wyoming. See *supra* note 70.

100. In Indiana, for example, the circuit court, superior court, municipal court, and county court all possess family law subject matter jurisdiction. See Telephone Interviews with Jack Stark, Staff Attorney, Division of Indiana State Court Administration (July 17, 1995), and Jeff Berkovitz, Director of Indiana Probate and Juvenile Services (July 3, 1997).

101. See *infra* Appendix D.

have been the focus of many studies at the national, state, and local levels.¹⁰²

Traditionally, the legal system has separated civil and criminal matters, and it has distinguished among classes of cases within these categories.¹⁰³ When applied to family law decisionmaking, this configuration has resulted in conflicting jurisdiction among courts, unpredictable decisionmaking, a waste of judicial and litigant resources, successive appeals, and inefficient court administration.¹⁰⁴ Particularly for litigants experiencing multiple family law problems, this traditional structure has created serious negative consequences. According to an A.B.A. study,

[i]n virtually all cases, in virtually all communities, the myriad courts and social service agencies do not communicate adequately with each other, resulting in unnecessary delay, duplication and contradictory rul-

102. See STEPHEN P. JOHNSON, *JUST SOLUTIONS: SEEKING INNOVATION AND CHANGE IN THE AMERICAN JUSTICE SYSTEM* (1994) (reporting on the American Bar Association's national conference in 1994 to encourage dialogue among lawyers, judges, and the public regarding needed justice system improvements); CALIFORNIA SENATE TASK FORCE ON FAMILY RELATIONS COURT, SENATE TASK FORCE ON FAMILY RELATIONS COURT: FINAL REPORT 1-6 (1990) (describing problems for family law litigants within California's court system such as multiple hearings, conflicting orders, unrealistic expectations, delay in receiving services, and inadequate allocation of court resources); GOVERNOR'S CONSTITUENCY FOR CHILDREN, A FAMILY COURT FOR FLORIDA 10-11 (1988) (defining high volume, delay, lack of coordination, and inconsistency as issues in Florida's handling of family law matters); GA. REPORT AND RECOMMENDATIONS, *supra* note 64, at 13-14 (summarizing problems of confusion, inefficiency, unnecessary adversarialism, delay, conflicting rulings, extended appeals, lack of services, and untrained or unqualified court personnel regarding the Georgia court system's handling of family law matters); E. HUNTER HURST & JEFFREY A. KUHN, A FAMILY DEPARTMENT FOR THE DISTRICT COURTS OF KANSAS : RECOMMENDATIONS FOR IMPLEMENTATION 5-6 (1993) (identifying the excessive volume of juvenile and family legal matters, the need for a coordinated approach for the same child or children, and a lack of justice system resources for family law cases as the major problems plaguing Kansas' court system); JEFFERSON FAMILY COURT DEV. PROJECT, INTERIM REPORT TO THE COURT: JEFFERSON FAMILY COURT PILOT PROJECT 10 (1992-93) (describing the Kentucky court system's treatment of family law matters as uncoordinated with overlapping jurisdiction and piecemeal decisionmaking); RHODE ISLAND FAMILY COURT STUDY COMM., REPORT OF THE FAMILY COURT STUDY COMMITTEE 2-3, 5 (1957) (documenting Rhode Island's system of overlapping jurisdiction, inadequate court personnel, and lack of coordination in handling family law matters); VIRGINIA FAMILY COURT PILOT PROJECT ADVISORY COMM., REPORT ON THE FAMILY COURT PILOT PROJECT 21, 28 (1992) (finding that Virginia's court system is inconvenient, inefficient, uncoordinated, backlogged, and unpredictable for family law litigants); KING COUNTY BENCH/BAR TASK FORCE, UNIFIED FAMILY COURT 8 (1994) (summarizing problems within the court system of King County, Washington, as barriers to access the system, lack of case finality, lack of specialized family law training for court staff, and ineffective coordination and sharing of information among court agencies and outside agencies).

103. See Williams, *supra* note 5, at 385-86.

104. See Pound, *supra* note 46, at 162. See also MAXINE BOORD VIRTUE, *FAMILY CASES IN COURT* (1956) (discussing an early comprehensive study of family law case handling by court systems in Chicago, Illinois; Indianapolis, Indiana; San Francisco, California; and Toledo, Ohio).

ings and recommendations. Moreover, the same family may have to appear in a family court, a juvenile court and a probate court, all of which are located in different parts of the community. This system wastes money and does not serve children well.¹⁰⁵

A Maryland study identified impediments that are typical of those plaguing many court systems nationwide, for which many of those states seek a solution.¹⁰⁶ The report listed the following as the most pressing concerns:

- (1) the resolution process is often time-consuming, expensive, and cumbersome, with some aspects of the dispute being adjudicated more than once;
- (2) proper attention is not being given to child-related issues, which are being allowed to fester as part of other aspects of a family-law dispute;
- (3) there is inadequate systemic resort to non-judicial resolution techniques (ADR) that might provide better, quicker, cheaper, and less acrimonious solutions to many of these kinds of cases;
- (4) there is inadequate coordination and consolidation of litigation involving the same family—a case, or several cases, involving the same family may be dealt with by different judges or masters, or even by different courts—thus inhibiting a rational, coordinated, stable approach to both the litigation and the problems that spawned it;
- (5) in some instances, judges sitting on family-law cases display either a lack of interest, a lack of temperament, or a lack of understanding with respect to these cases; and
- (6) the courts are not giving proper attention to the special needs of poor people, who often cannot afford representation by counsel and need, or desire, to proceed *pro se*.¹⁰⁷

The prevailing fragmented approach to family law adjudication in this country does not allow one court the opportunity to hear the total extent of a family's problems, thereby depriving any court of the power to com-

105. A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 53-54. *See also* Williams, *supra* note 5, at 388. Williams provides an example of the negative consequences of judicial inconsistency: [I]n an abuse case the judge may have determined that a father has sexually abused his daughter and prohibited his future contact with the daughter. However, in the concurrent dissolution of marriage action between the child's parents, a second judge may have excluded evidence of the father's sexual misconduct and ultimately ordered visitation between the father and daughter.

Id. (citation omitted).

106. *See supra* note 102; *infra* note 107.

107. ROBERT C. MURPHY, REPORT OF THE FAMILY DIVISION REVIEW COMMITTEE 6-7 (1993) (reporting results of a legislatively mandated study summarizing two in-depth reports about Maryland's family law adjudicatory system).

pletely resolve family legal matters¹⁰⁸ and exposing the system to manipulation by the litigants.¹⁰⁹

The negative consequences of this approach to family law decision-making become more apparent in light of the sheer magnitude of family law cases. Nationally, divorce cases constitute over 50% of all civil actions filed in trial courts.¹¹⁰ In the decade from 1984 until 1994, the number of juvenile cases has increased nationwide 59% and the number of family law cases has increased 65%.¹¹¹ This staggering volume exposes the pressing need to reform the judicial system so that courts can resolve family law cases in a more comprehensive, coordinated, and effective manner.¹¹²

II. A THEORETICAL PERSPECTIVE ON COURT REFORM

A. PLANNED CHANGE AND A PROBLEM-ORIENTED APPROACH

The legal adjudication process in America is seriously overloaded, due to crowded dockets, inefficient operations, delay, and lack of resources.¹¹³ Particularly in the area of family law, one must acknowledge that courts cannot resolve all the problems a family brings to the court system, especially when those problems may have had their genesis in the community, workplace, church, school, or other social institution.¹¹⁴ Yet,

108. See *Dunn v. Wescott*, 366 N.Y.S.2d 291, 296 (N.Y. Fam. Ct. 1975). A New York family court judge commented on the court's lack of power to resolve all the issues in the case:

The court regrets the delay created for the litigants because of our failure to dispose of all the issues raised. It is but another sad example of the unworkability of our present court system wherein there is a partial but not total overlap of authority and responsibility. This situation can only be corrected by knowledgeable and realistic court reform.

Id.

109. See *Williams*, *supra* note 5, at 388 (suggesting that unhappy litigants can file successive actions in different courts in systems where fragmentation exists).

110. See *Jana B. Singer, The Privatization of Family Law*, 1992 WIS. L. REV. 1443, 1562-63.

111. See *Barnes*, *supra* note 12, at 22.

112. See *Singer*, *supra* note 110, at 1563.

113. See *Richard A. Posner, An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399 (1973) (applying economic theory to increase understanding of court operations). See also *Gabrielle Tracey Letteau, Note, Crisis in California: Constitutional Challenges to Inadequate Trial Court Funding*, 22 HASTINGS CONST. L.Q. 557 (1995) (detailing the increase in recent case filings in California contrasted with decreased financial support for the judiciary and advancing four arguments in support of increased court funding).

114. See *MALCOLM M. FEELEY, COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL* xiii (1983). See also *Steven Keava, Demanding More Justice*, A.B.A. J., Aug. 1994, at 46 (focusing on popular perceptions of and expectations from the justice system).

the court system can provide more assistance to efficiently resolve cases and to enhance the quality of families' lives than it presently offers.

Court reform in family law must begin, like other court reform projects, as a planned process of change.¹¹⁵ After demonstrating a need for change, or acknowledging problems connected to court operations,¹¹⁶ one must clarify and understand the context of the problems. This is a difficult task, however, for many reasons:

Courts are not what they appear to be. The nature of their problems is not always evident. The law as written does not capture the real structure and operations of the courts. One of the central problems of the courts is that there is no agreement on what constitutes acceptable practice and hence no agreement on what improvements should be made. Practices that are regarded by some as signs of decline may, when seen through someone else's eyes, be seen as strengths.¹¹⁷

In addition, large case volumes¹¹⁸ necessitate a focus on changes designed to increase court efficiency and on internal or management

115. See, e.g., Edward B. McConnell, *Planning for the State and Federal Courts*, 78 VA. L. REV. 1849, 1849-50 (1992) (outlining five components of a planned change process, including assigning responsibility for the plan to a specific individual or group; involving all of those who will be affected by the result in the planning process; articulating the plan in writing; broadly disseminating and explaining the plan; and reviewing the plan periodically to revise it, if necessary).

116. See Cavanagh & Sarat, *supra* note 23, at 375. The authors discuss specific court problems: Court capacity refers to the fit between what courts are and what they do: to the way in which the resources, expertise and procedures of courts bear on their ability to provide effective resolution of the cases they handle. Some issues and problems cannot, according to critics of the courts, be resolved through judicial procedures. Nonetheless, the "explosion" of law brings such matters into the courts. The result is a "crisis" of competence or capacity. *Id.* (citation omitted). The authors argue, however, that courts can cope with these problems of competence or capacity by adapting but not significantly changing essential court functions of impartiality, due process, and application of legal rules to the facts of the case. See *id.* at 376-78.

117. FEELEY, *supra* note 114, at xii. But see, e.g., Margaret A. Jacobs, *Reliable Data About Volume of Lawsuits Filed Are Very Scarce*, DAILY REC., July 15, 1995, at 13 (arguing that outdated court recordkeeping systems, particularly in state courts, preclude accurate assessment of numbers and types of civil case filings and that Congress should fund an improved data collection system to more accurately assess courts' functioning).

118. See *supra* note 4. But see, e.g., Harry N. Scheiber, *Innovation, Resistance, and Change: A History of Judicial Reform and the California Courts, 1960-1990*, 66 S. CAL. L. REV. 2049, 2051 (1993). Scheiber cautions that statistics about court caseloads may lead to false assumptions about the nature of problems of delay and congestion in the court system. See *id.* Accordingly, with regard to many procedural reforms aimed at eliminating delay and congestion, "the reforms have seldom been truly successful." *Id.* at 2052 (citation omitted); Trotter & Cooper, *supra* note 78, at 213. Trotter and Cooper identify resolution of case delay as the major court reform activity and describe research projects focusing on delay, which they argue is a subjective term that avoids quantitative definition. See *id.* at 213, 220. The authors define court backlog, an issue related to case delay, "as that portion of a court's active caseload that could not be disposed of within the period of acceptable [or tolerable] delay." *Id.* at 221 (emphasis in original). Their article elucidates the difficulties attendant to defining terms related to court reform, such as how to define a case. See *id.*; Posner, *supra* note 113, at 445-48

changes.¹¹⁹ The adversary system itself can operate to inhibit reform, as the emphasis generally is on the individual litigants, rather than on systemic issues.¹²⁰

The planned change process can occur by applying a "problem-oriented approach"¹²¹ to the issue of court reform. This approach seeks to identify a problem within the court system "as perceived and actually experienced by those who daily use and work in the courts. It insists upon a realization and a sensitivity to the details of administration. As such, it can focus on solutions to concrete problems."¹²²

Invoking this involvement by participants in the court reform process can be difficult, however. A major obstacle in any court reform effort is the unwillingness to acknowledge the need for or to contemplate change, rather than the mere resistance to change itself.¹²³ The problem-oriented

(conducting a cost-benefit analysis of durations of delay, analogizing the cost of delay with how parties utilize time while waiting in line, and finding that delay can benefit parties if it encourages them to settle).

119. See Martha J. Dragich, *Once a Century: Time for a Structural Overhaul of the Federal Courts*, 1996 WIS. L. REV. 11, 16-17.

120. See Cavanagh & Sarat, *supra* note 23, at 384-85. The authors suggest that courts have difficulty resolving disputes where the parties maintain an interdependent or ongoing relationship, as in family legal proceedings. "This is an unfortunate approach to adjusting tensions within relationships involving trust, spontaneity, and reciprocity. Here adjudication has the tendency to disrupt rather than to heal, forcing people to cast their relationships in terms of rights and cognizable grievances." *Id.* (citation omitted). See also Scheiber, *supra* note 118, at 2071. Scheiber argues that court reform is not a popular issue among society in general.

Indeed, programs of reform for court organization, structure, and procedure traditionally have not received much attention from even large segments of the bar, let alone the electorate at large, except when issues surface in ways that directly threaten particular interests, or when the specter of higher taxes awakens general interest.

Id. (citation omitted).

121. FEELEY, *supra* note 114, at 209.

122. *Id.* at 210. Feeley contrasts this approach to court reform with an administrative approach, where improvements through court coordination and enhanced management are imposed on the bureaucracy overseeing the justice system. See *id.* at 205. The proponents of administrative change often fail to understand the actual operations of the court and the substantive underpinnings of the justice system. See *id.* A problem-oriented approach to court reform differs from yet another type of court reform, namely, "rights-based reform." *Id.* at 206. Rights-based reform focuses on specific problems which translate into legally guaranteed rights, such as the right to a speedy trial in the criminal context. This is an approach more compatible with the adversarial nature of our judicial system. See *id.* at 206-07. Both an administrative approach and a rights-based approach seem less complementary than a problem-oriented approach to the family ecological focus and to the therapeutic nature of the court reform discussed in this Article.

123. See *id.* at 192. See also Scheiber, *supra* note 118, at 2114-15 (commenting on resistance to court reform efforts both nationally and in California and identifying court system professionals as the most focused opposition); Marcia M. McBrien, *Governor Signs Law Creating Michigan Family Court*, MD. FAM. L. MONTHLY, Feb. 1997, at 25 (describing Michigan's family court reform effort that began in the 1940s and resulted in legislation in 1996 to create such a court); Scott Bassett, *Legis-*

approach to court reform in family law seeks to overcome this lethargy by actively focusing on the identification of systemic deficiencies and on suggestions for improvements. This method also requires reformers to ensure that court employees, including judges, clerks, and court administrators, as well as diverse community representatives, share an understanding of the system's fundamental goals and recognize the need for change.¹²⁴

For courts to accomplish the systemic goals of family law adjudication as articulated in the Standard Family Court Act, or to effectively resolve all of a family's legal matters in a coordinated and comprehensive fashion, it becomes critical for court professionals to become more insightful about today's family. This requires acknowledging the interdependency between the family and the society at large. As one group of professors has argued:

It is apparent that all families make use of (and many more are in need of) some form of outside help in raising their children, yet we still maintain a myth of self-sufficiency. Since in reality we *are* dependent on each other, it makes little sense to perpetuate the myth that we are not. Valuing independence stigmatizes those individuals who use family services as well as those individuals who provide them. A new concept of the way in which families (and individuals) should interact with each other and the other elements of society is imperative. Why not acknowledge the interdependence that already exists? Why not see it as positive?¹²⁵

To accommodate the interdependent nature of the family when adjudicating its legal matters, the court reform process must structure courts to enable them to render services needed to assist litigants. Courts must have the ability to identify those services early in the court process and to seek and foster connections for the family with other parts of the community in order to strengthen the family members' functioning. The legal system also can consider shifting some responsibilities for decisions about families to other institutions, such as religious organizations or schools.¹²⁶ The need to understand a family's connections to the community supports the design of a court system which can maintain an active involvement in a

lature Creates Family Division of Circuit Court, 10 INST. OF CONTINUING LEGAL EDUC. FOCUS ON MICH. L. PRAC., Jan. 1997, at 1 (recounting the heated nature of legislative debate in Michigan on proposed legislation to establish a family court).

124. See JOHNSON, *supra* note 102, at 63.

125. James Garbarino, Mario Thomas Gaboury, Florence Long, Patricia Grandjean & Elliot Asp, *Who Owns the Children? An Ecological Perspective on Public Policy Affecting Children*, in 5 LEGAL REFORMS AFFECTING CHILD AND YOUTH SERVICES 43, 46-47 (Gary B. Melton ed., 1982) (citations omitted) (emphasis in original).

126. See *id.* at 59.

family's case sufficient to discern these linkages. A trained court professional may assume this role. An approach to court reform that focuses on the roles of court professionals, then, is most useful.¹²⁷

B. THE ROLES OF COURT SYSTEM PROFESSIONALS

A focus on the roles of court system professionals "yields a model of a court as an institutionalized human group, which relates the behavior of judges and other professionals to . . . court structure and function."¹²⁸ In order for the court system to operate in a coordinated manner, the system's professionals must understand one another's responsibilities and must communicate regularly regarding the system's effectiveness.¹²⁹ Given the extraordinary power of judges to render decisions in family law cases that affect all aspects of people's lives, it is important to begin the examination of court system professionals by focusing on the role of judges.

1. *Managerial Judging*

The overwhelming volume of family law cases subject to adjudication¹³⁰ presents an initial management challenge for court system professionals. Consideration of the emerging role of the federal judiciary offers assistance with this management task. In the federal context, as well as in many state courts, the judiciary have become "managerial judges."¹³¹ This

127. See Peters, *supra* note 21, at 897. The author suggests experiencing professionals' daily lives within an existing court system in order to challenge reformers' notions of reality. See *id.* at 898; Keith O. Boyum, *A Perspective on Civil Delay in Trial Courts*, 5 JUST. SYS. J. 170, 173 (1979). Boyum offers a definition of "role" in the context of the court system:

Roles are prescriptions as to how a position occupant should go about fulfilling the functions of the position. Such prescriptions emerge from the expectations which occupants of other positions in the system hold for the behavior of a position occupant. But position occupants usually have role expectations for themselves, too.

Id. (emphasis in original).

128. Boyum, *supra* note 127, at 173.

129. See FAMILIES IN COURT: RECOMMENDATIONS FROM A NATIONAL SYMPOSIUM 6 (Meredith Hofford ed., 1989) [hereinafter FAMILIES IN COURT].

130. See *supra* note 4.

131. Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 376 (1982). The author characterizes current roles of judges:

In growing numbers, judges are not only adjudicating the merits of issues presented to them by litigants, but also are meeting with parties in chambers to encourage settlement of disputes and to supervise case preparation. Both before and after the trial, judges are playing a critical role in shaping litigation and influencing results.

Id. at 376-77. See also Marjorie O. Rendell, *What Is the Role of the Judge in Our Litigious Society?* 40 VILL. L. REV. 1115, 1130 (1995). Rendell analogizes judges to parents and, specifically, to mothers:

Judges are, like parents, overseers of the day-to-day activities—the case crises, as well as the progress—but at the same time, stewards of the environment, charged with preserving it for

new image of judging presents a model quite different from the traditional notion of a judge as a detached, impartial decisionmaker.¹³² An understanding of managerial judging can assist with the attempt to improve family law adjudicatory systems. Judges hearing family law cases often are not trained to oversee such an extraordinary number of cases, nor do they possess sufficient background to handle the breadth and diversity of the legal issues comprising the cases.¹³³

Judges have tended to practice managerial judging mostly at the pretrial and posttrial phases of litigation.¹³⁴ The judges' management techniques consist of informal meetings with litigants and attorneys designed to highlight the issues subject to litigation, to enhance opportunities for settlement, and to help implement provisions of orders or decrees.¹³⁵ In both the pretrial and posttrial contexts, judges often hear evidence otherwise inadmissible in the traditional adversary courtroom setting,¹³⁶ such as hearsay evidence. To assist judges in this managerial effort, federal courts have adopted an individual calendar system, under which a judge assumes responsibility for a case from beginning to end.¹³⁷ Additionally, judges have received management assistance from enhanced computerization that permits extensive data collection and analyses about cases, as well as from court rules requiring parties to submit pretrial and trial litigation plans and case information sheets.¹³⁸

the sake of future generations. Judges enjoy the role not only of ensuring that effective, quality justice is meted out in their courtrooms today, but that the system remains capable of providing a superior quality of justice in the years to come.

Id.

132. See Resnik, *supra* note 131, at 380. Resnik describes the traditional notion of a judge: The idealized image of judicial behavior in the United States conforms to the symbolism implicit in these icons. The robes, the odd etiquette of the courtroom, and the appellation "your honor" all serve to remind both litigants and judges of the special nature—the essential estranged quality—of their relationship. Judges are exempt from the rules of normal social intercourse; they need not try to please litigants. Judges must decide the facts and apply the law regardless of the displeasure they incur. Stoic goddess, scales, sword, and blindfold are accurate emblems of this hard-edged, uncompromising task.

Id. at 383 (citation omitted).

133. See Albano, *supra* note 3, at 787. See also GARY B. MELTON, LOIS A. WEITHORN & CHRISTOPHER SLOBOGIN, COMMUNITY MENTAL HEALTH CENTERS AND THE COURTS: AN EVALUATION OF COMMUNITY-BASED FORENSIC SERVICES 76, 79 (1985) (finding that a typical trial judge lacks knowledge of and interest in the social sciences and that mental health professionals have infrequent referrals from the courts).

134. See Resnik, *supra* note 131, at 404.

135. See *id.* at 404-05.

136. See *id.* at 413.

137. See *id.* at 399.

138. See *id.*; FED. R. CIV. P. 16(a)-(c) (requiring pretrial conferences and outlining objectives, scheduling, planning, and subjects for consideration at the conference). See, e.g., MD. R. P. 2-504 to 2-504.2 (requiring scheduling orders and scheduling conferences in all civil matters, as well as permitting pretrial conferences); Robert F. Peckham, *A Judicial Response to the Cost of Litigation: Case*

Active judicial participation in the case management process, however, carries some threats to traditional notions of justice. For example, active case management by judges expands their already significant power¹³⁹ and may weaken litigants' satisfaction with and control over their cases.¹⁴⁰ In addition, the extensive case-related information judges receive, particularly at the pretrial phase, may heighten their personal biases and investments in the outcome of cases.¹⁴¹ Finally, case processing can become the goal of litigation rather than a means to achieve the parties' wishes.¹⁴² This exaggerated emphasis on case processing can obfuscate effective case resolution and potentially can harm litigants.¹⁴³

Several alternatives exist to counteract the potential negative consequences of judicial case management. One approach to managerial judging attempts to preserve judicial impartiality. This method involves assigning trials to judges other than those judges who managed the pretrial phases, although this means abandoning the individual calendar system.¹⁴⁴ Another alternative removes judges from all management tasks, which

Management, Two-Stage Discovery Planning and Alternative Dispute Resolution, 37 RUTGERS L. REV. 253, 254 (1985) (concluding that increased case management at the federal level has effectively reduced delay and litigation costs); Dick Thornburgh, *America's Civil Justice Dilemma: The Prospects for Reform*, 55 MD. L. REV. 1074, 1089-90 (1996) (advocating early and mandatory exchange of and dialogue about core discovery documents in civil lawsuits, along with court rules to that effect, in federal and state courts).

139. See Resnik, *supra* note 131, at 425. See also Judith T. Younger, *Marriage, Divorce, and the Family: A Cautionary Tale*, 21 HOFSTRA L. REV. 1367, 1376 (1993) (discussing an experimental family law case management program initiated in California and also implemented in Minnesota which gives the presiding judge enhanced discretion and settlement powers, causing some to criticize its deemphasis of due process); Donald B. King, *Judicious Intervention: What One California Judge Has Done to Expedite Settlement*, FAM. ADVOC., Spring 1997, at 22, 23, 25, 28, 30 (1997) (describing the judicial intervention and case management system for California's family law cases).

140. See Marcus, *supra* note 8, at 793.

141. See Resnik, *supra* note 131, at 427. See also Jeffrey M. Shaman, *The Impartial Judge: Detachment or Passion?*, 45 DEPAUL L. REV. 605 (1996). Shaman argues that "[p]ure impartiality is an ideal that can never be completely attained. Judges, after all, are human beings who come to the bench with feelings, knowledge, and beliefs that cannot be magically extirpated." *Id.* He supports this notion by relying on the 1990 version of the Code of Judicial Conduct, which he interprets as acknowledging the need for judges to remain part of the community and to participate in activities contributing to the improvement of the justice system. See *id.* at 609. This active community involvement enhances the ability of judges to reflect notions of legal realism in their own jurisprudential philosophies. See *id.* at 615.

142. See Resnik, *supra* note 131, at 431.

143. See Peters, *supra* note 21, at 900, 926. See also Scheiber, *supra* note 118, at 2070-71 (arguing that other disadvantages of increased managerial judging include movement by some litigants toward alternatives to the court system, along with "the diminishing judicial articulation of public values").

144. See Resnik, *supra* note 131, at 433-34.

other court personnel (such as case managers, mediators, or arbitrators) then handle, and employs judges only to resolve the traditional aspects of litigation.¹⁴⁵ Also, in an effort to decrease the need for judicial management, courts can adopt rules to resolve some of the issues that require management, such as limiting discovery.¹⁴⁶ The extraordinary volume of family law cases that requires oversight by a court system professional, however, suggests considering judges for some portion of the case management task.

2. *Judicial Specialization and Specialized Courts*

A focus on the role of the judiciary in the court reform process also draws attention to the issue of judicial specialization, particularly when considering reform within the context of a specialized court,¹⁴⁷ such as a unified family court. As the Ad Hoc Committee on Business Courts, another type of specialized court, has noted, "it is clear that in almost every field of endeavor and in every profession, the need to master a body of knowledge and to gain experience in working with that body of knowledge has created a narrower focus over time for those who work within more broadly defined fields."¹⁴⁸ Operation of a specialized court does not necessitate judicial specialization in that area of the law. Nonetheless, court organization influences judicial quality, and judicial specialization may enhance the entire adjudicatory system within which the specialized judge operates.¹⁴⁹

145. See *id.* at 435-36.

146. See *id.* at 443. See also JACK B. WEINSTEIN, REFORM OF COURT RULE-MAKING PROCEDURES 14 (1977). Weinstein discusses the value of court rules:

Rules, like legislation, permit a whole multitude of possible procedural and related issues to be decided at once, with a possible saving of judicial energy in individual cases. At the least, well-drafted rules should save judges and lawyers expensive case-law research time. A good set of rules should—in theory—also reduce appeals and reversals on nonsubstantive points. By providing more efficient court procedures, they allow courts and lawyers to accomplish more with the same expenditure of energy, enabling us to better meet the pressures of more, and more complex, litigation.

Id. See Scheiber, *supra* note 118, at 2086 (recognizing the importance of the judicial rulemaking power).

147. See Stempel, *supra* note 14, at 69-71 (defining specialized courts).

148. Ad Hoc Committee on Business Courts, *supra* note 15, at 948.

149. See Stempel, *supra* note 14, at 70-71. See also Rochelle Cooper Dreyfuss, *The Federal Circuit: A Case Study in Specialized Courts*, 64 N.Y.U. L. REV. 1, 73 (1989). Dreyfuss studies the patent jurisdiction of the Court of Appeals for the Federal Circuit, a specialized court established in 1982, and discusses general forms of court specialization:

There are many ways to create specialization. There are simple specialized courts, specialized courts with generalized judges, generalized courts with exclusive special jurisdiction, and panels with categorical case assignments. Within these paradigms there are several variations: specialization at both the trial and appellate levels; specialized trial courts with general appellate courts; or general trial fora reviewed by specialized appellate courts.

Traditionally, society has regarded specialized judges with less prestige than their generalist counterparts. The public has perceived that specialized courts attract less qualified judges, that the judges become too isolated and narrowly focused, and that the court system becomes less adaptable to changing caseloads.¹⁵⁰

Techniques exist to help reformers overcome notions of the inferior status of specialized courts and jurists. To ensure that specialized courts and jurists have the same status as their generalist counterparts, these specialized bodies must have the same resources, facilities, and support staff as the generalists. Specialized jurists also must receive the same salary and benefits as generalists.¹⁵¹

Given the benefits of judicial specialization, particularly at the trial level,¹⁵² the legal system should not support any societal imposition or notion of inferior status.¹⁵³ According to Professor Stempel,

[specialization provides] improved precision and predictability of adjudication; more accurate adjudication; more coherent articulation of legal standards; greater expertise of the bench; economies of scale that flow from division of labor, particularly including speed, reduced costs and greater efficiency through streamlining of repetitive tasks and wasted motions.¹⁵⁴

In contrast to specialized jurists, generalist judges may confront the specialized subject matter infrequently, so that they may lack the experience and the time to grasp fully the intricacies of a body of law.¹⁵⁵ The practice of rotating panels of generalist judges into specialty courts for defined time periods, as opposed to permanent judicial assignments of specialized judges, allows courts to achieve temporary specialization.¹⁵⁶ On

Id. (citation omitted). See LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 398 (1985) (urging that judges hearing family law cases demonstrate expertise in and enthusiasm for family law or, in the alternative, that judges receive mandatory training before hearing these cases and calling for the creation of specialized family law jurists); King, *supra* note 8, at 27-28 (advocating that family law judges possess a background in family law and that all family law judges undergo mandatory judicial education to enhance case and court management skills).

150. See Stempel, *supra* note 14, at 89-91. See also Dreyfuss, *supra* note 149, at 3.

151. See Stempel, *supra* note 14, at 120-21.

152. See *id.* at 112, 114 ("The specialist trial judge will be superior to the generalists in her ability to focus more quickly on the important factual issues and to apply the law with sensitivity in light of the court's institutional memory.").

153. See *id.* at 83.

154. *Id.* at 88-89 (citation omitted). See also Dreyfuss, *supra* note 149, at 2.

155. See Rochelle Cooper Dreyfuss, *Specialized Adjudication*, 1990 BYU L. REV. 377, 378.

156. See Stempel, *supra* note 14, at 116.

the other hand, rotating judges cannot reap all the benefits of specialization, since they may not continue to apply or to develop their specialization beyond the rotations.¹⁵⁷ Comprehensive specialization, or permanent assignments of specialized judges, is preferable both to incompletely specialized courts and to those composed of rotating generalist judge panels.¹⁵⁸

In order for a specialized court to have a coherent function, reformers must determine whether the court has the power to decide, to dispose of, and to supervise certain cases.¹⁵⁹ Limiting subject matter jurisdiction to a particular substantive area of law can allow judges to "see the same issues repeatedly and thus have both the time and the motivation to do the research and thinking needed to resolve them accurately."¹⁶⁰ A proper degree of subject matter specialization is required, however. If a court is too narrowly focused or specialized, inefficiency can result in that the issues contributing to the dispute may require litigation in several tribunals.¹⁶¹ The isolation of many specialized courts¹⁶² suggests that judges sitting in these courts seek to interact meaningfully with their generalist colleagues. In short, as Professor Dreyfuss finds, "specialization is neither always good nor always bad."¹⁶³

On balance, specialization of some sort may endure because of its effectiveness.¹⁶⁴ Specialization provides an efficient manner to deal with

157. *See id.*

158. *See id.* at 127.

159. *See Dreyfuss, supra* note 149, at 53. Dreyfuss discusses considerations regarding forms of specialization:

The form that specialization takes should, in short, depend on the reason that specialization is thought desirable. If the predominant interest is utilization of expertise, the implementation strategy should turn on where expertise is needed. When the law is clear but difficult to apply to complex factual situations, the place to specialize is at the trial. When the facts are clear but the law is complex, or in need of judicial elaboration, expertise would be more valuable at the appellate level where the court could make needed doctrinal innovations without concern for creating disuniformity.

Id. at 74.

160. Rochelle C. Dreyfuss, *Forums of the Future: The Role of Specialized Courts in Resolving Business Disputes*, 61 BROOK. L. REV. 1, 16 (1995) (citation omitted). *See also Dreyfuss, supra* note 155, at 409 ("The more intricate the law, the more likely it is that a generalist will get things wrong, confuse matters, and encourage additional litigation. The more complicated the facts of a case, the more the judge must master before the case can be decided at all.")

161. *See Dreyfuss, supra* note 160, at 20.

162. *See id.* at 17.

163. Dreyfuss, *supra* note 155, at 383.

164. *See Stempel, supra* note 14, at 112. *See also Robert Gottsfield, Superior Court—Family Division—It's Time for Specialized DR/Juvenile Judges in Populous Counties*, ARIZ. ATT'Y, Nov. 1996, at 14 (urging the domestic relations and juvenile bars to work with the courts and devise a plan to recruit specialized judges for Arizona's Family Division).

complex legal matters,¹⁶⁵ although any unique procedures designed for use in these courts must adhere to due process requirements and must avoid bias.¹⁶⁶ The area of family law lends itself to adjudication within specialized courts and by specialized jurists. The need for a specialized family court derives, in part, from how families use the court system: They come to court for diverse reasons that are distinctive enough from other legal issues to justify special treatment, and they frequently return to court on these issues. Therefore, it becomes advantageous for families and society to coordinate an approach to family cases.¹⁶⁷

C. EVALUATING THE EFFECTIVENESS OF COURT REFORM PROPOSALS

Whether court reform proposals can produce an improved context for decisionmaking, as well as more informed and effective outcomes for the participants, is difficult to determine, nor does much empirical research exist.¹⁶⁸ According to Professor Dreyfuss:

One can measure the success of a court in a variety of ways. Objective factors, such as the court's docket-clearing rate, or the number of litigants choosing the court rather than other tribunals with comparable adjudicatory authority form one standard. Subjective measures include the satisfaction that litigants express in the adjudication they received, the regard with which the court is held among lawyers, academics and judges; and the degree to which the citizens of the jurisdiction and those who consume the law the court administers accept the court's output.¹⁶⁹

Three essential predictors of successful courts, however, include decisionmaking quality, efficiency, and due process.¹⁷⁰ The objective

165. See Ad Hoc Committee on Business Courts, *supra* note 15, at 949.

166. See Dreyfuss, *supra* note 160, at 21. The author cautions about perceived lack of due process in specialized courts under certain circumstances:

[R]epeat players have an advantage over one-time litigants. This problem is exacerbated on a specialized bench, where repeaters sometimes know all of the judges, are well-acquainted with the eccentricities of the court's local rules and specialized law, and are positioned to find suitable vehicles for advocating changes in the law that they deem appropriate. One-time litigants operate at a severe disadvantage.

Id. at 22 (citation omitted).

167. See SZYMANSKI ET AL., *supra* note 33, at 3. See also RUBIN & FLANGO, *supra* note 4, at 75-76 (finding from a study of court records that a significant proportion of families in court experience one or more of the following clustering of cases: delinquency, children in need of supervision, divorce, delinquency of another child, and abuse and neglect; abuse and neglect, prior custody and divorce; divorce and prior domestic assault or prior divorce).

168. See Dreyfuss, *supra* note 160, at 11.

169. *Id.*

170. See *id.* See also Marcus, *supra* note 8, at 774 (arguing that to design neutral procedures for litigation, the procedures must be accurate, allow for participation, and be efficient).

nature of these predictors renders them easy to apply in order to evaluate court reform efforts.

Decisionmaking quality, the first objective predictor of court success, relates to whether the court's outcome accurately considers the underlying facts and addresses the particular situation of the participants.¹⁷¹ The extent to which the court fashions the same outcomes in factually and legally similar circumstances also reflects decisionmaking quality; the parties can predict results in determining whether to utilize the court system to resolve their disputes.¹⁷² Whether the court's decisions further consistent social policies is another important predictor of excellence.¹⁷³

Efficiency of a court system, the second predictor of court success, relates to the timing of decisions relative to the litigants' need for resolution, the number of judges needed to resolve the cases, and the number of court appearances needed to resolve an entire dispute.¹⁷⁴ Due process considerations, the third measure of court success, require that court processes include notice, an opportunity for a hearing, and a neutral decision-maker.¹⁷⁵

Applying these predictors of successful courts to existing specialized family law adjudicatory systems permits a useful means for evaluating the potential effectiveness of these courts. Some skeptics question whether such an extreme change in court structure and operation resulting from establishing a specialized family court can accomplish a coordinated approach to family law cases,¹⁷⁶ although there is a paucity of empirical data.¹⁷⁷ Family court opponents argue that specialized family courts are expensive¹⁷⁸ and unnecessary, suggesting that judges can obtain the skills

171. See Dreyfuss, *supra* note 160, at 12.

172. See *id.* at 12-13. See also Dreyfuss, *supra* note 149, at 8.

173. See Dreyfuss, *supra* note 160, at 13.

174. See *id.* at 14. See also Dreyfuss, *supra* note 149, at 23 (stating that relitigation of issues should occur less often in specialized courts).

175. See Dreyfuss, *supra* note 160, at 15.

176. See RUBIN & FLANGO, *supra* note 4, at 36.

177. See Barnes, *supra* note 12, at 22. See also HURST & KUHN, *supra* note 102, at 7 (reporting on two documented studies evaluating the effectiveness of family courts, including a 1978 study of family courts in six states and a 1987 study of family courts in four states). See generally CHARLES D. EDELSTEIN, THE FAMILY CIVIL DEPARTMENT OF THE CIRCUIT COURT: BLUEPRINT FOR CHANGE—A DISCUSSION DOCUMENT (1993) (outlining specific recommendations to address problems in the operation of Florida's family court, established in 1991); ROBERT W. PAGE, ROSALIE B. COOPER, HOWARD H. KESTIN, B. THOMAS LEAHY, BIRGER M. SWEEN, STEVEN YOSLOV & CAROL LESNIEWSKI, PATHFINDERS COMMITTEE REPORT (1989) (detailing the results of a comprehensive study of the first five years of New Jersey's family court, established in 1984).

178. See HURST & KUHN, *supra* note 102, at 7. But see GOVERNOR'S COMM'N ON THE FAMILY, FINAL REPORT 13 (1966) (recommending a family court for California and responding to the argument

required to handle family matters in routine docket assignments of six months to one year.¹⁷⁹ On the other hand, results of the empirical studies conducted to date indicate that family courts can increase efficiency, competency, and coordination of decisionmaking; further, they can result in cost savings to attorneys, clients, and the court system, due largely to the specialization and increased efficiency of family court judges.¹⁸⁰ Thus, family courts appear to enhance decisionmaking quality, court efficiency, and due process.

While the justifications for establishing a family court are convincing, the challenges to creating this court are complex. Court reform requires considering the effects of any reorganization of the court system on the operation of a system's other courts.¹⁸¹ Reformers should not reorganize courts, therefore, without carefully defining their objectives and their implementation plans.¹⁸² Within the past few years, driven by the need to remedy a multitude of problems beleaguering the court system, a renewed effort to address problems of family law adjudication has unfolded.¹⁸³

As demonstrated by the results of the nationwide survey of family law adjudicatory systems, some family law court reform initiatives are underway.¹⁸⁴ Eleven jurisdictions already operate statewide family courts,¹⁸⁵ and fourteen states have established a family court in at least one area of

about the expense of a family court as follows: "If by a proper handling of troubled families we can reduce the human wreckage of family disruption, the expense will be more than justified. We cannot afford to reckon the cost of such treatment in dollars; it is properly calculable only in the coin of individual and social benefit.")

179. See RUBIN & FLANGO, *supra* note 4, at 36. See also Hunter Hurst, *Judicial Rotation in Juvenile and Family Courts: A View From the Judiciary*, 42 JUV. & FAM. CT. J., 1991/Vol. 42:3, at 13, 15-20 (discussing judges' perceptions of the advantages and disadvantages of judicial rotation or assignment to the family court for set periods, as opposed to the notion of specialized family court judges).

180. See HURST & KUHN, *supra* note 102, at 7. See also GOVERNOR'S CONSTITUENCY FOR CHILDREN, *supra* note 102, at 12-15 (summarizing in detail the results of two empirical studies of family court effectiveness); JEFFERSON FAMILY COURT DEV. PROJECT, *supra* note 102, at 73-77 (describing the benefits of Kentucky's family court pilot project in Jefferson County); VIRGINIA FAMILY COURT PILOT PROJECT ADVISORY COMM., *supra* note 102, at iv, 49 (recommending that Virginia create one court with comprehensive jurisdiction over all family law cases).

181. See RUBIN & FLANGO, *supra* note 4, at 65.

182. See *id.* at 36.

183. See Barnes, *supra* note 12, at 22. See also Junda Woo, *More States Use Single Court in Family Feuds*, WALL ST. J., June 25, 1992, at B1 (noting the nationwide trend to address problems within family law adjudicatory systems).

184. See *supra* Part I.B (discussing pilot and planned family courts). See also Barnes, *supra* note 12, at 22 (describing the existence of a nationwide trend toward some form of family court system).

185. See *infra* Appendix A.

the state, although not for the entire state.¹⁸⁶ Nine states plan to begin or have begun pilot family court projects.¹⁸⁷ Given the wide variety of methods by which states have structured their family law adjudicatory systems, these accomplishments do not reveal sufficient systemic change. As Professor Resnik observes, "unfortunately, these changes are being carried out piecemeal and with little reflection on their cumulative implications for the adversarial system."¹⁸⁸ In addition, court reform efforts must include diverse groups outside the legal profession, such as legislators, government leaders, social services groups, and consumers,¹⁸⁹ who are directly or indirectly affected by the court's operation.¹⁹⁰ As Judge Weinstein has argued:

The courts' functioning must be put in a social context, as part of a web of institutions that enable people to live together peaceable [sic]. We have learned to see legal institutions as part of a larger ecology in which various dispute institutions interact and effect [sic] one another. As these interconnections become common knowledge, those who would design or justify legal institutions must accept responsibility not only for the small world of adjudication, but for the larger world of disputing and bargaining in which it is set.¹⁹¹

Family law court reformers must structure the court system in a manner that equips it to account for the web of institutions within which a family functions and to resolve a family's legal problems comprehensively. A model unified family court, detailed in the following Section, would supply the means to accomplish this holistic treatment. A social science theoretical paradigm, the ecology of human development,¹⁹² superimposed to guide the construction of the unified family court can ensure that the court addresses the families' many interconnections. This ecological approach to the family law decisionmaking process can lead to more effective, responsive justice for families and children.

186. See *infra* Appendix B.

187. See *infra* Appendix C.

188. Resnik, *supra* note 131, at 444.

189. See FAMILIES IN COURT, *supra* note 129, at 1 (summarizing suggested reform proposals for courts dealing with family legal matters).

190. See JOHNSON, *supra* note 102, at 9-10. See also Melton, *supra* note 25, at 2003-04 (suggesting that courts become involved with community service agencies and the neighborhoods of which the courts are part and challenging courts to become community leaders).

191. Jack B. Weinstein, *Some Benefits and Risks of Privatization of Justice Through ADR*, 11 OHIO ST. J. ON DISP. RESOL. 241, 248 (1996).

192. See BRONFENBRENNER, *supra* note 31. See also *infra* Part III.A.1 (explaining the ecology of human development paradigm).

III. ENVISIONING A MODEL UNIFIED FAMILY COURT

A. CONCEPTUALIZING AN ECOLOGICAL AND A THERAPEUTIC PARADIGM

A research paradigm from the social sciences, known as the ecology of human development, provides a comprehensive analytical tool to design a family law adjudicatory system. To address the special needs of families who present themselves to the court system, a concept from mental health law, known as therapeutic jurisprudence, assists the court in understanding how it must intervene in the lives of families. Application of these two perspectives provides an interdisciplinary ecological and therapeutic framework in order to reform family law courts and create a model unified family court. This interdisciplinary approach helps judges and other court system professionals consider the many influences on human behavior and family life, thereby empowering the system to offer more pragmatic and effective solutions to contemporary family legal issues.

1. *The Ecology of Human Development*

According to Professor Urie Bronfenbrenner, who developed the ecology of human development theory, pursuing strategies designed to establish and to strengthen connections among all the competing influences on children's and families' lives can enhance their functioning. To account systematically for these competing influences, Bronfenbrenner arranges the settings within which individuals live their lives on a scale from smallest to largest. The most immediate context within which the individual experiences daily reality, such as the parent-child relationship and the husband-wife relationship, is the "microsystem."¹⁹³ Relationships between the microsystems, such as the amount of interaction between a child's school and his home setting, constitute the "mesosystem."¹⁹⁴ "Exosystems"¹⁹⁵ are the settings that have power over one's life, yet in which one does not participate, such as the effect of a parent's place of employment on the child's life. Finally, Bronfenbrenner labels "the broad ideological and institutional patterns of a particular culture or subculture"¹⁹⁶ as the macrosystems.

193. BRONFENBRENNER, *supra* note 31, at 7, 22.

194. *Id.* at 7-8, 25.

195. *Id.*

196. James Garbarino & Robert H. Abramowitz, *The Ecology of Human Development, in CHILDREN AND FAMILIES IN A SOCIAL ENVIRONMENT* 11, 27 (James Garbarino ed., 2d ed. 1992).

According to Professors Garbarino and Abramowitz, "[t]he most important thing about this ecological perspective is that it reveals connections that otherwise might go unnoticed and helps us look beyond the immediate and the obvious to see where the most significant influences lie."¹⁹⁷ For Bronfenbrenner, the crucial question becomes whether we can alter social institutions so that they can function as positive influences on family life by increasing the number and extent of individuals' and families' connections among the systems of this paradigm.¹⁹⁸

Any family law adjudicatory structure or setting must assist decisionmakers in considering an expanded concept of the family by acknowledging the "family ecology,"¹⁹⁹ or the interdependent nature of the family.²⁰⁰ Courts must view neighborhoods, religious organizations, and other associations or institutions within which family members participate as having the potential to influence the family's legal matters. Application of the ecology of human development paradigm²⁰¹ can structure a family law adjudicatory system in a manner which enables the system to accomplish this task.

Utilizing the ecology of human development as a framework to restructure courts means designing the system's operation and components in a manner that equips the entire adjudicatory process with a systematic approach to accommodate the complex factors affecting families' lives. As the author has commented elsewhere:

[A]dvocates, parties, and human services providers must identify for decisionmakers the types and strengths of the microsystem relationships within which people function, or the relationships between and among family members. In addition, decisionmakers need to understand family members' mesosystem relationships, or relationships between individuals and aspects of their immediate environment, such as neighborhoods, schools, and religious organizations.²⁰²

Likewise, court professionals must acknowledge the effects of macrosys-

197. *Id.* at 19.

198. See *American Families: Trends and Pressures, 1973: Hearings on Examination of the Influence That Governmental Policies Have on American Families Before the Subcomm. on Children and Youth of the Senate Comm. on Labor and Public Welfare*, 93rd Cong. 31962, 31964-65 (1973) (statement of Urie Bronfenbrenner, Professor of Human Development and Family Studies and Psychology, College of Human Ecology, Cornell University).

199. MARY ANN GLENDON, *THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE* 308 (1989).

200. See *supra* text accompanying note 125 (discussing the interdependent nature of today's family).

201. See BRONFENBRENNER, *supra* note 31, at 21.

202. Babb, *supra* note 25, at 802-03 (citation omitted).

tem influences, such as parental employment, on family legal matters.²⁰³ Finally, an ecological framework instructs court professionals “to look beyond the individual litigants involved in any family law matter, to holistically examine the larger social environments in which participants live, and to fashion legal remedies that strengthen a family’s supportive relationships.”²⁰⁴

This structured consideration of the family’s ecology by all court professionals facilitates problem-solving and enables family law decision-makers to understand more completely the comprehensive nature of the family’s functioning. An ecological structure to guide family law court reform leads to the design of a court system that empowers decisionmakers to apply the law in a manner that more effectively resolves the family’s legal issues.

2. *Therapeutic Jurisprudence*

When designing a model specialized court system, the need to reach agreement about the court’s philosophy is critical: “[p]ublic consensus on the goals of the law administered by the specialized tribunal emerges . . . as one of the most striking contributions to the success of specialization.”²⁰⁵ Since courts intervene daily in families’ and children’s lives, it is intrinsic to the family law decisionmaking process that “intervention ought to aim to improve the participants’ underlying behavior or situation.”²⁰⁶

The court’s focus on achieving an outcome of family law adjudication which helps the individuals and families appearing before it represents the goal of therapeutic jurisprudence, defined by Professor Wexler as follows:

Therapeutic jurisprudence is 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. Such consequences may flow from substantive rules, legal procedures, or from the behavior of legal actors (lawyers or judges).

The task of therapeutic jurisprudence is to identify—and ultimately to examine empirically—relationships between legal arrangements and therapeutic outcomes. The research task is a cooperative and thoroughly

203. *See id.*

204. *Id.* at 803.

205. Dreyfuss, *supra* note 155, at 414.

206. Babb, *supra* note 25, at 798.

interdisciplinary one . . . Such research should then usefully inform policy determinations regarding law reform.²⁰⁷

The sense of what constitutes a therapeutic outcome derives from the individual's own viewpoint, which courts must attempt to honor.²⁰⁸ On the other hand, "what is ultimately regarded as 'therapeutic'—and the law's role in promoting therapeutic aims—is a sociopolitical decision, decided by legal-political decisionmakers, with . . . important input given to consumers or recipients of the law's therapeutic aims."²⁰⁹ Therapeutic jurisprudence requires an examination of "the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects."²¹⁰ While the concept of therapeutic jurisprudence has emerged from the field of mental health law, it has received wide application in diverse legal areas, including family law.²¹¹

How, then, does the notion of therapeutic jurisprudence contribute to court reform in family law? According to Professors Wexler and Winick, therapeutic jurisprudence is merely a "lens" designed to shed light on interesting and important empirical and normative issues relating to the therapeutic impact of the law. The therapeutic jurisprudence perspective sets the stage for the articulation and debate of those questions, . . . but it does not itself provide any of the answers.²¹²

207. Wexler, *supra* note 32, at 8 (citation omitted).

208. See Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 645, 653 (David B. Wexler & Bruce J. Winick eds., 1997).

209. David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE*, *supra* note 208, at 811, 812 (citations omitted).

210. Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE*, *supra* note 208, at 763, 767 (italics omitted). *But see* Wexler, *supra* note 209, at 827 ("[R]esearch into the therapeutic or anti-therapeutic consequences of various arrangements applying or administering existing law has not received very much attention. This is . . . a most promising avenue of microanalytic therapeutic jurisprudence.").

211. See, e.g., *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE*, *supra* note 208, at vii-x (collecting articles about therapeutic jurisprudence as applied to mental health law, correctional law, criminal law and procedure, sexual orientation law, health law, personal injury and tort law, evidence, labor arbitration law, contracts and commercial law, the legal profession, rights/justice issues, future challenges, and empirical explorations); Babb, *supra* note 25, at 798-801 (applying the goal of therapeutic jurisprudence to family law decisionmaking). See also Shiff & Wexler, *supra* note 18, at 356 (suggesting a future comparative law approach to therapeutic jurisprudence in order to adopt creative rehabilitative features of other court systems).

212. David B. Wexler & Bruce J. Winick, *Patients, Professionals, and the Path of Therapeutic Jurisprudence: A Response to Petrila*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE*, *supra* note 208, at 707, 708 (citation omitted).

Resolving family legal disputes with the aim of improving the lives of families and children requires structuring the court system to enhance the system's potential to maximize the therapeutic consequences of court intervention. To accomplish this goal, the court system must allow for the contemplation of alternative legal outcomes intended to produce more effective functioning on the part of families and children.²¹³ As I have said before, "[i]n the field of family law, therapeutic justice should strive to protect families and children from present and future harms, to reduce emotional turmoil, to promote family harmony or preservation, and to provide individualized and efficient, effective family justice."²¹⁴ On the other hand, Wexler and Winick properly caution that "[t]herapeutic jurisprudence in no way suggests that therapeutic considerations should trump other considerations. Therapeutic considerations are but one category of important considerations, as are autonomy, integrity of the fact-finding process, community safety, and many more."²¹⁵

In effecting a therapeutic approach to family law adjudication, some scholars have suggested a reinaging of the judge's role to one of "healer,"²¹⁶ or a participant "in a process that restores people to their integrity and overcomes undesirable conditions."²¹⁷ This is in marked contrast to the popular concept of objective, neutral judging within our court systems:²¹⁸

The effort to provide an alternative to the traditional litigation process for the resolution of disputes is particularly relevant in courts where the parties would benefit greatly from judicial sensitivity, compassion, and individual attention. The courts where family matters are heard, such as divorce and child related concerns, and the juvenile jurisdictions, are natural arenas for a more humanistic approach [to judging].²¹⁹

Judges themselves can significantly shift their own judicial process to display a more therapeutic perspective toward families and children by affirmatively demonstrating respect and empathy for court participants and by supporting the adoption of appropriate alternative dispute resolution

213. See Winick, *supra* note 208, at 655.

214. Babb, *supra* note 25, at 800 (citation omitted).

215. Wexler & Winick, *supra* note 212, at 714.

216. Susan Snow & Steve Friedland, *The Judge as Healer: A Humanistic Perspective*, 69 DENV. U. L. REV. 713, 713 (1992).

217. *Id.* (citation omitted).

218. See *id.* at 714.

219. *Id.* at 718.

techniques.²²⁰ Despite these actions on the part of judges, however, "[t]he structure of the current system impedes a humanistic approach to judging."²²¹ As Judge Snow and Professor Friedland have noted:

The growing size and complexities of many court systems . . . aggravates [sic] the perception that one is on an assembly line, since a given judge may only handle a small aspect of the case before it moves on through the system. This is less than satisfying for judges . . . because they may never see or know the final outcome. Removed from the results of their own labors, as well as the people involved in the cases they have dealt with, it is understandable that judges come to feel disconnected from the individuals who appear in their courtroom. This disassociation helps the judge insulate him or herself from the frustration of working in a fragmented process.²²²

Others have advocated specific therapeutic roles for court personnel in addition to judges, particularly for mental health professionals involved in the family law decisionmaking process such as court consultants, special masters, arbitrators, mediators, divorce counselors, and various types of clinicians.²²³ Any individual or family interventions suggested by these personnel must exist as part of a comprehensive, thoughtfully conceived plan designed by the court to respond in a holistic manner to families' and children's problems.²²⁴ In keeping with a therapeutic jurisprudential goal, "[d]efining and expanding the role of the mental health interventionist should be an integral part of the current family law reform movement."²²⁵

Adopting therapeutic jurisprudence as the goal of a model family law adjudicatory system requires careful consideration of the therapeutic implications resulting from all aspects of the court process. Envisioning therapeutic jurisprudence as the outcome, however, encourages the discovery of creative ways to effectively resolve family conflicts.²²⁶ In the words of Professor Winick:

220. See *id.* at 719-21.

221. *Id.* at 715 (citation omitted). See also Martin Buxton & Lawrence A. Dubin, *Family Court Judges Are Only People: But More Is Required*, 1 WHITTIER L. REV. 177, 178 (1979) (arguing that the legal system impedes the humanity of judges by not acknowledging the difficulty of judges in accounting for their own psychological biases in the family law decisionmaking process).

222. Snow & Friedland, *supra* note 216, at 716 (citation omitted).

223. See Lynne M. Kenney & Diane Vigil, *A Lawyer's Guide to Therapeutic Interventions in Domestic Relations Court*, 28 ARIZ. ST. L.J. 629, 635-38 (1996).

224. See *id.* at 641.

225. *Id.*

226. See David B. Wexler, *Justice, Mental Health, and Therapeutic Jurisprudence*, in LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE, *supra* note 208, at 713, 719.

[T]herapeutic jurisprudence helps to identify the path of true law reform. By providing a new lens through which to examine law, it promises to produce new insights and a newly invigorated interdisciplinary approach to law that will enrich legal policy analysis and improve law's functioning and its ability to increase the well-being of our society.²²⁷

B. A BLUEPRINT TO CONSTRUCT A UNIFIED FAMILY COURT

A unified family court is a court that coordinates the work of independent agencies and tribunals, each with some limited role in resolving the controversies incident to a family's legal matters.²²⁸ By applying the ecology of human development as a framework for the court and by embracing the goal of therapeutic jurisprudence, this Section seeks to provide a model version of a court which most accurately portrays the concept of and the purpose behind a unified family court. The ensuing discussion explains how this unified family court addresses the existing impediments to effective family law adjudication. There exists, however, "no one panacea, solution, or process to offer—instead, . . . we should contemplate a variety of different ways to structure process in our legal system to reflect our multiple goals and objectives."²²⁹

The contributions of both the ecology of human development and therapeutic jurisprudence to structure court reform can transcend individual court system idiosyncrasies and, at the same time, can accommodate the multitude of social, legal, and political characteristics that embody the diversity of our society.²³⁰ Reformers following a problem-oriented approach to court reform should incorporate the specific unified family court features detailed in this Section. This process can enable reformers to construct a court system which approaches the model family law adjudicatory system proposed decades ago by the Standard Family Court Act²³¹

227. Winick, *supra* note 208, at 668.

228. See Pound, *supra* note 46, at 161.

229. Menkel-Meadow, *supra* note 22, at 11-12.

230. See Michael A. Town, *The Unified Family Court: Therapeutic Justice for Families and Children* 4 (Mar. 11, 1994) (transcript of address available from Chicago Bar Association). Town suggests "that each locale must come up with its own [family court] plan and there is no one perfect template for a unified family court system. Each community and legal or justice culture has its own way of conducting its affairs which should be respected." *Id.* See also Brown, *supra* note 16, at 84 (advocating that the structure of existing drug courts varies and must depend on the unique characteristics of the jurisdiction, including laws, resources, judges, and personnel); Trotter & Cooper, *supra* note 78, at 226 (discussing methodological foundations needed to launch a program designed to reduce court delay).

231. See *supra* Part I.A (discussing the Standard Family Court Act).

and as yet unrealized by a majority of our nation's court systems.²³² In addition, reformers can use this interdisciplinary framework to fashion a system most appropriate for the individuals and families appearing before their courts.

1. *Court Structure*

Consistent with the problem-oriented approach to court reform and with systems analysis, the primary determination when designing a family law adjudicatory system is how to structure it. This entails justifying the creation of a specialized court for family law adjudication. While there appears to be renewed interest in devising some form of specialized tribunal for the resolution of family law cases,²³³ many states still have not chosen this path.²³⁴ To encourage the construction of these separate and distinct systems, it is helpful to examine the theoretical foundation surrounding the implementation of specialized courts.

The field of family law appropriately lends itself to adjudication within a specialized court. While family law encompasses diverse legal issues,²³⁵ the effect of family law problems on the intimate aspects and the stability of people's lives represents a unifying theme that supports considering this body of law as a specialty area. This approach is consistent with an ecological focus. As Judge Arthur has noted,

a single court could examine the entire relationship between parent and parent, parent and child, child and child, family and in-laws, and family and the public. And, having explored the whole complex of relationships, a single court could provide consistent and continuing consideration of each aspect of the problem.²³⁶

A more difficult inquiry is whether judges assigned to specialized family courts must themselves be specialized family court jurists. The types of choices required by decisionmakers to resolve family legal matters compel the need for judicial specialization. Not only must these judges fully understand the intricacies of the entire body of family law, but they also must possess an appreciation for and understanding of the social settings within which family members function, including any problems

232. See *infra* Appendices B, C, and D.

233. See *supra* Introduction (documenting a national interest in unified family courts); *infra* Appendix C.

234. See *infra* Appendix D.

235. See *supra* note 1.

236. Lindsay G. Arthur, *A Family Court—Why Not?*, 51 MINN. L. REV. 226 (1966) (citation omitted) (advocating, in an early article, consolidation of family law litigation and court treatment of the entire family problem).

attendant to each of these settings, such as substance abuse and domestic violence.²³⁷ Judges can receive assistance in acquiring this social science background through mandatory interdisciplinary training.²³⁸ Family law decisionmaking that emanates from a jurist informed about relevant social science literature, including child development and family dynamics,²³⁹ and about how that knowledge applies to family law decisionmaking would be likely to result in resolutions that more effectively promote the well-being of families and children—a therapeutic outcome.²⁴⁰ Specialized family law jurists also can enhance decisionmaking quality by their immersion in the family law subject matter area, which would permit them to focus more accurately and quickly on the underlying facts and to render decisions more efficiently—another therapeutic outcome.²⁴¹

In order to fully comprehend the breadth of family law proceedings, as well as to understand from an ecological focus the various settings within which family law litigants live their lives, family law judges must remain within the family court system for significant periods of time.²⁴² Rather than prescribe a designated time period for judicial service, this issue seems best determined by each jurisdiction after assessing its required overall pattern of judicial assignment.

Problems arise with this unified family court requirement of specialized jurists, however. Many judges prefer to avoid service on the family court because of the perceived lack of prestige accorded by this assignment, as well as the possibility of emotional exhaustion resulting from the highly personal nature of family law cases.²⁴³ Procedures exist to minimize the family court judge's risk of judicial fatigue.²⁴⁴ For example,

237. See KATZ & KUHN, *supra* note 36, at 5-6.

238. See FAMILIES IN COURT, *supra* note 129, at 6. See also Margaret Beyer & Ricardo Urbana, *An Emerging Judicial Role in Family Court*, PRAC. PAPER SERIES (Juv. Just. Project of Crim. Just. Sec. of A.B.A., Washington, D.C.), Aug. 1986 (describing a training program for family court judges that provides background in child development, family problems, and education).

239. See KATZ & KUHN, *supra* note 36, at 5-6.

240. See Babb, *supra* note 25, at 808.

241. See *id.* at 800.

242. See KATZ & KUHN, *supra* note 36, at 4-5 (estimating the minimum length of judicial assignment to a family court should be four years). But see RUBIN & FLANGO, *supra* note 4, at 77 (estimating the minimum length of judicial assignment to a family court should be twelve months).

243. See RUBIN & FLANGO, *supra* note 4, at 10.

244. See KATZ & KUHN, *supra* note 36, at 5. See also Town, *supra* note 230, at 11. Town comments on the character of a family court:

A unified family court can be very overpopulated with cases, staff and litigants as well as emotions. It represents the frontline of the judiciary and it is not unlike an emergency room or field hospital mentality at times. Such a situation must be met with training, encouraging

family court judges can rotate through all parts of the family court docket,²⁴⁵ or judges periodically can rotate out of the family division docket to another docket within the court system.²⁴⁶ The ability of family court judges to rotate through various assignments or dockets within a family court, as opposed to handling only a particular type of case, can provide a broader and more informed context for judicial decisionmaking.²⁴⁷

To deal with the potential problem of prestige surrounding the status of a specialized family court, it is imperative to structure a specialized family court at the same status level as a trial court of general jurisdiction.²⁴⁸ This similar status ascribed to the family court reflects and promotes the importance of family law matters within the overall administration of the justice system.²⁴⁹ Given the critical importance of the family's functioning to the socialization and development of productive members of society,²⁵⁰ family law cases must receive court treatment at least equal to that of other cases within the court system.²⁵¹ Operating a specialized family law tribunal as a division of an existing court offers fewer financial and legislative challenges, as many courts already have the inherent authority to structure their dockets to accomplish the jurisdiction's own goals of judicial administration.²⁵² The decision of whether to structure the specialized family court as a separate court, housed in separate facili-

collegiality, rotation within and without family court and providing for down time where needed to prepare decisions.

Id.

245. See KATZ & KUHN, *supra* note 36, at 4.

246. See RUBIN & FLANGO, *supra* note 4, at 77. The authors summarize a study concerning the effects of judicial rotation:

In his interviews with fourteen judges, Hurst (1991) found that rotation raised perspectives for judges, according to juvenile and family jurisdiction equal status with other jurisdictions, and had some value in preventing "dynasties." On the other hand, rotation had an equal number of shortcomings, including the "no one in charge" syndrome; discouragement of career specialization; disincentive to training; less continuity in dealing with probation officers, lawyers, prosecutors, and social workers; and disadvantage for the judiciary in the competition for fiscal resources.

Id. at 77.

247. See SZYMANSKI ET AL., *supra* note 33, at 21-22. See also Hurst, *supra* note 179, at 15-20 (discussing the advantages and disadvantages of assigning all the judges of a court of general jurisdiction to the family court for specific time periods).

248. See *supra* text accompanying notes 150-51 (explaining techniques to overcome notions of inferior status).

249. See *Standard Family Court Act*, *supra* note 44, at 109.

250. See SZYMANSKI ET AL., *supra* note 33, at 3.

251. See 1993 Md. Laws 198.

252. See Steven J. Messinger, *On Moving Toward a Family Court in Georgia Without the Need for Constitutional Revision*, 12 GA. ST. U. L. REV. 667 (1996) (examining constitutional and statutory barriers to the creation of a family court in Georgia).

ties, or to structure the tribunal as an autonomous division of an existing trial court depends, in large measure, on the financial resources available to create the specialized court system.

Given the current volume and complexity of family law cases, creation of a specialized family court staffed with specialized family law jurists must become the norm rather than the exception, even for the smallest jurisdictions. Whatever the particular form of specialized family law adjudicatory system, these courts must receive the same resources and support as the generalist courts.²⁵³ Also, wherever the location of the family court facility, it should possess child- and family-oriented features, including appropriately designed waiting rooms for children and witnesses, interview rooms for evaluations and meetings, and adequate security.²⁵⁴

2. *Subject Matter Jurisdiction*

A problem-oriented approach to court reform requires focusing on another major difficulty encountered among our nation's family law adjudicatory systems. A recurring pattern within a majority of court systems is the fragmented manner in which courts attempt to resolve family legal matters, with more than one court often involved in determining a family's related legal issues.²⁵⁵ This fragmented decisionmaking process interferes with a major ecological goal of a family law adjudicatory system because it defeats the capacity of one court to examine the family holistically in order to better understand its functioning and to treat it accordingly. From an ecological perspective, the fragmentation impedes any effort by court professionals to identify and to strengthen the family's interactions among the various systems in which family members participate.

For the family court to coordinate multiple legal issues involving the same family and to monitor and enforce family court orders, a fundamental principle of any model unified family court must be the exercise of comprehensive family law subject matter jurisdiction over the full range of family law matters.²⁵⁶ The potential to completely resolve a family's re-

253. See Stempel, *supra* note 14, at 120-21.

254. See KATZ & KUHN, *supra* note 36, at 3. See also Laura Duncan, *Courthouse Day Care Programs Increasing*, A.B.A. J., Oct. 1995, at 22-23 (describing some features of the more than thirty child care centers within American courthouses and noting that California, Massachusetts, and New York have legislatively appropriated funding to construct these centers).

255. See *supra* note 102 (identifying studies on problems within existing family law adjudicatory systems).

256. See SZYMANSKI ET AL., *supra* note 33, at 10; *supra* note 1 (defining comprehensive family law subject matter jurisdiction).

lated legal problems becomes a therapeutic consequence; this outcome enables the participants to experience a sense of completion and to move forward with their lives, rather than remaining anchored to the court system by various unresolved legal issues.

In defining comprehensive subject matter jurisdiction, then, it is more prudent for court reformers to err on the side of overinclusive jurisdiction, as opposed to underinclusive jurisdiction; reformers must empower their unified family court to respond as comprehensively as possible to all of a family's related legal matters. This jurisdiction encompasses all divorce or dissolution and related matters, including distribution of marital property, separation, and annulment; child custody, visitation, modification, and interstate custody cases; child support establishment, modification, enforcement, and uniform reciprocal support cases; determination of paternity; child abuse and neglect; termination of parental rights; domestic violence proceedings; adoption; juvenile delinquency proceedings; adult and juvenile guardianship and conservatorship; mental health matters, including civil commitment and confinement; legal-medical issues, including right to die, abortion, and living wills; emancipation; and name change.²⁵⁷ Experts differ, however, about whether to include criminal jurisdiction over intra-familial matters, such as child abuse and domestic violence, within the family court's jurisdiction.²⁵⁸

257. See KATZ & KUHN, *supra* note 36, at 7-8. See also SZYMANSKI ET AL., *supra* note 33, at 10.

258. See KATZ & KUHN, *supra* note 36, at 8. The authors discuss the arguments for and against including criminal jurisdiction over intrafamilial matters as part of the family court:

While proponents for inclusion of this jurisdiction in family court argued that such a system promotes coordinated delivery of services to the family and discourages multiple interviewing of victims, as well as fragmented delivery, those arguing against such jurisdiction cited possible due process violations and community pressure for a more punitive stance toward offenders as rendering such jurisdiction inappropriate for the family court.

Id. at 8-9. See also SZYMANSKI ET AL., *supra* note 33, at 8-9. The authors suggest additional arguments against including criminal jurisdiction in the family court.

Inclusion of criminal jurisdiction within the family court can present a host of problems . . . First, there is a philosophical divergence between juvenile court and criminal court. Juvenile court's intervention is justified on the basis of protecting the child and is not intended as punishment but as remediation. Criminal proceedings seek to punish offenders without regard to family interests. Adult criminal proceedings require the availability of jury trial with the increased administrative burden on the restructured court system, unless the criminal jurisdiction is limited to misdemeanors.

Id. (citation omitted). See also Martin Guggenheim, *Constitutional and Due Process Concerns: Juvenile and Family Courts of the Future*, in FAMILIES IN COURT, *supra* note 129, at 179, 181 (addressing constitutional and due process considerations for case management of family violence matters).

3. *Case Management and Case Processing*

Presently, delay²⁵⁹ in processing and resolving family law cases is another problem characterizing many family law adjudicatory systems.²⁶⁰ This delay interferes with a therapeutic outcome for individuals and families, particularly in child-related cases, with respect to custody, child support, and termination of parental rights matters,²⁶¹ by allowing the families' problems to remain unresolved and potentially to escalate. Focusing on attempts to decrease delay requires improving the court's case management²⁶² functions, or the method by which cases proceed from initial filing through resolution. Reformers must decide whether judges need to perform management functions within their unified family court or whether other court personnel can undertake the management tasks. Another issue reformers must address is how to manage, including an analysis of the role of alternative case processing methods that remove cases from the courtroom.²⁶³ Improved case processing, however, does not necessarily mean more effective case resolution.²⁶⁴ Thus, the specific challenge for court reformers becomes how to process family law cases efficiently and effectively.

259. See Trotter & Cooper, *supra* note 78, at 220-21 (defining "delay" as a subjective term incapable of quantification and suggesting that some amount of case processing delay is unavoidable, while too much delay becomes intolerable).

260. See *supra* note 102 (identifying studies on problems within existing family law adjudicatory systems).

261. See A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 56 (explaining the effects of court delay on children). See also Lee M. Robinson, *The View From the Minors*, A.B.A. J., Sept. 1996, at 74, 76 (suggesting procedures for protecting children's interests in family law cases).

262. See Peckham, *supra* note 138, at 253-54 n.3. Peckham defines two-stage case management: Case management entails two basic phases of pretrial planning. In the first phase, the pretrial activity is planned. The device the court uses in this phase is the status conference, at which the court and the parties identify issues and schedule a discovery cutoff date, pretrial motions, and the trial date, among other things. At the status conferences, the trial judge can begin to introduce the possibility of settlement or any other alternative dispute resolution technique which might be suitable for the particular dispute. The second phase of pretrial case management involves planning the trial itself. In this second phase, the parties prepare pretrial statements and set out anticipated evidentiary objections in advance of trial. Requiring the attorneys to analyze and evaluate their cases before the trial begins assures that attorneys are prepared for trial and further facilitates settlement discussions.

Id.

263. See Scheiber, *supra* note 118, at 2092. Scheiber discusses the inadequacy of the traditional court system in resolving family law matters:

Some commentators and reformers . . . depict the regular courts and their procedures as simply inadequate in their competence to meet special needs, such as those which arise in juvenile proceedings or in family law when intervention of social workers and other professionals is deemed more effective than what judges can accomplish in the courtroom.

Id.

264. See Resnik, *supra* note 131, at 435-36.

Because parties in family law disputes generally seek a resolution of highly-charged, emotional matters, a therapeutic approach to structure court reform requires that these cases receive active, hands-on case management as early as possible. This type of case processing can result in more therapeutic outcomes for family law litigants, as it reduces the court's delay in attending to the families' problems and links the families as early as possible with appropriate social services. A judge, a professional court administrator, a trained intake worker,²⁶⁵ or a team of these personnel²⁶⁶ can evaluate each case filing or intake and can determine whether the parties require immediate court attention. The initial evaluation process also can result in referral of the parties to appropriate services,²⁶⁷ as well as scheduling an early status conference. At this conference, the parties, their attorneys, and the judge can frame the issues in the case, discuss settlement possibilities, and consider alternatives to an adversarial trial or hearing.²⁶⁸ This case processing strategy requires managerial judging: "As a case manager, . . . the trial judge becomes an active facilitator of the lawsuit, shaping its structure and shepherding its expeditious completion."²⁶⁹ Family law case management becomes an ongoing proc-

265. See Jeffrey W. Stempel, *Reflections on Judicial ADR and the Multi-Door Courthouse at Twenty: Fait Accompli, Failed Overture, or Fledgling Adulthood?*, 11 OHIO ST. J. ON DISP. RESOL. 297, 370 (1996). Stempel defines the "screening clerk" as "a judicial officer of substantial training and discretion" and ideally a lawyer. *Id.* See also A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 55 (detailing the operation of a family court intake unit).

266. See Family Division Green Paper 20-21, 42 (Jan. 28, 1993) (available at the office of the Assistant Director, New Jersey Family Division, Richard J. Hughes Justice Complex, Trenton, N.J.) (discussing the creation of case management teams in New Jersey's Family Division). *But see* A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 54 (advocating that the most cost-effective role for judges is to resolve only those truly adversarial proceedings).

267. See *infra* Part III.B.4 (describing the services component of a unified family court). See also A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 55. The authors provide an example of how a case management unit can operate:

[T]he case management unit would refer a family to parent education, to mediation, or to a judge for a protective order. The unit would consolidate and coordinate all pending cases involving one family and insure that services ordered by the court are provided. It would be a primary resource for informing families about available community resources that the family might wish to use. Finally, the unit could assist those who do not have legal counsel.

Id.

268. See Peckham, *supra* note 138, at 255. Peckham identifies alternatives to a merits trial, including court-annexed arbitration, mediation, and referral to a master. See *id.* He also summarizes various alternative dispute resolution techniques. See *id.* at 269-77. See also A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 54-55 (describing various referrals to court personnel); Gladys Kessler & Linda J. Finkelstein, *The Evolution of a Multi-Door Courthouse*, 37 CATH. U. L. REV. 577 (1988) (describing Washington, D.C.'s dispute resolution center that offers litigants in civil actions, including domestic relations cases, several methods to resolve disputes).

269. Peckham, *supra* note 138, at 254 n.3. See also Brown, *supra* note 16, at 86 (explaining the need for active judicial involvement in drug treatment courts which requires that judges possess

ess requiring both the coordination of court personnel and outside agencies, and it necessitates constant monitoring.²⁷⁰

The one judge/one case approach to case management, or the individual assignment system,²⁷¹ challenges judges to engage in more ecological and therapeutic decisionmaking by empowering them with a greater sense of responsibility for the effective and efficient resolution of a family's case.²⁷² Ongoing involvement with a family's legal matters enables a judge to develop a more complete understanding of the comprehensive nature of the family's legal problems by allowing the judge to identify the many systems within which family members participate. This expanded knowledge permits judges to fashion more effective outcomes to resolve a family's problems. This type of case processing system tests the judge's ability to remain impartial.²⁷³ But, as Professor Peckham points out, "[a]lthough a judge must exhibit the qualities of dispassion and disengagement, he or she need not be ignorant in order to be impartial, nor remote in order to be dispassionate."²⁷⁴ Active case management and a one judge/one case approach to family law decisionmaking are critical features to the design of a model unified family court.

The successful operation of a family court as described demonstrates the need for a high level of administrative organization both to manage cases and to coordinate services. The court management system, including nonjudicial personnel, must aim to resolve disputes in a timely manner, to supply and to coordinate efficiently the necessary resources or services, and to network appropriately with other courts in the system to share information about families that allows for consistent judicial decisionmaking.²⁷⁵ To accomplish this coordinated management, all family court personnel must understand the goals and operation of the entire family court system.²⁷⁶ An administrative or presiding family court judge,²⁷⁷ who is

"appropriate judicial temperament, strong interpersonal skills, and significant administrative abilities").

270. See Trotter & Cooper, *supra* note 78, at 224.

271. See Peckham, *supra* note 138, at 257.

272. See *id.* But see Trotter & Cooper, *supra* note 78, at 223 (defining a "master" system of case processing, where pooled cases reach different judges for separate phases of the same case).

273. See Peckham, *supra* note 138, at 261.

274. *Id.* at 262; Peckham also suggests that "[i]mpartiality is a capacity of mind—a learned ability to recognize and compartmentalize the relevant from the irrelevant and to detach one's emotional from one's rational faculties. Only because we trust judges to be able to satisfy these obligations do we permit them to exercise such power and oversight." *Id.*

275. See KATZ & KUHN, *supra* note 36, at 2. See also SZYMANSKI ET AL., *supra* note 33, at 10.

276. See KATZ & KUHN, *supra* note 36, at 2.

responsible to the chief judge of either the circuit or highest state court, can assist with this critical level of organization.²⁷⁸ A family court also requires a family court administrator, who is directly responsible to the state court administrator.²⁷⁹ These key administrative personnel, as well as a strong family court judiciary, must display leadership in attempting to coordinate family legal proceedings.²⁸⁰

4. *The Services Component*

To assist judges in the family law case management process, an effective family court must offer alternative dispute resolution procedures, such as negotiation, mediation, and other informal processes, in addition to the traditional adversarial model of decisionmaking.²⁸¹ These alternative procedures become important due to the distinctive nature of family law proceedings—legal issues with an overlay of highly charged emotional and social problems. The earlier the court incorporates these alternatives into family law proceedings, the more successful the court becomes at circumventing the adversary process and locating services to assist families.²⁸² In contrast to alternative dispute resolution programs existing independent of the court system, court-connected programs are likely to gain greater acceptance by the parties; they tend to view procedures in this setting as unbiased due to the affiliation with the court.²⁸³ In addition, nonadversarial proceedings can help decrease delays associated with traditional adversarial litigation.²⁸⁴

A model unified family court also must have available an array of social services that it can offer families to assist court professionals' understanding of the context of a family's legal problems and to address effectively social and psychological issues related to the family's functioning. While "family courts are not meant to act as social service departments armed with the power of coercion,"²⁸⁵ to operate most effectively these courts must allow decisionmakers the opportunity to under-

277. See SZYMANSKI ET AL., *supra* note 33, at 14. See also *Standard Family Court Act*, *supra* note 44, at 111.

278. See Gordon, *supra* note 34, at 13.

279. See KATZ & KUHN, *supra* note 36, at 10.

280. See SZYMANSKI ET AL., *supra* note 33, at 14-15. The authors suggest that achieving judicial leadership can occur by active involvement in bar associations and judges' organizations, advising organizations, and speaking at public education events. See *id.* at 16.

281. See KATZ & KUHN, *supra* note 36, at 4.

282. See SZYMANSKI ET AL., *supra* note 33, at 28.

283. See *id.* at 29.

284. See *id.* at 2.

285. Mulvey, *supra* note 29, at 56.

stand the reasons for behavior underlying a particular family's situation.²⁸⁶ This informed decisionmaking enables a judge to fashion a creative resolution to the family problem,²⁸⁷ a resolution generally encompassing a social dimension.²⁸⁸ The provision of services in this manner contributes to a court system that is ecological and therapeutic in its treatment of the family and, thus, consistent with the approach to court reform advocated in this Article.

The nature of the services courts can offer varies widely and depends on the needs of the community served by the court.²⁸⁹ These services can include, among others, assessment and evaluation, counseling, volunteer, community outreach, and family support services, as well as restitution, probation, diversion, and detention services for the juvenile delinquency component of the family court.²⁹⁰ Establishing and maintaining the services component of a unified family court challenges the court to work closely with the community to identify existing services and to highlight gaps.²⁹¹ Court management personnel must ensure the coordination of any services a family receives.²⁹² While the court can choose to offer some of the services itself, and examples of many creative programs abound,²⁹³ a

286. See *id.* at 57.

287. See *id.* at 56.

288. See Arthur, *supra* note 236, at 232.

289. See KATZ & KUHN, *supra* note 36, at 11 (suggesting that this need to access and coordinate services may cause confidentiality laws to be revised to allow access to appropriate information by court officials). See also FAMILIES IN COURT, *supra* note 129, at 2 (urging a reevaluation of court confidentiality rules to determine their underlying policy considerations and the need for such rules); SZYMANSKI ET AL., *supra* note 33, at 25, 35 (advocating regular meetings between judges and services providers to review the availability of services and suggesting specific procedures to maintain confidentiality yet permit communication).

290. See KATZ & KUHN, *supra* note 36, at 11; SZYMANSKI ET AL., *supra* note 33, at 27-28. See also MURPHY, *supra* note 107, at 20-21 (identifying "essential services" to an effective family court as mediation in custody and visitation matters, custody investigation, trained social workers to respond to emergencies, mental health services to provide evaluations, information services to assist unrepresented litigants, and parenting seminars).

291. See Mulvey, *supra* note 29, at 61. "A family court judge can encourage the creation of needed services, and present facts about the absence of such services and the consequences to children and the community as a result. This calls for a more active involvement than many judges would prefer to take . . ." *Id.* (citation omitted).

292. See A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 53 ("Services are fragmented; the same family may have different case workers from a child welfare agency, a school, a community health center, a juvenile delinquency program and a substance abuse treatment program.").

293. See Babb, *supra* note 25, at 806 n.189. The author provides information about court-connected programs:

For examples of existing educational programs designed specifically to assist participants in family legal proceedings, see Larry Lehner, *Education for Parents Divorcing in California*, 32 FAM. & CONCILIATION CTS. REV. 50 (1994) (describing a variety of court-connected educational programs for family law litigants in California); Virginia Petersen & Susan B.

more fiscally prudent option is to link the family with needed services that already exist outside the court structure and within community agencies and organizations.²⁹⁴ The earlier participants in family law cases receive necessary services, the more likely it becomes that the particular family experiences fewer problems later—a therapeutic outcome.²⁹⁵

5. *A User-Friendly Court*

The final component critical to a unified family court blueprint is the notion that the court remain accessible to and user-friendly for the participants, including the large proportion of pro se family law litigants.²⁹⁶ The mechanisms to achieve this result range from new information technologies, such as computerized kiosks that disseminate prepared legal forms,²⁹⁷ to the creation of “a new service paradigm in the justice system.”²⁹⁸ Implementing this new paradigm involves designing court structures for the convenience of the users rather than the lawyers and training court personnel to treat litigants with courtesy and civility.²⁹⁹ Bringing observers and

Steinman, *Helping Children Succeed After Divorce: A Court-Mandated Education Program for Divorcing Parents*, 32 FAM. & CONCILIATION CTS. REV. 27 (1994) (discussing a mandatory parent education program in Ohio for divorcing couples with children, the goals of which include providing parents information about how to help their children with the divorce process, about divorce-specific resources and services, about options for problem solving, and about how to remain independent of the court); Carol Roeder-Esser, *Families in Transition: A Divorce Workshop*, 32 FAM. & CONCILIATION CTS. REV. 40 (1994) (describing a court-connected mandatory divorce orientation program in Kansas that focuses on the psychological, social, legal, and child-related effects of divorce, as well as enumerating optional educational programs on other topics, including step parenting, grandparents' visitation, and single parenting); Andrew Schepard, *War and P.E.A.C.E.: A Preliminary Report and a Model Statute on an Interdisciplinary Educational Program for Divorcing and Separating Parents*, 27 U. MICH. J.L. REFORM 131 (1993) (describing a court connected interdisciplinary parent education program in New York for parents involved in custody, child support, and divorce and separation, and detailing the cooperation among the courts, mental health professionals, and educators); Bill Miller, *Divorce's Hard Lessons: Court-Ordered Classes Focus on the Children*, WASH. POST, Nov. 21, 1994, at A1, A12 (describing parent education programs in Maryland, Virginia, and Washington, D.C.).

Id.

294. See A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 55.

295. See RUBIN & FLANGO, *supra* note 4, at 9.

296. See JOHNSON, *supra* note 102, at 29. See also Henry Goldblatt, *Family Law Today: Rife with Complexities and Varied Roles*, COMPLEAT LAW., Winter 1995, at 20, 22, 62 (discussing a free computerized legal kiosk program in Maricopa County, Arizona, that assists pro se family law litigants); Scheiber, *supra* note 118, at 2076-77 (discussing how unifying trial courts, including family courts, can help assure uniform case processing procedures and caseloads, eliminate local variations in rules of practice, coordinate calendars and judges, and establish more streamlined appellate procedures).

297. See JOHNSON, *supra* note 102, at 29.

298. *Id.* at 34.

299. See *id.*

volunteers into the court can demystify the court system for the public and can serve as a valuable resource to the court system's operation.³⁰⁰

C. APPROACHING THE VISION

The unified family court described in this Article offers the family law adjudicatory process the following advantages: an enhanced recognition of the importance of the effective resolution of family proceedings to families and to society; coordinated and comprehensive legal and social services for the family, aimed at reducing emotional trauma for and improving the lives of family members; more efficient case processing and case management; and a more accessible and user-friendly court system.³⁰¹ While the cost to establish and maintain a family court is often cited as a disadvantage,³⁰² court systems presently allocate resources to resolve family law cases in an inefficient and uncoordinated manner. It is likely that a unified family court can reduce costs by centralizing and coordinating family law decisionmaking, rather than by operating a system requiring multiple proceedings in different tribunals.³⁰³

Some experts believe that, as it presently exists, "[t]he unified family court has worked well, generally fulfilling the high expectations of those who advocated the reform."³⁰⁴ On the other hand, the less positive results experienced by some jurisdictions do not justify abandoning the concept.³⁰⁵ Court reform in family law has proceeded since the early twentieth century;³⁰⁶ however, courts continue their struggle to develop a more appropriate system for family law adjudication.³⁰⁷ Survey results and studies assessing contemporary family law adjudication within America's courts consistently reveal unresolved issues that plague this system.

300. See *id.* at 35-37 (suggesting court-watching programs to provide judges with objective feedback, community focus groups aimed at improving court operation, and opportunities for the public to volunteer in the courts). See also Marsha Mah, *The People vs. Family Court*, DEL. TODAY, Mar. 1997, at 34, 40 (mentioning the use of court watchers as a way to improve existing family courts, such as the Delaware Family Court).

301. See Shepherd, *supra* note 34, at 39.

302. See *id.*

303. See Pound, *supra* note 46, at 170. See also Barnes, *supra* note 12, at 22, 23 (reporting that New Jersey's family court administrator believes that the family court system saves money, is faster, and is less adversarial than traditional means of family law adjudication).

304. Shepherd, *supra* note 34, at 38.

305. See *id.* at 39 (indicating increased costs, lack of resources, and judicial and staff fatigue as disadvantages experienced by some states in operating unified family courts).

306. See *supra* Part I.A (discussing the history of the family court movement).

307. See *infra* Appendix C.

Applying a problem-oriented approach to court reform has uncovered an essential element missing among existing family law adjudicatory systems: a paradigm or framework around which to structure the court.³⁰⁸ While there is no one ideal court design adaptable for every jurisdiction to address systemic family law adjudication problems, family law court reform must proceed with a specific vision. The application of an interdisciplinary ecological and therapeutic framework to proposed family law adjudicatory system reform is the blueprint critical to the construction of any court. As a court reform goal, this means designing anew the type of justice system defined by the Standard Family Court Act in 1959:

To protect and safeguard family life in general and family units in particular by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their interpersonal relationships, in a single court, with one specially qualified staff under one leadership, with a common philosophy and purpose, working as a unit, with one set of family records, all in one place, under the direction of one or more specially qualified judges.³⁰⁹

More effective resolution of family legal matters can strengthen individuals' and families' functioning, a benefit to the entire society. State and local governments have an interest in providing sufficient funding to allow for accomplishment of this goal.³¹⁰ Because courts must compete for scarce resources, collaboration among courts and a broad range of community organizations in initiating and organizing reform efforts can result in funding from both government and private grant sources.³¹¹ Inviting community representatives to participate in a state "court reform or court futures commission,"³¹² designed to identify justice system prob-

308. See Mulvey, *supra* note 29, at 50. Mulvey discusses the need for a paradigm shift in family law decisionmaking based upon a changing concept of the family.

[C]onceptual issues arising from the merger of family theory and legal process must be resolved. The "paradigmatic assumptions" of legal intervention which have evolved from a primarily individual focus must be reexamined in light of family theory. A family must be viewed as a "natural social system, with properties all its own." Theoretically, the legal system must address the definition and proper place of this entity's interest if it is to adopt a true family focus.

Id. (citations omitted). See also Marcus, *supra* note 8, at 813 ("To achieve dramatic progress, one must have a paradigm.").

309. *Standard Family Court Act*, *supra* note 44, at 106.

310. See A.B.A. PRESIDENTIAL WORKING GROUP, *supra* note 10, at 56.

311. See Brown, *supra* note 16, at 96 (discussing funding collaboration needed for drug courts). See also Edward B. McConnell, *Planning for the State and Federal Courts*, 78 VA. L. REV. 1849, 1866 (1992) (suggesting that academics receive grants to study court problems and to design courts due to their objective detachment from daily court operations).

312. JOHNSON, *supra* note 102, at 64.

lems, propose solutions, and monitor reform implementation,³¹³ constitutes a problem-oriented approach toward and a means to begin to implement court reform. This community-focused mechanism to achieve court reform offers another advantage in that "it offers humanity the opportunity to take conscious control of the systems by which we live."³¹⁴

CONCLUSION

Fashioning an effective system within which to resolve contemporary family legal issues requires a paradigmatic shift in conceptualizing the nature of the family and its functioning. "A family must be viewed as a 'natural social system, with properties all its own.'"³¹⁵ A theoretical social science perspective, the ecology of human development,³¹⁶ provides a mechanism for comprehending the true nature and breadth of a family's functioning and its legal problems, as well as a framework around which to design or to redesign a more effective family law adjudicatory system. Once a more responsive court structure exists, this institution can aim to dispense therapeutic justice with the goal of improving the lives of individuals and families in the disposition of family legal disputes.

Society cannot afford to overlook the opportunity to redesign existing family law adjudicatory systems or to fashion new models. Courts are likely to remain the forum to which people turn for resolution of their family legal matters. As Judge Weinstein has noted, "[i]n theory, if not always in practice, everyone is equal in the courts; mechanisms exist to help redress imbalances and protect against manifest injustice. Such a commitment is absent from many forms of private, extrajudicial dispute resolution."³¹⁷

This Article has advocated the creation of unified family courts as the reform effort having the greatest potential to enhance family law decisionmaking and thereby to improve people's lives. Only eleven states currently offer all their citizens the ability to resolve family legal matters within a family court structure. Reformers within the remaining jurisdictions must address many ongoing family law dispute resolution problems.

313. See *id.* at 64-69 (outlining mandates, membership, leadership, funding, and other considerations relevant to a justice system reform commission).

314. LoPucki, *supra* note 27, at 522.

315. Mulvey, *supra* note 29, at 50 (citations omitted).

316. See generally BRONFENBRENNER, *supra* note 31, at 3-4 (describing the treatment of human development through an ecological perspective).

317. Weinstein, *supra* note 191, at 246.

The Article has advanced a problem-oriented approach to court reform. In any court system, participants must maintain a constant vigilance and concern about evaluating and attempting to improve the family law court process. The systems analysis methodology outlined in this Article provides a structured mechanism to conduct this evaluation.

While each jurisdiction needs to build its own court consistent with the legal, social, and cultural needs of the community, this Article has presented a common interdisciplinary ecological and therapeutic framework to guide the construction effort. Adherence to this paradigm, which attempts to explain and enhance the development of individuals and families, empowers courts to render family justice that promotes the participants' well-being. This ecological and therapeutic blueprint must direct all family court construction or reconstruction efforts. Not only is the "substantial betterment"³¹⁸ of our family law adjudicatory systems possible, it is a process whose initiation cannot wait.

318. JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 2 (1949); *supra* epigraph to Introduction.

APPENDIX A

FULLY OPERATIONAL STATEWIDE FAMILY COURTS/DIVISIONS/DEPARTMENTS

STATE	SUBJECT MATTER JURISDICTION	COURT/DIVISION/DEPARTMENT	JUDGE TERM	CASE ASSIGNMENT
Delaware	comprehensive ¹	separate Family Court ²	12 year term on Family Court ³	one judge/one family ⁴
District of Columbia	comprehensive ⁵	division of Superior Court ⁶	9 month assignment ⁷	traditional calendar assignment ⁸
Florida	limited ⁹	division of Circuit Court ¹⁰	3 year rotation ¹¹	one judge/one family ¹²
Hawaii	comprehensive ¹³	division of Circuit Court ¹⁴	6 year term in Family Division ¹⁵	one judge/one case, where possible, otherwise traditional calendar assignment ¹⁶
Massachusetts	limited ¹⁷	department of Trial Court ¹⁸	life term upon appointment ¹⁹	traditional calendar assignment ²⁰
New Jersey	comprehensive ²¹	division of Superior Court ²²	2-3 year rotation ²³	varies ²⁴
New York	limited ²⁵	separate Family Court ²⁶	10 year term on Family Court ²⁷	one judge/one case ²⁸
Rhode Island	comprehensive ²⁹	separate Family Court ³⁰	life term upon appointment to Family Court ³¹	one judge/one case ³²
South Carolina	comprehensive ³³	separate Family Court ³⁴	6 year term on Family Court ³⁵	traditional calendar assignment ³⁶
Vermont	limited ³⁷	separate Family Court ³⁸	1 year term on Family Court ³⁹	one judge/one case ⁴⁰
Washington	limited ⁴¹	division of the Superior Court ⁴²	1 year term on Family Court ⁴³	traditional calendar assignment ⁴⁴

APPENDIX B

FAMILY COURTS/DIVISIONS/DEPARTMENTS WITHIN SELECTED AREAS OF STATE

<u>STATE</u>	<u>SUBJECT MATTER JURISDICTION</u>	<u>COURT/DIVISION/DEPARTMENT</u>	<u>JUDGE TERM</u>	<u>CASE ASSIGNMENT</u>
Alabama	varies ¹	division of Circuit Court ²	varies ³	one judge/one case ⁴
Colorado	limited ⁵	division of the District Court ⁶	4 years ⁷	varies ⁸
Kansas	varies ⁹	department of the District Court ¹⁰	varies ¹¹	one judge/all cases ¹²
Louisiana	limited ¹³	separate court ¹⁴	6 year term on Family Court ¹⁵	traditional calendar assignment ¹⁶
Mississippi	limited ¹⁷	separate court ¹⁸	4 year term on Family Court ¹⁹	one judge/one family ²⁰
Missouri	limited ²¹	division of the Circuit Court ²²	4 year term on Family Court ²³	varies ²⁴
Nevada	comprehensive ²⁵	division of District Court ²⁶	6 year term ²⁷	traditional calendar assignment ²⁸
New Mexico	limited ²⁹	division of District Court ³⁰	varies ³¹	one judge/one case ³²
Ohio	varies ³³	division of Court of Common Pleas ³⁴	6 year term ³⁵	traditional calendar assignment ³⁶
Oklahoma	limited ³⁷	division of the Unified District Court ³⁸	varies ³⁹	one judge/one family ⁴⁰
Oregon	limited ⁴¹	department of the Circuit Court ⁴²	6 year term ⁴³	traditional calendar assignment ⁴⁴
Pennsylvania	limited ⁴⁵	division of the Court of Common Pleas ⁴⁶	varies ⁴⁷	one judge/one family ⁴⁸
Texas	limited ⁴⁹	varies ⁵⁰	4 year term ⁵¹	varies ⁵²
Wisconsin	limited ⁵³	division of the Circuit Court ⁵⁴	4 year term ⁵⁵	one judge/one case ⁵⁶

APPENDIX C

PLANNED OR PILOT FAMILY COURTS/DIVISIONS/DEPARTMENTS

<u>STATE</u>	<u>SUBJECT MATTER JURISDICTION</u>	<u>COURT/DIVISION/ DEPARTMENT</u>	<u>JUDGE TERM</u>	<u>CASE ASSIGNMENT</u>	<u>PLANNED OR PILOT</u>
California	limited ¹	division of the Superior Court ²	not specified ³	one judge/one family ⁴	pilot ⁵
Georgia	comprehensive ⁶	division of the Superior Court ⁷	not specified ⁸	undetermined ⁹	pilot ¹⁰
Illinois	limited ¹¹	division of the Circuit Court ¹²	not specified ¹³	one judge/one family ¹⁴	pilot ¹⁵
Kentucky	limited ¹⁶	division of District and Circuit Courts ¹⁷	8 years ¹⁸	one judge/one family ¹⁹	pilot ²⁰
Maine	limited ²¹	division of the District, Superior, and Administrative Courts ²²	7 years ²³	traditional calendar assignment ²⁴	pilot ²⁵
Maryland	comprehensive ²⁶	division of the Circuit Court ²⁷	undetermined ²⁸	undetermined ²⁹	pilot and planned ³⁰
Michigan	comprehensive ³¹	division of the Circuit Court ³²	6 years ³³	one judge/one family ³⁴	planned ³⁵
New Hampshire	limited ³⁶	separate Family Court ³⁷	not specified ³⁸	one judge/one family ³⁹	pilot ⁴⁰
Virginia	comprehensive ⁴¹	separate Family Court ⁴²	4 years ⁴³	one judge/one family ⁴⁴	planned ⁴⁵

APPENDIX D

STATES WITHOUT FAMILY COURTS/DIVISIONS/DEPARTMENTS

<u>STATE</u>	<u>COURTS THAT HEAR FAMILY LAW CASES¹</u>
Alaska	Superior Court, District Court, and Youth Court ²
Arizona	Superior Court and Juvenile Court ³
Arkansas	Circuit Court, Chancery Court, Probate Court, and Juvenile Court ⁴
Connecticut	Superior Court ⁵
Idaho	District Court and Magistrate's Division ⁶
Indiana	Circuit Court, Superior Court, County Court, and Probate Court ⁷
Iowa	District Court and Juvenile Court ⁸
Minnesota	District Court ⁹
Montana	District Court and Youth Court ¹⁰
Nebraska	District Court, County Court, and Juvenile Court ¹¹
North Carolina	District Court and Juvenile Court ¹²
North Dakota	Unified Court System (only one trial court statewide) ¹³
South Dakota	Circuit Court ¹⁴
Tennessee	General Session, Circuit Court, Juvenile Court ¹⁵
Utah	District Court and Juvenile Court ¹⁶
West Virginia	Magistrate Court and Circuit Court ¹⁷
Wyoming	County Court and District/Juvenile Court ¹⁸

APPENDIX E

QUESTIONNAIRE FOR STATE COURT PERSONNEL

1. Introduction
 - a. Name of Research Assistant
 - b. Law Student at University of Baltimore
 - c. Research Assistant for Professor Barbara A. Babb
 - d. Presently conducting research on how states handle family law cases
 - e. May I please have your
name:
title:
address:
direct phone number:
 - f. Would you like our phone number? Fax number?
2. What is the volume of cases which deal with family issues?
 - a. Will you send us information/documentation?
3. Does your state have a family court?
 - a. How is it structured?
 - b. What is the subject matter jurisdiction of the court?
 - c. How long is the judge term?
 - d. How are cases assigned?

IF NO FAMILY COURT:

- a. Is your state considering establishing a family court?
- b. Is there any pending legislation to establish a family court?
 - 1) What is the status of that legislation?
 - 2) Will you send a copy of the proposed legislation?
- c. Does your state have a family law division?
- d. How are family law cases handled in your court system?
 - 1) Specialized tracking

- 2) Master system
 - 3) How quickly do cases move through the system?
- e. Does your state assign specific judges to family law cases?
- 1) How long do the judges sit on this docket?
 - 2) Do they hear exclusively family law cases or a combination of family law and other cases?
 - 3) Do judges who hear family cases have any specialized training in that area?
- f. How many different courts in your state deal with family law issues? (circuit, district, juvenile, *total number*)
- g. In your opinion, is there a need for a family court system in your state? Why or why not?

Notes for Appendix A

1. Comprehensive subject matter jurisdiction, in this Appendix, is defined to include divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; and withholding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. *See* DEL. CODE ANN. tit. 10, §§ 921-928 (1989 & Supp. 1996). Individual states may vary with regard to inclusion of particular subject matter jurisdictional areas. Any state defined to have comprehensive subject matter jurisdiction, however, has jurisdiction over a majority of the above subjects.

2. The Delaware Family Court was established in 1971. *See id.*

3. *See* DEL. CODE ANN. tit. 10, § 906 (1989 & Supp. 1996).

4. *See* Telephone Interview with Michael Arrington, Director of Special Court Services (June 26, 1997). One judge/one family case assignment, in this Appendix, is defined as one judge assigned to a family for all proceedings before the court involving that family.

5. *See* D.C. CODE ANN. § 11-1101 (1995); D.C. CODE ANN. §§ 16-2301 to 16-2365 (1997).

6. The District of Columbia established its Family Court in 1970. *See* D.C. CODE ANN. § 11-902 (1995).

7. *See* Telephone Interview with Edward Ricks, Director of Family Division, District of Columbia, Division of Superior Court (June 27, 1997).

8. *See id.* Traditional calendar assignment, in this Appendix, is defined as the standard procedure utilized by the clerk of the court to assign all civil matters to the respective judges on a daily, weekly, monthly, or other regularly scheduled basis.

9. Jurisdiction of the Family Division varies by each judicial circuit; however, the Family Division can hear dissolution of marriage, custody, visitation, property, reciprocal support, name change, paternity, adoption, and domestic violence cases. Additionally, the Supreme Court of Florida has recommended the inclusion of juvenile dependency and delinquency proceedings. *See In re* Report of Comm'n of Family Courts, 588 So. 2d 586, 586-87 (1991); Telephone Interview with Gwen Stewart, Senior Attorney for Family Court (Apr. 11, 1997).

10. Either local rules or administrative orders expressly approved by the Florida Supreme Court control implementation of Family Divisions in Circuit Courts. *See* Telephone Interview with Gwen Stewart, *supra* note 9.

11. The Commission on Family Courts recommends that the judge term be three years within the Family Division. *See id.*

12. The Supreme Court of Florida strongly suggests one judge/one family. Each judicial circuit may adopt its own case assignment, however. *See In re* Report of Comm'n of Family Courts, 633 So. 2d 14, 17 n.2 (1994).

13. *See* HAW. REV. STAT. §§ 571-11 to 571-14 (1997).

14. Hawaii established its Family Court in 1965. *See* HAW. REV. STAT. §§ 571-73 (1993).

15. District Court judges are assigned to the Family Court at the District Court level. Rotation through the juvenile, domestic, and special dockets of the Family Division occurs at varying intervals. The senior Family Court judge is a Circuit Court judge. *See* Telephone Interview with Richelle Kawasaki, Law Clerk, Office of Senior Judge Michael A. Town, Family Court of the First Circuit (Apr. 3, 1997).

16. *See id.* One judge/one case assignment, in this Appendix, is defined as one judge assigned to a case for the life of that case, including any motions and modifications related to the case.

17. The subject matter jurisdiction of the Massachusetts Probate and Family Court Department includes probate of wills, administration of trusts and estates, the appointment of guardians and conservators, adoption, change of names, divorce, and annulment. *See* MASS. GEN. LAWS ch. 215, § 3 (1989).

18. Massachusetts established its Probate and Family Court Department in 1978. The Massachusetts Trial Court consists of the following departments: the Superior Court Department, the Housing Court Department, the Land Court Department, the Probate and Family Court Department, the Boston Municipal Court Department, the Juvenile Court Department, and the District Court Department. *See* MASS. GEN. LAWS ch. 211B, § 1 (Supp. 1996).

19. *See* Telephone Interview with William F. Ryan, Jr., Assistant Court Administrator, Probate and Family Court of the State of Massachusetts (May 7, 1997).

20. *See id.*

21. *See* N.J. STAT. ANN. § 2A:4A-24 (West 1987 & Supp. 1997).

22. New Jersey established its Family Division by constitutional amendment in 1983 (N.J. CONST. art. VI, § 3). N.J. STAT. ANN. § 2A:4-3 (West 1987) addressed court personnel conditions, qualifications, and requirements. This statute was repealed and replaced in 1991 by N.J. STAT. ANN. §§ 2B:3-1 to 5-3 (Supp. 1997), upgrading certain court employee conditions, qualifications, and requirements; the constitutional provision establishing the Family Division remains effective. *See* Letter from Jeffrey A. Kuhn, Assistant Director for the Family Division of the Courts of New Jersey (Apr. 28, 1997) (on file with author).

23. Judges are assigned to the Family Division on a rotational basis. Once assigned, they typically serve for two to three years. *See* Telephone Interview with Marie Pirog, Staff Attorney for the Family Law Division (May 19, 1997).

24. In the smallest counties, one judge hears all cases; thus, the one judge/one family model applies. In slightly larger counties, one judge is specifically assigned to the Family Division, and that judge hears all family law cases, again corresponding to the one judge/one family model. In the larger counties, the systems vary. In some counties, individual judges specialize in one aspect of family law and only hear cases on that particular issue, suggesting a one judge/one case approach. In other counties, the cases are assigned on a rotational basis corresponding to a traditional calendar assignment. *Id.*

25. The Family Court has jurisdiction over child abuse and neglect proceedings; support proceedings; child custody; distribution of marital property; conciliation; proceedings concerning physically handicapped and mentally defective or retarded children; paternity; termination of custody based on neglect; proceedings concerning whether a person is in need of supervision; and proceedings concerning juvenile delinquency. *See* N.Y. FAM. CT. ACT § 115 (McKinney 1983 & Supp. 1997).

26. New York established its Family Court in 1962. *See* N.Y. FAM. CT. ACT § 113 (McKinney 1988 & Supp. 1997).

27. *See* N.Y. CONST. art. VI, § 13.

28. *See* Telephone Interview with Andrea Hoyt, Court Analyst for the Office of Court Administration (May 7, 1997).

29. *See* R.I. GEN. LAWS § 8-10-3 (Supp. 1996).

30. Rhode Island established its Family Court in 1961. *See id.*

31. *See* R.I. GEN. LAWS § 8-16.1-7 (Supp. 1996).

32. *See* Telephone Interview with Anthony Panichas, Deputy Administrator for the Rhode Island Family Court (May 19, 1997).

33. *See* S.C. CODE ANN. § 20-7-736 (Law Co-op. 1985 & Supp. 1996).

34. South Carolina established its Family Court in 1977. S.C. CODE ANN. § 14-2-10 (Law Co-op. 1985 & Supp. 1996).

35. *See* S.C. CODE ANN. § 20-7-1370 (Law Co-op. 1985 & Supp. 1996).

36. *See* Telephone Interview with Mary Schroeder, Deputy Director of Court Administration, South Carolina Family Court (May 19, 1997).

37. The Family Court has jurisdiction over divorce, annulment, and property distribution; child custody and visitation; alimony; paternity; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; and mental health. *See* VT. STAT. ANN. tit. 4, § 454 (Supp. 1997). There is also an office of magistrate within the Family Court, with jurisdiction over child support establishment, modification, and enforcement; reciprocal support

actions; and child support in parentage cases after determining parentage. *See* VT. STAT. ANN. tit. 4, § 461 (Supp. 1997).

38. Vermont established its Family Court in 1990. *See* VT. STAT. ANN. tit. 4, § 451 (Supp. 1996).

39. Judges are selected from the Superior and District Courts for a one-year term on the Family Court; however, in smaller counties, the Family Court judges also serve as Superior and District Court judges. *See* VT. STAT. ANN. tit. 4, § 21a (Supp. 1996); VT. STAT. ANN., Admin. Order No. 13 (Supp. 1997).

40. Generally one judge does hear one case. Since judges only serve on the Family Court for one year, however, sometimes the same judge cannot hear a case from start to finish, as some cases do not conclude during this time period. *See* Telephone Interview with Lee Suskin, State Court Administrator (May 23, 1997).

41. The Family Court has jurisdiction over proceedings involving the determination or modification of parenting plans, child custody, visitation, support, and the distribution of property or obligations. WASH. REV. CODE ANN. § 26.12.010 (West 1997).

42. Washington established its Family Court in 1949. *See* WASH. REV. CODE ANN. § 26.12.010 (West 1997).

43. *See* WASH. REV. CODE ANN. § 26.12.020 (West 1997).

44. In the more rural areas, however, there is only one judge for all Superior Court cases; therefore, the case assignment is one judge/one family in rural areas. *See* WASH. REV. CODE ANN. §§ 2.08.061-2.08.065 (West 1988 & Supp. 1997).

Notes for Appendix B

1. Family Court Divisions are established by local legislative acts; thus, jurisdiction varies. Generally, Family Court Divisions have jurisdiction over cases involving divorce, annulment, custody and support of children, granting and enforcement of alimony, and all other domestic and marital matters over which the Circuit Court has jurisdiction. *See* Telephone Interview with Robert H. Maddox, Staff Attorney, Administrative Office of Courts (Mar. 5, 1997).

2. Family Court Divisions exist in the larger judicial circuits, in areas where the population is large enough to support such divisions. Presently, nine out of thirty-two judicial circuits have Family Court Divisions. These divisions are referred to by different names, depending on the locality. These names include Family Court Division, Juvenile and Domestic Relations Court, Family Division, Family Court, and Domestic Relations Division. *See* ALA. CODE § 12-17-24.1 (1995); Telephone Interview with Robert H. Maddox, *supra* note 1.

3. Family Court Divisions are established by local legislative acts; thus, judicial terms vary by locality. Generally, judges of the Family Court Divisions serve a six-year term in that division. *See* Telephone Interview with Robert H. Maddox, *supra* note 1.

4. Case assignments vary depending on the jurisdiction involved. Generally, it is one judge/one case. *See* Telephone Interview with Peg Walker, Director of Research and Planning at the Alabama Administrative Office of Courts (May 20, 1997). One judge/one case assignment, in this Appendix, is defined as one judge assigned to a case for the life of that case, including any motions and modifications related to the case.

5. Colorado has established Family Law Divisions internally in Colorado Springs, Denver, and Arapahoe County. Subject matter jurisdiction varies, but it can include divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile causes; and domestic violence. *See* Telephone Interview with Cheri Kester, Office of the State Court Administrator (Apr. 10, 1997). In addition, family law magistrates appointed in each judicial district issue, modify, and enforce child support orders. *See* COLO. REV. STAT. § 13-5-301 (Supp. 1997).

6. Colorado Springs, Denver, and Arapahoe County internally established Family Law Divisions of the District Court. *See* Telephone Interview with Cheri Kester, *supra* note 5.

7. *See id.*

8. Colorado Springs County follows the one judge/one family method of case assignment, if possible. In Denver County, however, any judge assigned to the Family Law Division will hear a case. Denver maintains a separate Juvenile Court. If a family has a case involving both family law and juvenile issues, a judge from the Juvenile Court hears the juvenile issues and a judge from the Family Law Division hears the other aspects. *See id.* One judge/one family case assignment, in this Appendix, is defined as one judge assigned to a family for all proceedings before the court involving the family.

9. There is only one county, Douglas County, that has a true Family Department. The jurisdiction of the Douglas County Family Department includes divorce, annulment, separate maintenance, custody, support, paternity, visitation, and related matters; child in need of care, termination, adoption, and related matters; juvenile offenders and traffic offenses committed by juveniles; and protection from abuse in domestic violence cases. Sedgwick and Shawnee Counties have modified Family Departments handling paternity, separations, and divorce. *See Telephone Interviews with Kathy Kirk, Kansas Judicial Center (May 7, 1996; Apr. 3, 1997).*

10. In 1977, the Kansas Legislature authorized the creation of specialized divisions of the District Court whenever the judges of the District Court deem it necessary and the Supreme Court approves it. *See KAN. STAT. ANN. § 20-438 (1995).* Douglas County's Family Department was established under this statute. *See id.*

11. There is presently only one judge appointed to the Family Department of the District Court in Douglas County. She will serve as the Family Department judge as long as she pleases. *See Telephone Interviews with Kathy Kirk, supra note 9.*

12. There is only one judge of the Family Department in Douglas County; therefore, that judge hears all the cases. *See id.*

13. The Family Court for East Baton Rouge Parish has jurisdiction over divorce, annulment, paternity, spousal and child support, custody and visitation, and all matters incidental to any of the foregoing proceedings. The Family Court also has jurisdiction over all proceedings for writs of habeas corpus for the determination and enforcement of rights to the custody of minors or for the release of any person in actual custody in any case where the Family Court has original jurisdiction. *See LA. REV. STAT. ANN. § 13:1401 (West Supp. 1997).*

14. The Family Court for East Baton Rouge Parish shall convene in quarters that the governing authorities of the city of Baton Rouge and East Baton Rouge Parish shall provide. *See LA. REV. STAT. ANN. § 13:1407 (West Supp. 1997).*

15. *See LA. REV. STAT. ANN. § 13:1403 (West Supp. 1997) (per LA. CONST. art. V, § 15).*

16. *See Telephone interview with Julie Ray, Family Court Administrator for East Baton Rouge Parish (May 20, 1997).* Traditional calendar assignment, in this Appendix, is defined as the standard procedure utilized by the clerk of the court to assign all civil matters to the respective judges on a daily, weekly, monthly, or other regularly scheduled basis.

17. The Family Court has original jurisdiction in all proceedings concerning any delinquent or neglected child and jurisdiction as provided in the Youth Court Law of 1946. *See MISS. CODE ANN. § 43-23-5 (1993).*

18. Harrison County is the only county in Mississippi that has a Family Court. Family Courts can be established only in counties which meet certain requirements, namely, counties that are heavily populated. *See MISS. CODE ANN. § 43-23-1 (1993).*

19. MISS. CODE ANN. § 43-23-39 (1993) provides that Family Court judges are elected in the same manner as Chancery Court judges, who are elected for four-year terms. *See MISS. CODE ANN. § 9-5-1 (1996).*

20. There is only one Family Court judge in Harrison County; therefore, that judge hears all the Family Court cases. *See id.*

21. The Family Court has jurisdiction over marriage, legal separation, separate maintenance, child custody and modification actions; annulment; adoption; juvenile proceedings; paternity; child support and enforcement; adult abuse and child protection actions; name change; and marriage license waiting period waivers. *See MO. REV. STAT. § 487.080 (Supp. 1997).*

22. There are presently seven Family Courts throughout the state of Missouri. Six of these courts, specifically created by statute, exist in the larger metropolitan areas. Other circuits can choose, by local court rule, to establish a Family Court in their circuit. *See* MO. REV. STAT. § 487.010 (Supp. 1997); Telephone Interview with Gary Wait, Director of Juvenile and Family Court Programs (May 20, 1997).

23. *See* MO. REV. STAT. § 487.050 (Supp. 1997).

24. Case assignment varies by circuit. Generally, the assignments occur by a traditional calendar assignment system. *See* Telephone Interview with Gary Wait, *supra* note 22.

25. *See* NEV. REV. STAT. § 3.223 (Supp. 1995). Comprehensive subject matter jurisdiction, in this Appendix, is defined to include divorce, annulment and property distribution; child custody and visitation; alimony and child support; paternity, adoption, termination of parental rights; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; withholding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. *See* DEL. CODE ANN. tit 10, §§ 921-928 (Supp. 1996). Individual states may vary with regard to inclusion of particular subject matter jurisdictional areas. Any state defined to have comprehensive subject matter jurisdiction, however, has jurisdiction over a majority of the above subjects.

26. Family Courts are authorized in counties with population greater than 100,000. Currently two counties, Clark and Washoe, have Family Courts. *See* NEV. REV. STAT. § 3.0105 (Supp. 1995); Telephone Interview with Kathy Harrington, Assistant Law Librarian, Office of Washoe County Family Court Judge Scott Jordan (Apr. 10, 1997).

27. NEV. CONST. art. VI, § 5 provides that District Court judges are appointed for six-year terms. NEV. REV. STAT. §§ 3.012-3.018 (Supp. 1995) provides that in judicial districts with Family Courts, District Court judges are designated as judges of the Family Court.

28. The clerk's office uses a traditional calendar assignment to assign the cases to the Family Court judges; however, the judges transfer the cases among themselves in order to achieve the goal of one judge/one family. *See* Telephone Interview with Kathy Harrington, *supra* note 26.

29. The Family Court division has jurisdiction over divorce, annulment, property distribution, child custody, visitation, alimony, child support, paternity, termination of parental rights, grandparent visitation, and domestic violence. *See* Telephone Interview with Delores Saavedra, Clerk of the Court (May 7, 1996); Telephone Interview with Feru Goodman, Staff Attorney, Administrative Office of the Courts (Mar. 27, 1997).

30. Family Court divisions of the District Court, created by District Court rule, only exist in the larger districts where the population creates the need for such a division. Presently there are two Family Courts. *See* Telephone Interviews with Feru Goodman, Staff Attorney, Administrative Office of the Courts (June 5, 1996; Mar. 27, 1997; Apr. 24, 1997).

31. Judges are elected to the District Court for six-year terms. Any judge on the District Court can request assignment to the Family Court. There is no minimum term. *See* Telephone Interview with Belinda Demaree, Office of Judge Anne Kass, Presiding Family Court Judge, 2nd Judicial District (May 27, 1997).

32. *See id.*

33. There are eighty-eight counties in Ohio and six different types of domestic relations divisions within the Courts of Common Pleas. One type handles divorce and support (twelve counties). A second type hears divorce, support, and juvenile matters (six counties). The third type of domestic relations division is part of the general Court of Common Pleas, which also hears juvenile and probate matters (seven counties). A fourth type has jurisdiction over divorce, support, and paternity cases (five counties). In one county (the fifth type), the domestic relations division has jurisdiction over divorce, support, juvenile matters, and probate. The remaining fifty-seven counties do not have domestic relations divisions; the Court of Common Pleas hears domestic cases, as well as criminal and civil matters. *See* Telephone Interviews with Doug Stephens, Project Manager of Family Court Feasibility Study (May 8, 1996; Apr. 24, 1997).

34. *See* OHIO REV. CODE ANN. § 3105.011 (Banks-Baldwin 1996).

35. See OHIO REV. CODE ANN. § 2301.03 (Banks-Baldwin 1994 & Supp. 1997).

36. See Telephone Interview with Doug Stephens, Project Manager of Family Court Feasibility Study (May 27, 1997).

37. The jurisdiction of the Family Law Division, which is created by local rule, varies in Oklahoma and Tulsa Counties. In both counties the Family Law Division hears divorce, annulment, property distribution, child custody and visitation, alimony, child support, paternity, and termination of parental rights. The Family Law Division of neither county hears juvenile cases. See Telephone Interviews with Sheila Sewell, Deputy Director of the Administrative Office of the Courts (May 7, 1996; Mar. 27, 1997).

38. Family Law Divisions exist in two counties: Tulsa and Oklahoma. See Telephone Interview with Sheila Sewell, Deputy Director of the Administrative Office of the Courts (Mar. 27, 1997).

39. OKLA. CONST. art. VII-B, § 5 provides that District Court judges may appoint special judges to serve with no set term to hear probate, divorce, domestic relations, custody or support, guardianship, conservatorship, mental health, juvenile, adoption, and determination of death cases. See OKLA. STAT. ANN. tit. 20, § 123 (West 1991).

40. See Telephone Interview with Dave Hill, Court Administrator for Tulsa County (May 27, 1997); Telephone Interview with Robert Martin, Trial Court Administrator for Oklahoma County District Court (May 27, 1997).

41. Subject matter jurisdiction includes divorce, child custody, child support, visitation, filiation, proceedings to commit a mentally ill person, guardianship for minors, juvenile proceedings, domestic violence, adoption, and any other proceedings dealing with domestic relationship disputes. See OR. REV. STAT. § 3.408 (1995).

42. Family Court Domestic Relations Departments exist in at least Marion, Multnomah, Clackamas, Deschutes, and Lane Counties. See Telephone Interview with Sue Gerhardt, Office of Hugh McIsaac, Director of Family Court Services (Apr. 10, 1997).

43. Circuit Court judges are elected for six-year terms. See OR. CONST. art. VII(A), § 1.

44. Prior to trial, cases are assigned using the traditional calendar assignment method. If a case goes to trial, the same judge who conducts the trial hears all subsequent matters related to that case. See Telephone Interviews with Susanne Kolar, Lead Worker for Family Law Domestic Relations Department (May 21, 1997; June 26, 1997).

45. The Family Court Division has jurisdiction over desertion or nonsupport of wives, children and indigent parents; child custody; divorce, annulment and property matters relating thereto; dependent, delinquent, and neglected children; adoptions; and delayed birth certificates. See PA. CONST. art. V, § 16; PA. SCHED. CONST. art. 5, § 16.

46. Family Court Divisions only exist in Philadelphia and Allegheny Counties. See 42 PA. CONS. STAT. ANN. § 951 (West 1981). Each Court of Common Pleas has a domestic relations services section, which consists of probation officers and other court staff. See 42 PA. CONS. STAT. ANN. § 961 (West 1981).

47. Judges in the Court of Common Pleas serve ten years, then are subject to a nonpartisan retention election. Judges decide how much time they wish to spend hearing cases in the Family Court Divisions. See Telephone Interview with Don Harris, Director of Policy, Research, and Statistics for the Administrative Office of Pennsylvania Courts (May 28, 1997).

48. See *id.*

49. The jurisdiction of the Family District Court includes adoptions, birth records, divorce, annulments, child welfare, custody, child support, reciprocal support, termination of parental rights, dependency, neglect, and delinquency. See TEX. GOV'T CODE ANN. § 24.601 (West 1988); Telephone Interview with Jim Hutchinson, General Counsel, Office of the Court Administrator (Mar. 27, 1997).

50. In the larger counties, the Family District Courts are separate courts; however, in the smaller counties, the Family District Courts are merely divisions of the District Courts. See Telephone Interview with Jim Hutchinson. *supra* note 49.

51. A Family District Court judge's qualifications and term of office are the same as those for a District Court judge. See TEX. GOV'T. CODE ANN. § 24.602 (West 1988). TEX. CONST. art. V, § 7 provides that District Court judges serve for four years.

52. Assignment of cases is done by individual counties. Thus, both one judge/one family and traditional calendar assignment are used. *See* Telephone Interview with Jim Hutchinson, General Counsel, Office of the Court Administrator (May 28, 1997).

53. Subject matter jurisdiction includes divorce, child custody, visitation, child support and maintenance, family support, division of property, reciprocal support actions, and guardian ad litem. The Family Division does not handle juvenile and adoption matters. *See* Telephone Interview with Ron Witkowiak, Wisconsin District Court Administrator (Aug. 28, 1995); Telephone Interview with Cindy Hapka, Office of Wisconsin District Court Administrator (Mar. 20, 1997).

54. The only Family Division, established by local rule, exists in Milwaukee. *See* Telephone Interviews with Cindy Hapka, Office of Wisconsin District Court Administrator (Mar. 20, 1997; Apr. 10, 1997).

55. Judges are assigned to various trial divisions: civil, felony, misdemeanor traffic, family, children's, and probate and mental health. During a judge's four-year term, she can rotate throughout these divisions. *See* Telephone Interview with Cindy Hapka, *supra* note 53.

56. *See* Telephone interview with Cindy Hapka, Office of Wisconsin District Court Administrator (May 27, 1997).

Notes for Appendix C

1. San Mateo County Family Law Pilot Project has jurisdiction over temporary child support, temporary spousal support, temporary health insurance, and mediation of contested custody/visitation cases. *See* CAL. FAM. CODE § 20010 (West 1994 & Supp. 1997). Santa Clara County's Family Court has jurisdiction over temporary or permanent child or spousal support, modifications of temporary or permanent child or spousal support, health insurance, custody or visitation in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, exclusive custody, or pursuant to the Uniform Parentage Act. *See* CAL. FAM. CODE § 20031 (West 1994 & Supp. 1997); Telephone Interview and Electronic Mail follow-up with Jennifer Gaspar, Training Coordinator, Administrative Office of the Courts (Mar. 5, 1997).

2. There were originally two Family Law Pilot Projects: San Mateo County Pilot Project and Santa Clara County Pilot Project. The legislature did not specify the reason(s) behind the establishment of the Family Law Pilot Projects in these two counties. *See* CAL. FAM. CODE § 20000 (West 1994). Santa Clara County now has a Family Court. San Francisco, Humboldt, and Shasta Counties are studying the feasibility of similar systems. *See id.*

3. The judicial term for each Family Law Pilot Project was not specified because the duration of the pilot projects was two years, ending July 1, 1996. *See* CAL. FAM. CODE § 20002 (West 1994).

4. *See* Telephone Interview with Julie Lara, Legal Clerk, Santa Clara County Clerk's Office (June 4, 1997). One judge/one family case assignment, in this Appendix, is defined as one judge assigned to a family for all proceedings before the court involving that family.

5. *See* CAL. FAM. CODE §§ 20000-43 (West 1994).

6. *See* STATE BAR OF GA. COMM'N ON FAMILY COURTS, REPORTS AND RECOMMENDATIONS, 5-6 (1995) [hereinafter GA. REPORTS AND RECOMMENDATIONS]. Comprehensive subject matter jurisdiction, in this Appendix, is defined to include divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal support; name change; guardianship of minors and disabled persons; and withholding withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. *See* DEL. CODE ANN. tit. 10, §§ 921-928 (Supp. 1996). Individual states may vary with regard to inclusion of particular subject matter jurisdictional areas. Any state defined to have comprehensive subject matter jurisdiction, however, has jurisdiction over a majority of the above subjects.

7. The Commission on Family Courts has recommended the establishment of a Family Court Division in each Superior Court to handle family law matters currently within the jurisdiction of the

Superior Courts, as well as family law matters currently within the jurisdiction of the Juvenile Courts and other classes of courts. See GA. REPORTS AND RECOMMENDATIONS, *supra* note 6, at 1.

8. See *id.*

9. See *id.* at 14.

10. Georgia has enacted enabling legislation for pilot programs, see GA. CODE ANN. § 15-5-26 (1996), but the Judicial Council has yet to approve any pilot projects. Two judicial circuits have pilot proposals pending before the Council: Tallapoosa Judicial Circuit in northwest Georgia and Tifton Judicial Circuit in south Georgia. See Letter from Quintus W. Sibley, Reporter, State Bar of Georgia Commission on Family Courts (Apr. 11, 1997) (on file with author).

11. The Fifth Municipal District's Unified Family Court Project currently hears "divorce cases and other related matters such as child support enforcement, collection and civil orders of protection." John Flynn Rooney, *5th Municipal District Opens Unified Family Court Project*, DAILY L. BULL., July 22, 1997, at 1. The court expects to expand its jurisdiction to include juvenile delinquency and child protection matters sometime in the Fall of 1997. See *id.*

12. See 750 ILL. COMP. STAT. ANN. 5/105, 35/4 (West 1993).

13. Assignments are made at the discretion of the chief judge. See Telephone Interview with Joy L. Lee, Court Administrator, Sixth Municipal District, Circuit Court of Cook County (Aug. 1, 1997).

14. At present, one judge hears all family court cases. See *id.*

15. A Family Court currently operates in the Fifth Municipal District. See Rooney, *supra* note 11, at 1. Projects are currently planned for the Sixth Municipal District and the Eighteenth Judicial District. See Telephone Interview with, and Facsimile Transmission from, Joy L. Lee, Court Administrator, Sixth Municipal District, Circuit Court of Cook County (Aug. 1, 1997).

16. There is one Family Court Pilot Project in Kentucky. The Jefferson County Family Court Pilot Project hears all cases of divorce, adoption, termination of parental rights, dependency, neglect, abuse, paternity, status, and emergency protective order cases. See Telephone Interviews with Jim Birmingham, Family Court Administrator (May 8, 1996); Carla Prather, General Counsel for the Jefferson County Family Court (Apr. 24, 1997).

17. The Jefferson County Family Court Pilot Project hears cases previously assigned to the Circuit Court and the District Court. Kentucky implemented the Family Court Pilot Project in March, 1991, by order of the Supreme Court of Kentucky, effective until further order from that court. See *Kuprion v. Fitzgerald*, 888 S.W.2d 679 (Ky. Ct. App. 1994) (documenting the creation of the Jefferson County Family Court Pilot Project); Telephone Interview with Carla Prather, *supra* note 16.

18. There are nine judges assigned to the Jefferson County Family Court Pilot Project. Four of these positions are permanent assignments to the Family Court Pilot Project. The remaining five judges can rotate out of the Family Court Pilot Project; only one judge has made such a choice since the inception of the project in 1991. See Telephone Interview with Carla Prather, *supra* note 16.

19. See FAMILY CT. NEWSLETTER, JEFFERSON COUNTY PILOT PROJECT (Jefferson County, Ky., Family Court), Mar. 8, 1991, at 4.

20. See *id.*

21. The Family Court Pilot Project provides specialized and expedited procedures for all cases involving divorce, post-divorce motions, paternity, protection from abuse, parental rights and responsibilities, and unmarried parents. See Telephone Interviews with Judge Joyce A. Wheeler, Director of Family Court Pilot Project (Aug. 18, 1995; Apr. 3, 1997).

22. The Family Court Pilot Project is structured as the Family Court Division of the District Court, Superior Court, and Administrative Court. Presently this pilot project is in effect in the Cumberland County Superior Court and in the Ninth District Court. The legislature authorized the creation of the pilot project in 1990 to handle family law cases. In 1993, the legislature extended the pilot project until January 15, 1999. See ME. REV. STAT. ANN. tit. 4, §§ 1, 451 (West Supp. 1995).

23. Only one judge for each pilot project site sits primarily in the Family Court Pilot Project; other judges usually sit from one to several days at a time. See Telephone Interviews with Judge Joyce A. Wheeler, *supra* note 21.

24. See Telephone Interview with Diane Harvey, Clerk of Administrative Court and Clerk of Family Court Pilot Project (May 28, 1997). Traditional calendar assignment, in this Appendix, is defined as the standard procedure utilized by the clerk of the court to assign all civil matters to the respective judges on a daily, weekly, monthly, or other regularly scheduled basis.

25. The legislature authorized the creation of the pilot project in 1990 to handle family law cases. In 1993, the legislature extended the pilot project until January 15, 1999. See ME. REV. STAT. ANN. tit. 4, §§ 1, 451 (West Supp. 1995).

26. See 1993 Md. Laws 198 and MD. CT. RULE 16-204 (effective July 1, 1998).

27. The Family Division of the Circuit Court for Baltimore City was mandated by 1993 Md. Laws 198, 1996 Md. Laws 13, and 1997 Md. Laws 3. Family Divisions for counties with more than seven circuit court judges were mandated by MD. CT. RULE 16-204 (effective July 1, 1998).

28. The judge term in the Family Division presently is undetermined; however, within Baltimore City, the current practice is a six-month rotation in each of the existing divisions of the Circuit Court. See Telephone Interview with Judith Moran, Baltimore City Family Division Case Coordinator (May 1, 1997).

29. See *id.*

30. See 1993 Md. Laws 198 and MD. CT. RULE 16-204 (effective July 1, 1998).

31. See MICH. COMP. LAWS ANN. § 600.1021 (West Supp. 1997) (effective Jan. 1, 1998).

32. See MICH. COMP. LAWS ANN. § 600.1003 (effective Jan. 1, 1998).

33. See MICH. COMP. LAWS ANN. § 600.1011 (effective Jan. 1, 1998).

34. See MICH. COMP. LAWS ANN. § 600.1023 (effective Jan. 1, 1998).

35. See MICH. COMP. LAWS ANN. § 600.1001 (effective Jan. 1, 1998).

36. The jurisdiction of the Family Division Pilot Project includes divorce, annulment, alimony, paternity, child custody and visitation, child support, domestic violence, juvenile delinquency, abused and neglected children, children in need of assistance, adoption, guardianships, termination of parental rights, and name change. See 1995 N.H. Laws 152:2.

37. In May 1995, the New Hampshire legislature enacted Chapter 152 establishing a Family Division Pilot Program in Rockingham and Grafton Counties. See 1995 N.H. Laws 152:2.

38. Judges have been asked to serve for the life of the Family Division Pilot Program, which is approximately two years. See Telephone Interview with Craig Briggs, Administrator of Family Division Project (June 2, 1997).

39. See *id.*

40. The pilot project has operated since July 1996. See *id.*

41. See VA. CODE ANN. § 16.1-241 (Michie Supp. 1997).

42. Legislation authorizing the establishment of the Family Court passed in 1993. As of April 10, 1997, the Virginia legislature has not authorized any funding for the Family Court; therefore, the Family Court has yet to become operational. See Telephone Interviews with Office of Lelia Hopper, Director, Family Court Project (May 8, 1996; Apr. 10, 1997).

43. See Telephone Interview with Lelia Hooper, Director, Family Court Project (May 29, 1997).

44. See *id.*

45. Virginia's Family Court Project is presently on hold. Legislation creating the project was passed in 1993 and remains in effect until June 1, 1998. The legislature has not funded the project, however; thus, the Family Court presently does not exist. See *id.*

Notes for Appendix D

1. Family law, in this Appendix, is defined to include divorce, annulment and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; and with-

holding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. *See* DEL. CODE ANN. tit. 10, §§ 921-926 (Supp. 1996).

2. *See* ALASKA STAT. § 47.10.65 (Michie 1996); ALASKA STAT. § 22.10.020 (Michie 1988); Telephone Interviews with Stephanie Cole, Deputy Director, Administrative Office of the Courts (July 11, 1995; Mar. 5, 1997).

3. The Superior Court consists of five divisions: Juvenile, Domestic Relations, City/Municipal, County, and Justice of the Peace. Domestic cases are heard only in the Juvenile, Domestic Relations, and County Divisions. *See* ARIZ. CONST. art. VI, §§ 14, 15; ARIZ. REV. STAT. ANN. § 8-202 (West Supp. 1996); ARIZ. REV. STAT. ANN. § 25-311 (West Supp. 1996); ARIZ. REV. STAT. ANN. 8-102.1 (West Supp. 1989); Telephone Interview with Mary Lou Quintana, Division Director of Court Services (July 11, 1995); Telephone Interview with Agnes Felton, Division Director of Court Services (Mar. 5, 1997).

4. *See* ARK. CODE ANN. § 9-27-306 (Michie Supp. 1995); ARK. CODE ANN. § 16-13-201 (Michie 1994); ARK. CODE ANN. § 9-12-301 (Michie 1993); ARK. CODE ANN. § 28-1-104 (Michie 1987); Telephone Interview with James D. Gingerich, Director of the Administrative Office of the Courts (June 23, 1995); Telephone Interview with Leslie Steen, Clerk of the Supreme Court (Mar. 5, 1997).

5. *See* CONN. GEN. STAT. ANN. §§ 46b-42, 46b-93, 46b-121, 46b-174, 46b-180 (West 1993); CONN. GEN. STAT. ANN. § 51-164 (West 1985); Telephone Interview with Robert Tompkins, Deputy Director of the Family Division (a social services arm of the Superior Court) (Aug. 16, 1995); Telephone Interview with Paula Campo, Family Division Administrator (Mar. 5, 1997).

6. *See* IDAHO CODE §§ 16-1602, 16-1603 (Supp. 1997); IDAHO CODE §32-715 (1996); IDAHO CODE § 16-2002(a) (Supp. 1996); IDAHO CODE §§ 20-502 (Supp. 1996); Telephone Interview with Thomas Frost, Legal Counsel, Administrative Office of the Courts (July 7, 1995); Telephone Interview with Jana Saxton, Assistant to Thomas Frost (Mar. 20, 1997).

7. *See* IND. CODE ANN. § 31-6-2-1.1 (Michie Supp. 1996); IND. CODE ANN. §§ 33-4-4-3, 33-8-2-9, 33-8-2-10 (Michie 1992); IND. CODE ANN. §§ 33-5-4.5-1 to 33-5-50-11 (Michie 1992 & Supp. 1996); Telephone Interviews with Jack Stark, Staff Attorney, Division of State Court Administration (July 17, 1995; Mar. 27, 1997); Telephone Interview with Jeff Berkovitz, Director of Probate and Juvenile Services (July 3, 1997).

8. *See* IOWA CODE ANN. §§ 598.2, 600.3, 602.7101 (West 1996); IOWA CODE ANN. §§ 232.61, 232.109 (West 1994); Telephone Interviews with David Ewert, Director of Appellate Screening (July 7, 1995; Mar. 20, 1997).

9. *See* MINN. STAT. ANN. § 260.111 (West Supp. 1997); MINN. STAT. ANN. §§ 260.019, 260.021 (West 1992); MINN. STAT. ANN. §§ 518.002-518.66 (West 1990 & Supp. 1997); Telephone Interviews with Steve Forestell, Director of Judicial Advisory Service (July 27, 1995; Apr. 3, 1997).

10. *See* MONT. CODE ANN. §§ 40-4-104, 40-6-109, 41-3-103, 41-5-203 (1995); Telephone Interviews with Chris Wethem, Staff Attorney, Administrative Office of the Courts (June 29, 1995; Mar. 20, 1997).

11. *See* NEB. REV. STAT. § 42-348 (Supp. 1996); NEB. REV. STAT. § 24-517 (1995); NEB. REV. STAT. § 43-247 (1993); Telephone Interview with Joseph C. Steele, Court Administrator (June 29, 1995); Telephone Interview with Sherry Lampe, Assistant Court Administrator (Mar. 27, 1997).

12. *See* N.C. CONST. art. VI, § 1; N.C. GEN. STAT. §§ 7A-517(9), 7A-523, 50-4 (1995); Telephone Interview with Fred M. Morelock, District Court Judge (June 29, 1995); Telephone Interview with Betty Wall, Assistant Clerk of the Supreme Court (Mar. 20, 1997).

13. *See* N.D. CENT. CODE § 27-20-04 (1989); N.D. CENT. CODE §§ 14-12.1-02, 14-15-01 (1981); N.D. CENT. CODE § 27-20-03 (1974); Telephone Interview with Sherry Mills Moore, Chair of Ad Hoc Commission on Family Law (Aug. 30, 1995); Telephone Interview with Keith Nelson, North Dakota Courts Administrator (Mar. 27, 1997).

14. South Dakota's Circuit Court is the only court of general jurisdiction; therefore, all family law cases are heard in the Circuit Court. *See* S.D. CODIFIED LAWS §§ 25-10-2, 26-7A-1 (Michie 1997); S.D. CODIFIED LAWS §§ 25-3-1, 25-5A-5, 25-6-6, 26-7A-2 (Michie 1992); Telephone Inter-

view with Michael Buenger, State Court Administrator (Aug. 30, 1995); Telephone Interview with Ken Olander, State Court Administrator's Office (Apr. 3, 1997).

15. See TENN. CODE ANN. §§ 37-1-103, 37-1-104, 37-1-203, 37-1-205 (1996); TENN. CODE ANN. § 16-15-406 (1994); Telephone Interview with Jean Stone, Staff Attorney, Administrative Office of the Courts (June 29, 1995); Telephone Interview with Jona Coppola, Assistant to Director of Administrative Office of the Courts (Mar. 20, 1997).

16. See UTAH CODE ANN. §§ 78-3a-104, 78-3a-105 (1996); UTAH CODE ANN. § 30-3-16.1 (1995); Telephone Interview with Brant Johnson, Acting General Counsel, Administrative Office of the Courts (July 27, 1995); Telephone Interview with Cheryll May, Public Information Officer (Mar. 20, 1997).

17. See W. VA. CODE §§ 48-2-5, 48-4-14, 49-5-2 (1996); Telephone Interviews with Penny Crandall, Assistant Director for Family Law Master Program (Aug. 17, 1995; Mar. 21, 1997).

18. See WYO. STAT. ANN. §§ 1-22-104, 5-5-135, 14-1-203, 14-2-106, 14-6-203, 20-2-104, (1997); Telephone Interview with Allen Johnson, Senior Staff Attorney, Administrative Office of the Courts (July 27, 1995); Telephone Interview with Elaine Kirby, Fiscal Specialist for Administrative Office of the Courts (Mar. 20, 1997).

