



Families Matter:

Recommendations to Improve Outcomes
For Children and Families in Court

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Families Matter: Recommendations to Improve Outcomes for Children and Families in Court

This report is based on the Families Matter Symposium, convened in June 2010 by the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC). The symposium brought together an interdisciplinary group of family law experts to identify problems regarding the practice of family law and to make recommendations about promising solutions.

Financial contributors to the symposium included:

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FAMILIES MATTER: RECOMMENDATIONS TO IMPROVE OUTCOMES FOR CHILDREN AND FAMILIES IN COURT

EXECUTIVE SUMMARY

The Families Matter initiative was designed as a major, multi-year undertaking to develop legal practice methods and approaches to reduce the destructive consequences of the family legal process. The initiative was intended to respond to the need for deep and meaningful reform of the family law process.

Convened in June 2010 by the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC), the Families Matter Symposium brought together an interdisciplinary group of family law experts for two days at the University of Baltimore to identify problems regarding the practice of family law and to make recommendations about promising solutions.¹ The best outcomes for family law cases require a combination of lawyers and mental health professionals, social scientists, mediators, judges, academics, policymakers and financial experts, among others. In addition, Symposium participants acknowledged that the resolution of family law cases must not be “win or lose” and that a major shift in tone is needed.

The main question was, “How do we radically transform a family court system from one that disrupts and tears apart families to one that helps heal them?” The Families Matter initiative intended to help develop and support a family justice system with an interdisciplinary,

¹ Financial contributors to the symposium included: Adelberg, Rudow, Dorf & Hendler, LLC; Avery & Cheerva LLP; Friedman, Mirman Co., L.P.A.; Fullenweider Wilhite; Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC; Hooper & Jacobs, LLC; Levine & Smith, LLC; Law Office of Maryann E. Foley; Schiller DuCanto & Fleck LLP; and Young, Berman, Karpf & Gonzalez, P.A.

holistic and therapeutic focus; to make a broad range of family and individual services available to separating families; to foster greater use of alternative dispute resolution at the earliest stages of a case; and to encourage training law students, lawyers, judges, and court personnel toward a less adversarial, therapeutic, holistic focus when dealing with family law matters. This report provides a summary and overview of the Symposium discussions and the suggestions for reform that emerged from those discussions. Suggestions for further consideration included:

- The development and implementation of Unified Family Courts are fundamental to family justice system reform.²
- Courts should develop and implement differentiated case management approaches that (1) screen for public health issues such as domestic violence and addiction; (2) adopt a triage process that identifies family characteristics and provides an appropriate dispute resolution process based on those characteristics; (3) identifies other unmet legal and non-legal needs of litigants; and (4) refers/provides litigants with appropriate services.
- Child custody litigants should receive legal counsel (“Civil Gideon”).³
- Courts should provide effective assistance to self-represented litigants in family law matters.⁴
- The family court system should incorporate interdisciplinary collaboration, including input from lawyers, judges, mediators, mental health professionals, and financial experts, among others.

² American Bar Association Policy supports the commitment to unified children and family courts, set forth in the Standards Relating to Court Organization and Administration, Standard 1.1., which pledges to promote the implementation of unified children and family court systems as described in Standard 1.1 recognizing that the manner of administering these courts may differ among states and jurisdictions. The policy endorses seven specified clarifications and additions to the components of unified children and family courts. August 1994, reaffirming 1980 policy. REPORTS WITH RECOMMENDATIONS TO THE HOUSE OF DELEGATES: 1994 ANNUAL MEETING § 10C (1994). *See also* ABA policy that supports the use of the term “problem-solving courts” to refer to specialized initiatives such as drug courts, community courts and mental health courts, as well as programs such as unified family courts; (2) the continued development of problem-solving courts to improve court processes and court outcomes for litigants, victims and communities; and (3) the consideration of the use of the principles and methods employed by problem-solving courts in the daily administration of justice. Promote education about problem-solving courts. Approved by the House of Delegates, 2001 Annual Meeting, Resol. 117.

³ ABA policy urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low-income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction. Approved by the House of Delegates, 2006 Annual Meeting, Resol. 112A.

⁴ *Id.*

- Courts should be authorized to mandate that family law litigants, including non-parents who are a daily part of children’s lives, attend parenting classes.
- Law schools should examine and revamp family law curricula to include interdisciplinary instruction, such as that envisioned in the Association of Family and Conciliation Courts (AFCC) Family Law Education Reform project.⁵
- Policymakers, family law experts, academics, and others should examine and, when appropriate, adopt effective family law practices and programs developed in other countries.
- Outcome data should be collected to evaluate the effectiveness of family court programs and policies.
- Judges must be suited by temperament to sit in family court, and they should be trained comprehensively.
- States should adopt standards for custody evaluators (such as the *Guidelines for Child Custody Evaluations in Family Law Proceedings* promulgated by the American Psychological Association and the *Model Standards of Practice for Child Custody Evaluations* promulgated by the Association of Family and Conciliation Courts (AFCC)), and custody evaluations should be independent for all contested cases.
- There should be an information campaign to educate the public about the realities and potential harm of acrimonious legal proceedings; the financial, tax, and other implications of different actions; and the availability and characteristics of alternative dispute resolution and various services.
- Domestic violence should be addressed as a public health as well as a public safety issue; there should be intensive case management of domestic violence cases; and there should be specialized training and certification for professionals who practice in the field.⁶

⁵ *About the Family Law Education Reform Project Website*, FLERPROJECT.ORG, <http://www.flerproject.org/> (last visited Sep. 30, 2012).

⁶ ABA policy supports educational programs designed to inform and train judges about the civil, criminal, psychological, evidentiary and procedural issues relating to domestic violence. The policy makes reference to the strong belief that such education and training is essential to ensure the proper disposition of cases in which domestic violence issues may arise, including six specified types of cases. The policy further resolves that such programs include information about community resources and programs which would facilitate assistance to victims and their children. The policy urges governmental and agency funding of such training programs. February, 1996. *See also* ABA policy urging support of efforts to pass legislation and secure funding for the development of multidisciplinary, community-based programs to respond to the current epidemic of domestic violence. The policy recommends that any government or private entity developing multidisciplinary programs in response to domestic violence ensure that such programs contain seven specified essential elements, including (1) participation by various professionals having services to offer victims of domestic violence; (2) coordinated information-sharing among appropriate offices to ensure that all aspects of the justice system are adequately informed about each other's action in domestic violence cases; (3) multidisciplinary public education programs about domestic violence; (4) multidisciplinary domestic violence prevention and intervention through employee assistance programs; (5) enhanced legal representation for victims of domestic violence and their children and expanded attorney training; (6) data collection;

The recommendations in this Final Report can serve as a catalyst for change in the practice of family law, with the overarching goal of improving the family law system and process so they become less destructive to children and their families. This report is not intended to represent the final scope of issues or solutions necessary to this task, but it is a means to describe the Families Matter initiative and to structure thinking about how to achieve positive outcomes for families and children.

and (7) policies, procedures and practices which place primary emphasis on the safety of the victim and the victim's children. August 1995.

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*Happy families are all alike;
every unhappy family is unhappy in its own way.*

— Leo Tolstoy, ANNA KARENINA Ch.1 (1877)

*Marriage may be the best child welfare, crime prevention, and
anti-poverty program this country has.*

— Chief Justice Leah Ward Sears (retired), Supreme Court of Georgia, Remarks at the University of Virginia (Dec. 2010)

Introduction

Few legal domains are more fraught with difficulty and potentially shattering consequences than the realm of family law. Fact finding can be a grueling process, with truth obscured by wildly different perspectives and a high-stakes urge to win at any cost. Animosity may not be limited to words alone; domestic violence is a continuing threat in some of the worst cases.⁷ Children are often the ones who pay the highest price.⁸

While the vast majority of separated and divorcing parents settle issues without excessive acrimony and litigation,⁹ those who do litigate often create significant problems for judges, attorneys, and others involved in the divorce process. More important, they also risk exposing their children to a long-term negative impact on their emotional/ psychological development.

The original notion of a judge needing Solomonic wisdom, indeed, did occur in a dispute over custody of a child. Today, many judges and lawyers are faced with what seems like the Solomonic equivalent of splitting a baby in half. They confront these dilemmas in justice systems that may themselves be part of the problem due to limited court resources;

⁷ For example, a woman who said she had been previously unable to get a restraining order against her husband was attacked by him in a Florida judge's chambers. See Martha Neil, *Lawyer Steps in to Help Woman Attacked During Divorce Hearing in Judge's Chambers*, THE AMERICAN BAR ASSOCIATION (posted Apr. 19, 2011, 12:32 PM), http://www.abajournal.com/news/article/lawyer_steps_in_to_help_woman_allegedly_attacked_by_ex/. See also Amanda J. Schmesser, *Real Men May Not Cry, But They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws*, 58 SYRACUSE L. REV. 171 (2007) (arguing that heterosexual males account for a substantial number of domestic violence victims and that violence in the home is a social problem, regardless of whether it is committed by men or women).

⁸ See generally JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE* 196 (1989).

⁹ Janet R. Johnston et al., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 FAM. CT. REV. 283, 284 (2005) (only 4% of child-custody cases are litigated).

inadequate training of judges, attorneys, and others in family law matters; undue expense; overlapping subject-matter jurisdiction; inconsistent orders; and a lack of coordination and collaboration.

Some of the failings of the family law system are well documented.¹⁰

- The harshness of adversarial justice harms people whose emotions are already raw because of impending family dissolution and exacerbates contentiousness.¹¹
- A “win-lose” mentality may breed failure to effectively deal with differences.¹²
- Children can feel like and are often used as pawns in a battle between parents.¹³
- Family resources may be depleted because of endless litigation rather than spent on other needs.¹⁴
- Lawyers themselves can experience burnout or be threatened or even be physically harmed by hostile litigants.¹⁵
- Matters that are primarily psycho-social are at times decided by judges who sometimes are ill-equipped or untrained to make the best decisions.¹⁶
- Well-founded fears of escalating domestic violence may go unaddressed, or worse, trigger a punitive response to the victim.¹⁷

¹⁰ See generally, Barbara A. Babb & Mitchell K. Karpf, *A More Humane Vision of Family Law*, BALTIMORE SUN, Jul. 13, 2010, available at http://articles.baltimoresun.com/2010-07-13/news/bs-ed-family-law-20100713_1_family-law-family-breakup-family-justice-system; see also Louise Phipps Senft, *Legal System Must Change to Help Families*, UNIFIED FAM. CT. CONNECTION (Univ. of Balt. Sch. of Law Sayra and Neil Meyerhoff Ctr. for Families, Children and the Courts, Baltimore, Md.), Winter 2011, at 15, available at http://law.ubalt.edu/downloads/law_downloads/CFCC_UFC_WINTER2011.pdf

¹¹ Babb, *supra* note 9; Senft, *supra* note 9.

¹² Babb, *supra* note 9; Senft, *supra* note 9.

¹³ WALLERSTEIN, *supra* note 7. See also Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children*, 52 FAM. REL. 373 (2003).

¹⁴ See Paul T. Capuzziello, *An Interdisciplinary Approach to Handling Divorce Cases*, UNIFIED FAM. CT. CONNECTION (Univ. of Balt. Sch. of Law Sayra and Neil Meyerhoff Ctr. for Families, Children and the Courts, Baltimore, Md.), Winter 2011, at 2, available at http://law.ubalt.edu/downloads/law_downloads/CFCC_UFC_WINTER2011.pdf. The problem of financing divorce litigation has spurred a new business, about which concerns have been raised. The New York Times reported in the spring about a loan enterprise that targets divorcing spouses who cannot easily afford representation for protracted battles. See Binyamin Applebaum, *Taking Sides in a Divorce, Chasing Profit*, N.Y. TIMES, Dec. 5, 2010, at A1. The problem with this “solution” has been discussed in a recent blog. See Barbara A. Babb, *A Troubling New Practice: For Profit Businesses that Fund Divorce Cases*, SAYRA AND NEIL MEYERHOFF CENTER FOR FAMILIES, CHILDREN AND THE COURTS BLOG (Jan. 19, 2011, 5:02 PM), <http://ub-cfcc.blogspot.com/2011/01/troubling-new-practice-for-profit.html>

¹⁵ In one case, a lawyer was physically assaulted by the husband of her client; opposing counsel’s efforts to warn the lawyer did not reach her in time. Martha Neil, *Opposing Counsel’s Warning Comes Too Late; Lawyer, 54, Is Stabbed 12 Times in Her Office*, ABA JOURNAL.COM, (Jun. 14, 2010, 5:46 PM), http://www.abajournal.com/news/article/opposing_counsels_warning_comes_too_late_lawyer_54_is_stabbed_12_times_in_o/

¹⁶ See generally WALLERSTEIN, *supra* note 7. Andrew Schepard, *Alienated Children in Divorce and Separation*, 48 FAM. CT. REV. 1 (2010).

¹⁷ See generally, Kelly Browe Olson & Nancy Ver Steegh, *Introduction of Special Issue Editors*, 46 FAM. CT. REV. 434 (2008); Nancy Ver Steegh and Clare Dalton, *Report From the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454, 460 (2008).

- There may be a proliferation of inconsistent orders, making justice inefficient, haphazard, and potentially damaging.¹⁸
- The judicial system is swamped with family law cases.¹⁹
- The burdens of litigation influence the work lives of the litigants, affecting their job performance.²⁰
- Legal education is not preparing students for the challenges of dealing with fragile families, and an adversarial ethic often exacerbates this problem.²¹
- Effective alternative dispute resolution interventions are being used in some jurisdictions, but not everywhere, and implementation is very inconsistent.²²
- The child's voice is often lost, with resultant pain and resentment that may last a lifetime.²³
- Unchecked hostility between parents is harmful to children, while adversarial processes cause further deterioration and acrimony.²⁴
- Insufficient coordination among varied professionals who work with fragile families means lost opportunities and may lead to conflicting orders.²⁵

¹⁸ Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 SO. CAL. L. REV. 469 (1998).

¹⁹ In Maryland, for example, according to the 2009 Annual Report of the Maryland Circuit Court, family law cases constitute more than 45% of that court's total trial court filings. In Georgia, in 2005, 355,000 cases were filed in Georgia's trial level court. Of those cases, 223,000 were civil, 65% of which were domestic relation cases. Family law cases are commonly half of a trial court docket, and often take about two years from start to finish.

²⁰ Capuzziello, *supra* note 13, at 2.

²¹ Alexis Collentine, *The Family Law Education Reform Project: How the Proposed Changes Would (and Could) Attract Students to Family Law Courses*, 44 FAM. CT. REV. 595 (2006).

²² "The heart of any efficient family law system is the ADR process," writes Judge Hugh Starnes. He continues, "By working on improving the use, quality and diversity of those valuable processes, the whole legal culture can evolve into a more cooperative problem-solving atmosphere." Hugh Starnes, *Judges Play a Crucial Role in Improving Family Courts*, UNIFIED FAM. CT. CONNECTION (Univ. of Balt. Sch. of Law Sayra and Neil Meyerhoff Center for Family, Children and the Courts, Baltimore, Md.), Winter 2011, at 8, *available at* http://law.ubalt.edu/downloads/law_downloads/CFCC_UFC_WINTER2011.pdf.

²³ WALLERSTEIN, *supra* note 7, at 302. "The first upheaval occurs at the breakup. Children are frightened and angry, terrified of being abandoned by both parents, and they feel responsible for the divorce. Most children are taken by surprise: few are relieved. As adults, they remember with sorrow and anger how little support they got from their parents when it happened. They recall how they were expected to adjust overnight to a terrifying number of changes that confounded them. Even children who had seen and heard violence at home made no connection between that violence and the decision to divorce. The children concluded early on, silently and sadly, that family relationships are fragile These early experiences colored their later expectations." *Id.* at 298.

²⁴ *Id.* at 310: "Parents and children in violent or high-conflict families will need another set of services provided by people with specialized training."

²⁵ See Peter Salem, *Improving our Family Courts and Services: A Call for Interdisciplinary Collaboration*, UNIFIED FAM. CT. CONNECTION (Univ. of Balt. Sch. of Law Sayra and Neil Meyerhoff Ctr. for Family, Children and the Courts, Baltimore, Md.), Winter 2011, at 7, 10, *available at* http://law.ubalt.edu/downloads/law_downloads/CFCC_UFC_WINTER2011.pdf

- The politics of judicial appointments can lead to family court judges who do not have the interest or judicial temperament to preside over family law cases.

The Families Matter Symposium was an undertaking to change the practice of family law and the family justice system. Sponsored by the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC), the Families Matter Symposium was designed to respond to the need for deep and meaningful reform of the family law process.

The recommendations from the Families Matter Symposium can assist with the development of legal practice methods and approaches to minimize the damaging consequences of family legal proceedings, particularly in the areas of matrimonial and custody cases. In addition, the Families Matter Symposium recommendations can inform how to highlight, disseminate, and promote promising practices and the development of new approaches that minimize the damaging consequences of family legal proceedings.

The interdisciplinary group of experts at the Families Matter Symposium concluded that the best outcomes for family law cases often require more than lawyers. Mental health professionals, social scientists, mediators, judges, academics, policymakers and financial experts also must be involved.²⁶ Moreover, the resolution of these cases must not be “win or lose.” Instead, a major shift in tone is needed. The reform work generated by the Symposium must focus on ways to expand the assistance that family law can provide children and families and steps to include those professionals who too often must do damage control after the legal process has harmed vulnerable participants.

The Families Matter initiative has not occurred in a vacuum, however. There have been multiple projects, efforts, programs, and practices by several organizations in the past few decades that have laid substantial groundwork for this initiative. There arguably has been a profound transformation of the family law system in the past decade, with the rapid development of reforms such as mediation, parenting coordination, early neutral evaluation, differentiated case management, Unified Family Courts, reform of family law courses by law schools, and other developments that have targeted the potentially destructive consequences of family law on families and children. Many of these reforms are included in this report, with recommendations for strengthening and/or replicating them.

The family law system, however, continues to disrupt and tear apart families. The Families Matter initiative intends to help develop and support a family justice system that has an interdisciplinary, holistic and therapeutic focus; make a broad range of family and individual services available to separating families; foster greater use of alternative dispute resolution at the earliest stages of a case; and encourage training law students, lawyers, judges, and court

²⁶ Domestic violence cases may require a different approach, in part because co-parenting and conflict avoidance is less appropriate in that context, and in part because of the importance of protection of rights and findings that validate a victim and hold an abuser accountable for stopping abuse.

personnel toward a less adversarial, therapeutic, holistic focus when dealing with family law matters.²⁷

The Symposium's Structure and Goals

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC)²⁸, brought together 60 interdisciplinary experts in the field of family law for a two-day Families Matter Symposium at the University of Baltimore on June 24-25, 2010.

The Symposium's two-day format allowed for plenary presentations and intensive break-out sessions designed to both identify problems and to elicit promising solutions from the assembled experts, who were divided into six discussion/breakout groups. An important goal was to develop a framework and strategy for collaboration among participants, future partners, and other family justice system experts. There was general agreement that one of the most important targets for change is the next generation of lawyers who, with appropriate training, can help transform the practice of family law.

One of the key features of the conference was its interdisciplinary nature. Among the participants were judges, academics, lawyers, mediators, financial experts, mental health professionals, custody evaluators, domestic violence advocates, and court administrators.²⁹ Families Matter Symposium planners recognized that participants would have multiple perspectives. Consequently, each group's initial task was to identify the most pressing problems in their designated area of family law and to formulate a strategy to promote change as part of the multi-year Families Matter initiative. After the conference, CFCC published a special issue of its Unified Family Court Connection newsletter devoted to articles written by a number of experts who participated in the symposium.³⁰

²⁷ Salem, *supra* note 24.

²⁸ CFCC is a national leader in promoting family justice system reform. CFCC's mission is to create, foster and support local, state, and national movements to integrate communities, families, and the justice system in order to improve the lives of families and the health of the community. CFCC engages in policy initiatives, program development and implementation, law school education, strategic planning, technical assistance, and evaluation. Therapeutic jurisprudence and the ecology of human development are at the heart of CFCC's mission, based on the belief that effective justice and good outcomes are best served by a comprehensive, multidisciplinary approach to the legal and social problems affecting children and families.

²⁹ More than 60 participants attended the Symposium at the University of Baltimore School of Law. Attendees included, among others, Maryland Chief Judge Robert Bell; Texas Supreme Court Justice Debra Lehrmann; The Hon. Hugh Starnes, Senior Circuit Court Judge, Florida; Chief Justice Leah Ward Sears (retired), Supreme Court of Georgia; The Honorable Judith Kreeger, Eleventh Judicial Circuit-Family Division (Miami-Dade County); The Honorable Audrey J. S. Carrion, Associate Judge of the Circuit Court for Baltimore City; The Honorable Marcella Holland, Administrative Judge for the Circuit Court for Baltimore City; The Honorable Edward Newman, Magistrate of the Rhode Island Family Court; Janet Fink, Esq., Deputy Counsel to the New York State Unified Court System; Rebecca Henry, Esq., Deputy Chief Counsel of the American Bar Association Commission on Domestic Violence; Diane Nunn, Esq., Director of the California Center for Families, Children and the Courts; Professor Barbara A. Babb Director of the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts; Peter Salem, Executive Director of the Association of Family and Conciliation Courts; Pamela Gagel, Esq., Assistant Director of the Institute for the Advancement of the American Legal System; Dr. Irwin Sandler, Director of the Prevention Research Center at Arizona State University; Joan Meier, Professor of Clinical Law and Director of the Domestic Violence Legal Empowerment and Appeals Project at George Washington University Law School; Pamela Ortiz, Esq., Executive Director of the Maryland Access to Justice Commission; Rachel Wohl, Esq., Executive Director of the Maryland Mediation and Conflict Resolution Office. See Appendix for a complete list of invited participants and attendees.

³⁰ UNIFIED FAM. CT. CONNECTION (Univ. of Balt. Sch. of Law's Sayra and Neil Meyerhoff Ctr. for Family, Children and the Courts, Baltimore, Md.), Winter 2011.

How can we develop practices and methodologies to make family law litigation less disruptive on those families going through it?

— Mitchell Karpf, Young, Berman, Karpf & Gonzalez, P.A.

In her opening remarks, Professor Barbara A. Babb, CFCC's Director, reinforced CFCC's commitment to the Families Matter initiative and the powerful collaboration among the organizations represented at the symposium. She explained CFCC's family justice system reform approach and mission to identify structures and processes that improve children's and families' lives, particularly through the creation of Unified Family Courts. Professor Babb underscored the importance of addressing both the legal *and* non-legal problems that affect families and children in family court.

The need is not only great, but urgent. Family law is inherently complex, emotional, and of utmost importance to the people affected by it. We hope that the joint wisdom assembled here can make a substantial contribution.

— Professor Barbara Babb, Founder and Director of the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts

Chief Judge Robert Bell (Ret.) of the Maryland Court of Appeals, the keynote speaker, spoke about Maryland's judicial initiatives aimed at better meeting the growing needs of families across the state because "families matter." Commenting that one of the Maryland judiciary's guiding principles is creating fuller access to justice for all citizens, he noted that Maryland Governor Martin O'Malley recently supported a bill to increase civil legal filing fees to increase funding to legal aid services. Chief Judge Bell touched on the family justice system innovations that the judiciary developed over the past few years, including services for self-represented litigants, alternative dispute resolution, and closer collaboration with the Department of Juvenile Services and other agencies that provide services for families involved in family court.

Ours is, of course, a complex society and more and more people are continuing to turn to the courts and the legal profession as a first, rather than a last, resort to provide authoritative and timely solutions to the problems that plague our lives. Not a day passes in this state, and indeed in any court in this country, when the consequences of some court ruling, shaped in large measure by the arguments and advocacy of lawyers, has not touched the lives in substantial numbers of our citizens, and particularly our families and children.

— Chief Judge Robert Bell of the Maryland Court of Appeals (Ret.)

The plenary session provided time for participants to identify the most important problems or issues of the present family court system and to discuss promising new practices that address the system's negative consequences. Following the plenary, participants divided into six breakout groups for the remainder of the Symposium: Alternative Dispute Resolution/Interdisciplinary Collaboration; Financial Dimensions/Attorneys and Other

Professionals; Lack of Resources; Courts; the Role of the Child/Child's Voice; and Abuse/Violence.

In the Symposium closing, Chief Justice Leah Ward Sears (Ret.) from the Supreme Court of Georgia spoke about the enormous changes in family structure she has witnessed over the course of her adult life. In 1955, only four children of every hundred were born out of wedlock; by 2000, 33 of 100 were born to unwed parents, and divorce statistics for parents more than tripled. Justice Sears observed that family law matters are responsible for the lion's share of overflowing court dockets, though the general public often incorrectly assumes that criminal cases are the source of the congestion. "Building a viable marriage culture is a legitimate concern of family law," she concluded.

This Final Report provides a summary and overview of the Symposium discussions and the suggestions for reform that emerged from those discussions:

- The implementation and operation of Unified Family Courts are fundamental to family justice system reform.³¹
- Courts should develop and implement differentiated case management approaches that (1) screen for public health issues such as domestic violence and addiction; (2) adopt a triage process that identifies family characteristics and provides an appropriate dispute resolution process based on those characteristics; (3) identifies other unmet legal and non-legal needs of litigants; and (4) refers/provides litigants with appropriate services.
- Consideration should be given to providing legal representation to litigants in matters as crucial as child custody ("Civil Gideon").³²
- Courts should provide effective assistance to self-represented litigants in family law matters.³³
- The family court system should incorporate interdisciplinary collaboration, including input from lawyers, judges, mediators, mental health professionals, and financial experts.
- Courts should be authorized to mandate that family law litigants, including non-parents who are part of children's lives, attend parenting classes.
- Law schools should examine and revamp family law curricula to include interdisciplinary instruction, as that envisioned in AFCC's Family Law Education Reform project.

³¹ REPORTS WITH RECOMMENDATIONS TO THE HOUSE OF DELEGATES: 1994 ANNUAL MEETING § 10C (1994), *supra* note 1.

³² ABA policy approved by the House of Delegates, 2006 Annual Meeting, Resol. 112A, *supra* note 2.

³³ *Id.*

- Policymakers, family law experts, academics, and others should examine and, when appropriate, adopt effective family law practices and programs developed in other countries.
- Outcome data should be collected to evaluate the effectiveness of family court programs and policies.
- Judges must be suited by temperament to sit in family court, and they should be trained comprehensively.
- States should adopt standards for custody evaluators (such as the *Guidelines for Child Custody Evaluations in Family Law Proceedings*³⁴ promulgated by the American Psychological Association and the *Model Standards of Practice for Child Custody Evaluations*³⁵ promulgated by the Association of Family and Conciliation Courts (AFCC)), and custody evaluations should be independent for all contested cases.
- There should be an information campaign to educate the public about the realities and potential harm of legal battles; the financial, tax, and other implications of different steps; and the availability and characteristics of alternative dispute resolution and various services.
- Domestic violence should be addressed as a public health as well as a public safety issue; there should be intensive case management of domestic violence cases and there should be specialized training and certification for professionals who practice in the field.³⁶

The sticking points among Symposium participants included the best approach to involve and represent children in family law cases, as well as the use of mediation in cases of domestic violence. There also was disagreement about the value of court proceedings and the proper scope of court action.

- In the case of the child's voice, some argued for strictly limiting children's representation, and some suggested having mental health professionals act as filters for and adjuncts to children's testimony. Others, however, advocated in favor of zealous, unfiltered, client-informed representation of children in a broad range of cases.
- Some participants argued for the salutary effect of attempting mediation in particular domestic violence cases.

³⁴ Am. Psychological Ass'n, *Guidelines for Child Custody Evaluations in Family Law Proceedings* (2009), available at <http://www.apapracticentral.org/news/guidelines.pdf>

³⁵ Ass'n of Family & Conciliation Courts, *Model Standards of Practice for Child Custody Evaluations* (2006), available at <http://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/ModelStdsChildCustodyEvalSept2006.pdf>

³⁶ ABA policy August 1995, *supra* note 5.

- There was some philosophical debate about the extent to which courts should delegate their authority to non-judicial personnel, such as custody evaluators and parenting coordinators, and how much they should mandate services that could be considered intrusive; however, the benefits of such services in problem-solving and therapeutically oriented courts were widely recognized.
- Although there was general agreement about how destructive the adversarial process may be, the group also recognized that this concern must be balanced with the constitutional right to due process. While mitigating the potential damage of adversarial proceedings is crucial, affording all parties, including children who are the subjects of the proceedings, their “day in court” may be essential to engender the sense of fairness that is critical to ensure engagement in, and compliance with, the resolution of the proceedings.

The Groups' Work

The following summarizes each group's recommendations:

Group 1: Alternative Dispute Resolution (ADR)/Interdisciplinary Collaboration

This group addressed the question of whether it is a court's proper role to mandate services and order mediation, which some have questioned as intrusive, an invasion of privacy, and a delegation of authority. Participants noted that there is a lack of awareness about and use of ADR collaborative models, and that cost or other access barriers can interfere with the provision of mental health services.

The group developed a blueprint for effective ADR and interdisciplinary collaboration based on differentiated case management, family empowerment, and the early and coordinated use of various professionals from the legal, financial, ADR, and mental health fields. The group also agreed that the most effective way to facilitate this extensive coordination of experts and the courts is through differentiated case management.

Participants recognized that never-married parents have specific issues and recommended that the formulation of parenting plans be standard for every case with children. They also felt that there should be a special track with close judicial supervision in high conflict cases.

There was considerable discussion about the ability of separating partners to choose their own menu of options about how to proceed, given the potential acrimony and divisiveness that are the hallmarks of many family law cases. For example, if domestic violence is an issue, the use of mediation often is questioned. Members of the group recommended special training for mediators and individualized decisions by courts on whether to order mediation, rather than a too-quick bar on its use in domestic violence cases.

There was substantial deliberation regarding new processes and practices, such as parenting coordination, early neutral evaluation, hybrid mediation-evaluation processes, and others. Participants recommended that national and international organizations, including CFCC and AFCC, collect and disseminate promising ADR practices; establish a clearinghouse for

information about promising practices; host regional and national conferences; and publish reports and articles.

The group recognized the need for post-judgment monitoring of select cases. It mentioned the beneficial use of parent coordinators and an expedited process for review of compliance issues when appropriate. Other action items included a redoubling of efforts by national, state, and local organizations to foster and develop Unified Family Courts and the establishment of a national clearinghouse of research and information that includes both web-based and live forums.

There was a suggestion that mediation be a pre-requisite to divorce filings. In addition, the group recommended that the definition of “successful mediation” be enlarged to move beyond a settlement focus, encompassing also informed decision-making and an improved legal process. Performance-based assessments of court-annexed mediators were recommended. Further, there was a recommendation to recognize that collaborative law, while beneficial in many cases, can substantially add to the expense of proceedings.

Group 2: Financial Dimensions — Attorneys and Other Professionals

This group identified financial ignorance among all the players in a divorce case as a major issue and the consequent need for effective education in the financial and tax ramifications of dissolution. The group believed that, because the vast majority of cases settle before trial, settlements generally reflected financial ignorance and were often unfair or misguided in an unacceptably high number of cases. The group also noted the intersection of property and child-related issues because of a settlement’s impact on where a child lives, as well as on the child’s financial security.

There was consensus among participants that the adversarial system creates too great a focus on winning, which, in turn, can result in delayed resolutions, undue litigation expense, and additional harm to the entire family.

Group members questioned the advisability or feasibility of uniform rules in financial matters due to the fact that jurisdictions vary significantly in how they calculate alimony and child support. In addition, the fact that the assumptions are different with respect to non-traditional families introduced an element of complexity that may make uniform rules less useful.

The group also considered the special challenges for family law practitioners who must contend with the difficult emotions of their clients, while they also strive to meet court goals and the economic imperative of efficiency. Some participants pointed out that lawyers themselves can be guilty of inflammatory behavior and prone to protracted and unnecessary litigation. The group advocated that judges set an appropriate tone and expectations and not hesitate to use sanctions. Also, the group recommended that suitable professionals, including qualified mediators (who could be involved in both economic and child-related issues), be brought into a case at an early stage.

There was general agreement that lawyers and judges should receive specialized education on family issues. The group also recognized the need to make changes in legal education to better prepare new lawyers for a family practice. Similarly, continuing legal education requirements should include appropriate training for family law practitioners on promising practices, as well as specialized issues relevant to the practice of family law.

The group agreed that litigants should receive some form of education about what to expect in a family law proceeding. Lawyers, financial professionals, and others involved in a given case can provide some information about the short- and long-term implications of their decisions. Many separating parties are self-represented, however, and look to the family court for reliable and comprehensive information.

The group recommended the following:

- The establishment of a centralized repository for forms and information about the divorce process;
- The availability of pro bono lawyers to answer questions in courthouses;
- The use of questionnaires to provide information to court personnel to assist with triage;
- The use of kiosks and self-help centers;
- The use of fact sheets that include information for litigants on issues such as domestic violence, child abuse/spousal abuse, mental health, substance abuse, financial needs, parenting issues, and immigration matters, to name a few. The hope of the group was that greater information could reduce litigants' unrealistic expectations and better address potential problems;
- The effective use of limited scope representation or unbundled legal services;
- The development and implementation of Unified Family Courts.

Group 3: Lack of Resources

This group grappled with the often-prohibitive cost of legal representation for litigants, the problems of self-representation, the difficulty of paying for other professionals' time, and the cost of targeted services for families and youth in distress.

Participants urged the adoption of "Civil Gideon" – the notion that attorneys should be provided for those without the ability to pay for civil legal representation. The group noted that implementation of Civil Gideon would create potentially costly and complicated issues, such as adequate specialized training for lawyers taking high-conflict custody cases.

The group acknowledged that self-represented litigants in general are a challenge for courts, particularly when only one party in a case is represented. The judge must avoid ethical

problems and the appearance of bias, while trying to assure fairness. The group recognized the disproportionate impact of self-representation on low-income litigants. Participants also noted that legal fees in matrimonial and other family law proceedings can vary widely depending on the jurisdiction, complexity of the case, and other factors. There was consensus that there is an overall dearth of affordable, well-qualified family lawyers.

Participants observed that the adversarial system itself contributes to the high cost of litigation, and that some lawyers are responsible for either allowing or stoking conflict. The group recommended educating judges so that they can more easily curb excessive tactics.

The group discussed the lack of resources for family law cases, agreeing that there is insufficient support for interdisciplinary services and case coordination. One possible response, according to participants, is to look to other countries for ways to restructure families in a less contentious and more family-friendly way. The group referred to New Zealand and Australia, where family centers focus on educating the general public and separating families about all aspects of family restructuring, including the practical and emotional. The group advocated early mediation and full use of interdisciplinary practitioners.

Participants developed several suggestions to increase and/or strengthen services, programs, and other resources for family courts, including the following:

- Free seminars and a dedicated office to educate and assist self-represented litigants;
- Increasing filing fees to raise revenues for services;
- Expanded fundraising by the courts;
- Developing uniform guidelines regarding alimony, custody, and child support.

The group recommended the following strategies aimed at finding the most cost-effective, evidence-based services, including:

- Public disclosure of fees;
- Public education about how to be a good consumer of legal, ADR, and other services;
- Educating judges and attorneys about the efficient use of services;
- Training judges to recognize and intervene when an attorney engages in unnecessary litigation;
- Greater use of preventive services.

It was noted that the number one predictor of damage to a child's well being is economic strain in the household, and that the cost of divorce itself can harm children.

Group 4: Courts

The group centered its initial discussion around court-specific problems, including the following:

- Cases pertaining to the same family handled by different judges/courts, with no communication between them;
- Lack of access to a judge in a timely manner because of crowded dockets or structural issues, such as only holding family court on certain days;
- The use of masters or other court-appointed officials to preside over family law cases;
- Insufficiently experienced or educated judges;
- Lower salaries for family court judges as compared to those for other judges;
- The perceived inferior status of family court as compared to other courts;
- Lack of specialized training for family court judges;
- The politics of judicial appointments, which can lead to family court judges who do not have the interest or judicial temperament to preside in family court;
- Poor outcome evaluations;
- Court processes that are either too rushed or too prolonged;
- Ineffective triage in case-processing, with over-reliance on "one-size-fits-all" justice;
- A legal education system that does not adequately prepare law students and lawyers for the practice of family law;
- Certain consequences of the adversarial process (e.g., greater acrimony, difficulty in achieving agreement, further exacerbation of family tensions, etc.) and lack of public awareness;
- Insufficient awareness by the public, litigants, and courts of the potentially harmful impact of litigation on children and how to mitigate harm;
- Inadequate recognition by judges and attorneys of which cases need to be settled versus tried;

- Insufficient holistic responses to allegations of abuse, etc.;
- Structural barriers to services, including legal representation and supportive resources;
- Litigants not feeling heard in court; emotions being neglected, and the judge not recognizing the need for referral to services.

The group recommended a wide range of solutions for the problems it identified.

With respect to judges, the group believed that proper selection and mentoring, as well as continuing support, are necessary, and that family court judges should have a dedicated assignment. Only those with the appropriate judicial temperament, interest, commitment to interdisciplinary cooperation and collaboration, and relevant background in family law should serve as family court judges. The group also recommended a variety of incentives and strategies for ensuring that the most suitable judges serve on family court. For example, there might be awards for mayors or governors who make particularly well-informed and well-researched family court appointments. Judges themselves can be rewarded with sabbaticals and other perks for serving on family court. Continuing education for judges is essential. The National Judicial College could spearhead training efforts, and perhaps distance learning could be used to good effect. New judges should receive special training, and there should be a national certification standard for family court judges. There should be ongoing research, possibly by a university consortium, to substantiate which approaches and practices have the best outcomes for families, and that research should be shared regularly with judges. Other ideas included having an online clearinghouse for judges; one example offered was www.familycourt.org.

In order to improve case flow and outcomes, participants recommended mandatory early case evaluation, early intervention referrals to appropriate and effective community resources, early mandatory parent education (with some exceptions), and case management plans that include explicit identification of case types and a clear explanation of the triage process. Fast-tracked case processing should differentiate among low-, mid-, and high-conflict cases, with special handling for domestic violence protective order cases. The group also highlighted the critical importance of well-informed case managers who could direct parties to an array of legal, accounting, mediation, mental health, and other specialists. Furthermore, parties, including the indigent, should be given collaborative options, and collaborative and mediation efforts that include the child's voice or perspective should be encouraged. There should be court-based centers or programs that link parties to resources and information, and courts should have available to them databases and clearinghouses about best practices and case management. The courts should provide a venue for neutral exchanges and supervised visitation of children. There also should be standards and rules for custody evaluators. The group suggested that incentives should be offered to those who agree to undergo mediation. Participants also noted the importance of effective post-divorce case management, with the same judge and assessment team hearing modification motions and other post-judgment matters. The group recommended that all court

personnel receive specialized training on matters such as how to interview a child and the basics of child development.

This group echoed the remarks of other groups regarding the importance of family law education and emphasized the need to promote curriculum improvements in law schools. These improvements include instilling a sense of service, increasing interdisciplinary awareness, and creating a better path to viable employment for graduating students interested in pursuing the practice of family law. For students in other disciplines, such as social work and psychology, there should be cross-fertilization and the opportunity for joint degrees. Participants recommended that family law practitioners should be certified and suggested that knowledge of ADR should be tested on bar exams. For those already engaged in the practice of family law, the group advocated that lawyers should be mandated to discuss ADR with clients and to certify to the court that they have complied with this requirement, with exceptions for certain cases of abuse. The group added that ADR should include the child's voice or perspective.

There was brainstorming about creative ways to inform the public about family law and family court processes, including, for instance, awards for the best and worst portrayals of family law in the media, a national public education campaign with multiple target audiences, and the creation of a Community Advisory Committee that would hold stakeholders' meetings. Participants emphasized the importance of spreading awareness about ADR and collaborative law.

Group 5: The Role of the Child/Child's Voice

This group addressed children's needs and their appropriate role in family law proceedings. Participants acknowledged that the child's voice often goes unheard in family court, but they also recognized that the question of how a child should be included is not a simple one. There was agreement that family dissolution, while theoretically adhering to a "best interests" approach, often leaves children's interests unprotected, especially when parents are enmeshed in a win-lose or adversarial mentality.

Participants emphasized the importance of understanding a child's developmental stage when determining an appropriate course of action. There was discussion about the distinction between child-directed versus "best interests" lawyers and children's capacity to direct representation. Participants expressed deep concerns about the automatic provision of a child-directed attorney.

The group noted the difference between a judge hearing from a child, on the one hand, and a child expressing a preference about custody issues, on the other. Participants were not favorably inclined toward the latter, due to a child's feeling put in the middle of the parents' conflict. The group debated whether children should appear before the judge at all, and there was general agreement that a child would be well served by having a mental health professional as guide, filter, and adjunct voice. There was a preference in the group for the use of best interest attorneys, rather than child-directed lawyers.

The group noted that there was a lack of evidence about which court approaches and practices are of greatest benefit to children and called for further research about the needs of children.

Specific recommendations included:

- Independent custody evaluations;
- No automatic appointment of a child’s attorney;
- The development of a parenting plan at the outset of a custody case;
- A team-based approach when representing children, pairing legal and mental health professionals;
- Early neutral custody evaluation and case triage;
- Input from children that is filtered by mental health professionals, rather than received directly from the child;
- A “best interests” standard, with interdisciplinary cooperation critical to resolution;
- A communications campaign to educate the public;
- Changes in law school curricula, with greater focus on ADR and an understanding that courts are a last resort;
- Continuing legal and professional education focusing on the needs of children;
- Lobbying for legislative change around the country.

Group 6: Abuse/Violence

This group posited the following issues and problems:

1. The family court system generally lacks the capacity to address abuse within the family, in part because of the overwhelming emphasis on co-parenting and avoidance of conflict. Abuse – of adults or children – requires a clear and boundary-setting /accountability approach, as well as protection of children’s and adult victims’ needs over the rights or wishes of an abusive parent.
2. If possible without sacrificing victim safety, both judges and lawyers need to avoid conflict and focus on mutual interests. Courts need to recognize that abusers may be manipulative and calculating even when they appear contrite. Treating them as equally hurting and equally needy is profoundly mistaken and potentially very destructive to the rest of the family.

3. The response to abuse allegations too frequently is punitive and pathologizing to the victim.
4. There is not sufficient coordination among courts handling different aspects of family law cases, such as domestic violence and juvenile matters.
5. Accurate identification of domestic violence in family law cases is necessary for proper treatment.
6. Some family law professionals may lack real abuse expertise, causing them to misconstrue children's experiences and expressions.
7. While acknowledging the tension between potential safety risks and not rupturing the parent-child relationship, some custody evaluators may have strong biases toward co-parenting that would be inappropriate where abuse is at issue.

The group developed several recommendations to address these concerns. First, courts should commit to strengthening families by developing and implementing a new role for the family court. The family court's role should center on re-structuring a family so that family members emerge from litigation prepared as much as possible to support their children and other family members emotionally, economically, and socially. The suggested approach was characterized as a holistic one, similar to the drug court model. The group noted the potential for burnout and other trauma experienced by domestic violence judges and attorneys. Participants suggested that there be no long-term assignments in the domestic violence docket and that there be supportive services and networks for lawyers dealing with domestic violence.

Second, to expand and strengthen domestic violence expertise among judges, lawyers, and evaluators, a multi-disciplinary curriculum should be developed and there should be defined standards for domestic violence expertise for each profession. In addition, certification of domestic violence experts and custody evaluators for cases involving abuse is desirable. Abuse screenings should be done at the earliest stage possible in each case and should be repeated periodically.

Third, there should be widespread public education and outreach on domestic violence as a public health issue. A "pro-health" message was advised for public outreach campaigns in schools, colleges, and the general public, with a focus on prohibiting unacceptable behavior rather than punishing the perpetrator.

Finally, courts and attorneys should consider and address children's and parents' needs as separate issues that require different plans and programs. With respect to parental alienation, the group agreed that it was an especially thorny and controversial issue about which there was a lack of real expertise. Various participants cautioned that alienation frequently is raised in order to deny domestic violence or child abuse allegations. It should be noted, however, that children can be manipulated by one parent to reject the other parent

who does not deserve to be rejected. Of course, the presence of abuse suggests not only significant safety concerns but also implies serious parenting concerns.

Concluding Recommendations

In addition to the specific recommendations enumerated throughout this Final Report, both generally and by the Groups, the participants at the Families Matter Symposium recommended eight overarching actions to take following the Symposium that would move the transformation of the family justice system forward. The recommended actions include:

1. Commitment to action by CFCC, the Association of Family and Conciliation Courts (AFCC), the National Council of Juvenile and Family Court Judges (NCJFCJ), the Institute for the Advancement of the American Legal System (IAALS), and other national groups;
2. This published report to be disseminated among Symposium participants and more broadly in order to facilitate communication and enlist additional partners;
3. The establishment and development of Unified Family Courts; training to strengthen and expand appropriate skills, practices and procedures in Unified Family Court jurisdictions and pilot sites; and training and technical assistance to all jurisdictions considering the development of Unified Family Courts;
4. Adoption of a therapeutic and holistic approach to family law as the primary role of a family court;
5. Increased training and respect for family law practice;
6. A campaign of public awareness and public education about the detrimental effects of the adversarial approach to resolving separation and divorce issues and about the beneficial consequences of adopting a more therapeutic and less adversarial approach to family law.
7. The establishment of a web-based clearinghouse for responding to public interest about Families Matter (the clearinghouse may in time be a separate entity or have a separate identity);
8. Identification of promising family court and family law practices based on an integrated multi-disciplinary approach using a triage and case management system.

Coordinated efforts need to develop and continue, with the ultimate goal of improving the family law system so that it becomes less destructive to children and their families. This report is not intended to represent the final scope of issues or solutions necessary to this task, but it is meant as a contribution to the structure of the ongoing process and progress.

APPENDIX

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