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By Judge Leonard P. Edwards

National Council of Juvenile and Family Court Judges

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Introduction

One of the principal tasks of a democratic society is to nurture its children to a successful, productive adult life. In the United States we rely primarily upon the family to provide to children most of what they need.

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.¹

Other institutions participate in the socialization process, notably schools, churches, and recreational groups, but the fundamental authority for child rearing resides with a child's family.

When the family fails or is unable to rear its child within acceptable norms, society has an interest in intervening to achieve its own goals. Dysfunctional families which are unable to raise their children within societal norms threaten the viability of the social order.²

Our legislatures and courts have recognized the importance of responding to family dysfunction. Numerous laws detail society's response to a family which cannot control a child's delinquent behavior, a family which cannot adequately provide for a child, a family which cannot protect a child from

abuse, or a family which cannot or refuses to educate its child.

The ultimate authority for the resolution of these problems is the juvenile court. The person given the responsibility for carrying out the mandates of the legislature is the juvenile court judge. There are many other persons and institutions the child and family may encounter prior to reaching the court, but if all else fails, the legislatures in the United States have entrusted the authority to address the problems facing dysfunctional families and children to the juvenile court.

Our government's selection of the juvenile court as the institution to fulfill these functions raises a number of important questions:

Is the juvenile court a wise choice? Are there better alternatives than turning to the court system for the resolution of these problems? Are the tasks facing the juvenile court judge consistent with the traditional judicial role? Is the judiciary prepared to meet the challenges set by the legislature? What changes are necessary in the judiciary in order to meet these challenges?

This paper will address these questions. First, the paper surveys the origin and purposes of the juvenile court. Second, it describes the duties assigned to the juvenile court by the legislature and whether those functions could be better

¹ . . . the state's assertion of authority [over the general welfare of children] . . . is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent. . . citizens." *Prince v. Massachusetts*, 321 U.S. 158 (1941), citing *Pierce v. Society of Sisters*, 268 U.S. 510.

² "The costs of such failed socialization is not immediately apparent except in the case of those physically abused and neglected. Further, Payment for the failure is deferred and at the same time remote from many people in society, especially those with power. Nonetheless, few would disagree that the price is enormous." "Conclusion" by Francis Hartmann, *From Children to Citizens II, The Role of 'the Juvenile Court*, ed. Francis Hartmann. N.Y.: Springer-Verlag (1987) 385. See also "The High Cost of Failure," Chapter One in "Beyond Rhetoric: A New American Agenda for Children and Families," *Final Report of the National Commission on Children*, Washington, D.C.(1991) 3-13.

performed by alternative institutions. Third, the paper discusses the role of the juvenile court judge. Fourth, the paper addresses the challenges which face the judiciary as it attempts to fulfill its role as described by the legislature. This part covers several aspects of the ways in which judges are educated, how courts are structured and how these factors may inhibit juvenile court judges from fulfilling their role. The advantages of the unified family court are included in this discussion. It also addresses whether the juvenile court loses credibility, status and effectiveness when it is given inadequate resources to accomplish the social and legal goals assigned to it by the legislature. The final section covers what the judiciary may have to do to respond to the challenges posed by the juvenile court law and the role of the juvenile court judge.

The conclusion of this paper is that the juvenile court is a critical institution which should be maintained and strengthened so that it can accomplish the important tasks assigned to it by the legislature. Numerous changes must be made, however, in order to assure its effectiveness. First, there must be a clearly stated legislative purpose for the juvenile court. Second, the court must be given sufficient status and authority to accomplish its goals. Third, the role of juvenile court judge must be recognized and supported by the judiciary and by the community. Fourth, there must be the resources necessary to assist children and families, both within the community and for those who come to the attention of the juvenile court system. Finally, it must be recognized by all that the juvenile court and the agencies serving it cannot alone solve the problems facing children and families in our society today. While the juvenile court must play a key leadership role, the entire community must join in the efforts to support children and preserve families.

I. Origin of the Juvenile Court

The juvenile court is a unique institution, "unknown to our law in any comparable context."³ Originally a reform, the juvenile court combines social and legal attributes to serve public interests relating to children and families.⁴

Established in the late nineteenth century, the juvenile court was for some a humanitarian institution intended to rehabilitate youthful offenders and protect children. It was in part a recognition that children are different from adults and in part a reaction to the treatment of children as adults in the criminal justice system.⁵ For others it was an attempt to exert a new form of social control over children.⁶

The original purpose of the juvenile court is contained in the 1899 Illinois statute.⁷ In this statute legislators identify children for whom parenting has failed, children who are without the family structure necessary to assist them in their formative years, and children who have violated the criminal law. Upon identification of those children who fall under the jurisdiction of the court, the statute outlines two strategies: assist the parent to raise the child in the parent's home or remove the child to a better environment. The goal remains the same in either case: ensure that the child is properly raised.

³ *In re Gault* (1967) 387 U.S. 1, 87 S.Ct. 1428, 15 L.Ed.2d 527, at p. 4.

⁴ The juvenile court has been described as "one of the . . . innovations in an era renowned for its solicitous attention to children." S. Schlossman, *Love and the American Delinquent* (1977) 66.

⁵ Sutton, J., *Stubborn Children: Controlling Delinquency in the United States 1640 -1981* (1988) at p. 122; Hagan and Leon, *Rediscovering Delinquency: Social History, Political Ideology and the Sociology of Law*, 42 *Am. Soc. Rev.* 587, 597 (1977); *In re Gault*, *op. cit.* footnote 3.

⁶ Platt, A., *The Child Savers*, 2:75-83; Fox, "Juvenile Justice Reform: An Historical Perspective," 22 *Stanford Law Review* (1970) 1187 at 1218.

⁷ Relevant portions of the statute are as follows:

Section 1. . . . For the purposes of this act, the words "dependent child" and "neglected child" shall mean any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person; or whose home by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the streets, or giving any public entertainment. The words "delinquent child" shall include any child under the age of 16 years who violates any law of this state, or any city or village ordinance.

Section 7. . . . when any child under the age of sixteen (16) years shall be found to be dependent or neglected within the meaning of this act, the court may make an order committing the child to the care of some suitable State institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it.

Section 9. . . . In the case of a delinquent child the court may continue the hearing from time to time, and may commit the child to the care and guardianship of a probation officer duly appointed by the court, and may allow said child to remain in its own home, subject to the visitation of the probation officer; such child to report to the probation officer as often as may be required and subject to be returned to the court for further Proceedings, whenever such action may appear to be necessary; or it may authorize the said probation officer to board out the said child in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a suitable Provision may be made for the child in a home without such payment; or the court may commit the child, if a boy, to a training school for boys, or if a girl, to an industrial school for girls. Or, if the child is found guilty of any criminal offense, and the judge is of the opinion that the best interest requires it, the court may commit the child to any institution within said county incorporated under the laws of this state for the care of delinquent children, or provided by a city for the care of such offenders, or may commit the child, if a boy over the age of ten years, to the state reformatory, or if a girl over the age of ten years, to the State Home for Juvenile Female Offenders. In no case shall a child be committed beyond her minority.

"An act to regulate the treatment and control of dependent, neglected and delinquent children." State of Illinois General Assembly, April 21 1899. Cited in "The Contemporary Mandate" by Thomas Bearrows, Jeffrey Bleich and Michael Oshima, in *From Children to Citizens 1, The Mandate for Juvenile Justice*, ed. Mark Harrison Moore, New York, Springer-Verlag (1987)52-3.

The basis for the intervention described in the statute is *parens patriae*, the state as parent.⁸ Under this doctrine, when the parent fails, the state has the legal power to substitute for that parent and act on behalf of the child.

Implicit in this statute is the notion that children are different from adults, that they have developmental needs which they cannot satisfy without assistance and that care and supervision are critical to their upbringing.⁹ If children were no different from adults, the juvenile court would be unnecessary.

The purposes and functions of the juvenile court have evolved significantly since its creation in 1899. In order to understand the juvenile court today, the next sections will examine its various functions and how each has changed over the years.

⁸ This Latin phrase was taken from Chancery practice, where it was used to describe the power of the state to act in *loco parentis* for the purpose of protecting the property interests and the person of the child. See Rendleman, "Parens Patriae: From Chancery to the Juvenile Court," 23 *Supreme Court Review* (1971) 205; E. Ryerson, *The Best Laid Plans: America's Juvenile Court Experiment* (1978) 120.

The doctrine of *parens patriae* originally referred only to abused and neglected children. In the American juvenile court the concept has been expanded to include both delinquents and status offenders. See *Task Force Report: Juvenile Delinquency and Youth Crime*, The President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., U.S. Government Printing Office (1967) 2.

⁹ Children, after all, are not simply small adults. Any social policy that ignores that fact is destined to failure. Put differently, juvenile justice must incorporate a genuine developmental perspective into all its functions. This developmental viewpoint should be based on solid research, not political demagoguery (recall the Central Park case) or plea bargaining." Barry Krisberg, "The Politics of Juvenile Justice: Then and Now," *and Social Inquiry* (1991) 893-905 at 904.

On the differences between children and adults, see Coldstein, Solnit and Freud, *Beyond the Best Interests of the Child*, The Free Press (1973).

II. The Juvenile Court

The juvenile court is a part of the judicial system of all fifty states and the District of Columbia.¹⁰ Each state's juvenile court is unique in the way it is structured, in the powers granted to the juvenile court judge and in the types of cases it hears.¹¹ Nevertheless, there are substantial similarities in the ways in which juvenile courts in all jurisdictions function. These form the core of the juvenile court's responsibilities.

The three types of cases which are most commonly associated with the work of the juvenile court concern (a) delinquent children, (b) children who are "status offenders" [runaways, truants and the ungovernable] and (c) abused, abandoned and neglected children. These three legal classifications are arbitrary.¹² No clear line separates the factual circumstances that might result in a child or family being in one type of these court proceedings or another.¹³ In fact, there are significant correlations between the behaviors which lead children to be placed in any of the three categories. A high percentage of runaway children have been victims of physical or sexual abuse in the home.¹⁴

Delinquent youth most likely to recidivate include those whose first referral was for burglary, truancy, motor vehicle theft, or robbery.¹⁵ Studies of children involved in delinquent acts consistently have found that they have suffered child abuse and neglect at greater rates than either members of the general population or low-income Americans.¹⁶

Children and their families encounter other legal problems that many juvenile courts do not address. For example, there are legal problems relating to marital dissolution, child custody, child support, emancipation, guardianships, traffic violations, paternity, termination of parental rights, adoptions, mental health and domestic violence which may or may not be part of the work of the juvenile court in any particular jurisdiction. In many states these judicial functions are fragmented in different courts.¹⁷ In several jurisdictions most or all of those categories of cases are under the jurisdiction of one unified family court.¹⁸ There are strong arguments in favor of a unified family court, and some of those will be reviewed in Section V.

¹⁰ *National Council of Juvenile Court Judges, Directory and Manual*, Reno, Nevada (1964) 1.

¹¹ It has been observed that 'there is nothing uniform' in the operations of children's courts." *Juvenile Delinquency*, Paul Tappan (1973), cited in *Tasiforce Report: Juvenile Delinquency and Youth Crime*, The President's Commission on Law Enforcement and Administration of Justice, *op. cit.*, footnote 8, at p. 4. And see "An Empirical Typology of American Metropolitan Juvenile Courts," by Vaughan Stapleton, David P. Aday, Jr., Jeanne A. Ito, *American Journal of Sociology* 883 at 549-564.

¹² Some believe the categories should be abolished. "We should abolish the terms 'delinquent,' 'dependent,' and 'status offender.'" The sources of these children's problems are numerous, and the solutions often require interdisciplinary management across agency boundaries. Why must we prolong this fiction that children in need of help may be categorized according to what they have done or what has been done to them in a single moment, as opposed to treating them according to the causes and nature of their problems." "Juvenile Justice: How To Make It Work," Gladstone, Judge William E., *Miami Herald* *fewpoint*, Section C, 3 June 1990.

¹³ For example, a child may be having an argument with her parents. Tempers flare and the father strikes the child across the face. The child runs out inoedoor and leaves home for a week. In leaving she takes the family car. Depending on which part of the story is seen as the most important, this factual situation could result in a dependency, delinquency or status offense proceeding being instituted in the juvenile court. See "Delinquents and Status Offenders: The Similarity of Differences" by Stanton P. Fjeld, Lila New-son and Ruth M. Fjeld, *Juvenile and Family Court Journal* 32.2 (May 1981) 3-10.

¹⁴ "Children's Defense Budget: FY 1989," Children's Defense Fund, Washington, D.C. (1988), at p 220. "Many of these children are actually products of 'buse, neglect and extremely poor home environments.'" "Runaway/Homeless Youths: California's Efforts to Recycle Society's Throwawa> s," Little Hoover Commission, Sacramento (Apr. 1990) 3.

¹⁵ "Court Careers of Juvenile Offenders," Howard N. Snyder, National Center for Juvenile Justice (1988) xii; "Justice and the Child in New Jersey." Report of the New Jersey Juvenile Delinquency Commission (1989) 10.

¹⁶ "Children's Defense Budget: FY 1989," Children's Defense Fund, *op. cit.* footnote 14, 222-3.

¹⁷ Rubin, H. Ted, "Child and Family Legal Proceedings: Court Structure, Statutes and Rules," in *Families in Court*, ed. M. Hofford, NCTFCJ, Reno (1989) 25-61.

¹⁸ *Ibid.*, pp. 43-44. Rubin lists seven jurisdictions that are considered "family court states" with statewide authorization of either a family division or a separately structured family court with broad family-related jurisdiction. They include Hawaii, the District of Columbia, Delaware, Rhode Island, South Carolina, New Jersey and Connecticut.

A. Delinquency

Juvenile delinquency law is our society's response to crime committed by children. When a minor commits an act which would be a crime if committed by an adult, he or she may be subject to the jurisdiction of the juvenile court.

The creators of the juvenile court envisioned a new social institution and a new approach for dealing with delinquents. The role of the court was not simply to determine whether a child was guilty or innocent or to punish, but to answer the questions "(w)hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."¹⁹ Premised on the notion that children were not morally accountable for their behavior, but were victims of social, biologic and psychological forces, the juvenile court sought to intervene and rehabilitate. Even the juvenile court vocabulary was distinct. Instead of a complaint or indictment, there was a petition; a defendant was called a minor; there was a jurisdictional hearing instead of trial and a dispositional hearing rather than a sentencing.

Consistent with the notion of individualized justice, the juvenile court relied heavily upon probation and other social services to assist the child and family in carrying out the court's dispositional orders. In addition, the juvenile court utilized indeterminate sentences for children who came within the jurisdiction of the court. The indeterminacy permitted the agencies serving the

court to have enough time to accomplish the dispositional goals. State statutes reflected the emphasis on the individualized approach to the needs of each child before the court. Some statutes emphasized the court's obligation to act in each child's best interests.²⁰ Others stressed the court's obligation to act in a manner similar to that of a parent.²¹

The original role of the juvenile court was to treat and rehabilitate the delinquent minor utilizing an individualized approach rather than a justice.²² Since the state was not punishing the delinquent child, it was unnecessary to utilize the constitutional rights guaranteed to adult criminal defendants. Thus attorneys rarely appeared in juvenile court,²³ judges were not necessarily trained in the law, hearings were informal and jury trials were not a part of the fact finding process.²⁴

The concept of individualized justice was the hallmark of the juvenile court.

Individualized justice for children is the legitimate goal of the juvenile justice system. The court must, within the bounds of state and constitutional law, tailor its response to the peculiar needs of the child and family, with goals of (1) rehabilitating the child; (2) reuniting the family; and (3) protecting the public safety.²⁵

While there have always been critics of the juvenile court,²⁶ serious criticisms led to significant changes in the juvenile court during the 1960s. In a series of cases the United States

¹⁹"Why is it not just and proper to treat these juvenile offenders, as we deal with neglected children, is a wise and merciful father handles his own child whose errors are not discovered by the authorities?" Mack, Julian, "The Juvenile Court," 23 *Harvard Law Review* 104, 119-120 (1990) cited in *In re Gault*, 1967, *op. cit.* footnote 3, at p. 5.

²⁰Georgia Code Annotated section 15-1-1-35(a) (1990); Indiana Code Annotated section 31-6-15.5 (Burns 1986); North Dakota Cent. Code section 27-20-31 (Supp. 1989); Vermont Statutes Annotated Title 33, section 657 (1981).

²¹Illinois Annotated Statutes chapter 37, paragraph 801-2 (Smith-Hurd 1990); Indiana Code Annotated section 31-6-4 to 31-6-12 (Burns 1986); Iowa Code Annotated section 232.1 (West 1985); Nevada Revised Statutes section 62.031 (1985); Rhode Island General Law section 14-1-2(1981).

²²See generally Springer, Charles E., "Rehabilitating the Juvenile Court," *Noire Dame Journal of Law, Ethics & Public Policy*, 5.2 (1991) 397-420.

²³H. Lou, *Juvenile Courts in the United States* (1927), at pp. 137-8.

²⁴"Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it." *Commonwealth v. Fisher*, 213 Pa. 48, at 54, 62 A. 198 (1905) 200.

²⁵"Bench Sense," National Council of Juvenile and Family Court Judges, Reno (1981). "Individualized treatment should be considered for every juvenile," "The Juvenile Court and Serious Offenders," *Juvenile & Family Law Journal*, (1985) 9. State juvenile codes differ in their emphases on these three goals. For an example of a state with particularly strong language relating to the first two goals, see Kentucky, Section 600.010, "children are not removed from families except when absolutely necessary." A more typical statute, Florida Section 39.001, provides that a purpose of their Juvenile Act is "[t]o preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety of the public cannot be adequately safeguarded without such removal. . ." Finally, some states' statutes have rather weak language, providing only a "preference" for in-home treatment. See, for example, Kansas, Section 38.1501. And see "Youth Crime and the Choice Between Rules and Standards" by Lcc E. Teitelbaum, Unpublished Paper, University of Utah, 16-21.

²⁶Pound, R., "Forward to Young," *Social Treatment in Probation and Delinquency* (1937), p. xxvii, cited in *In re Gault*, *op. cit.* footnote 3, at p. 5.

Supreme Court formalized the adjudicatory stage of delinquency proceedings. Concluding that the child before the juvenile court receives "the worst of both worlds,"²⁷ the Supreme Court ruled that, in order for the state to take jurisdiction over a delinquent minor, the child must have notice of the charges, an attorney at state expense, the right to confront and cross-examine witnesses called by the state and the right to remain silent.²⁸ Subsequent decisions broadened the child's due process rights,²⁹ but did not make them co-equal with an adult criminal defendant's due process rights.

A child does not have the constitutional right to a jury trial,³⁰ and only a few states grant that right.³¹ Nor does a child have a right to bail.

Since the *Gault* case the criminalization of the juvenile courts has continued.³² The "purpose" clauses³³ of the juvenile court law of many states³⁴ have been modified to add to the concepts of rehabilitation and family preservation the policies of accountability and punishment.³⁵ Once unwanted and unnecessary in the juvenile court, the district attorney has now become an integral part of its operation.³⁶

²⁷"There is evidence, tr. fac', that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the prelection accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. United States* (1966), 383 U.S., 86S.Ct.1045, 16 L.Ed.2d 84, 541,566.

²⁸*In re Gault*, op. cil. footnote 5, at p. 5.

²⁹These cases have established th-; child's right not to be subject to double jeopardy (*Breed v. Jones* [1975J 421 U.S. 518, 95 S.Ct. 1779,44 L.Ed.2d346] and to have the charges proven beyond a reasonable doubt (*In re Wmship* [1970J 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368).

³⁰*McKener v. Pennsyhania* (1971) 403 VS. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647.

³¹Four stales permit jury trials at the discretion of the juvenile court judge {Alabama, *Exports State ex. rel. Simpson*, 288 Ala. 535,263 So.2d 137 (1972); California, *People v. Superior Court (In re Carl W.)* 15 C.3d 271, 124 Cal.Rptr.47 (1975) (advisory jury); Kansas, Kansas Statutes, Annotated section 38-1656 (1986); FiW/uy v. *State*, 235 Kansas 462. 681 2A 20 (1984); and South Dakota, South Dakota Codified Laws Annotated section 26-8-31 (1984)}, while 13 states grant a jury trial either in statute or cielaw decision. Alaska, *R.L.R. v. State*, 487 P.2d(1971), Alaska Statutes section 47.10.070(1990); Colorado, Colorado Revised Statutes section 19-2-501 (Supp. 1990; Massachusetts, *Commonwealth v. Thomas*, 359Mass.386,269N.E.2d 277(1971), MassachusetsAnnolaJedLawsCbapier 119, section 55A (Law Co-op. Supp. 1990), Michigan, Michigan Comp. Laws section 712A.1 1987); Montana, Montana Code Annotated section 41-5-521(7) 1989); New Mexico, *Peyion v. Nord* 78 N.M. 717,437 P.2d 716 1968); Oklahoma, Oklahoma Statutes Annotated, Title 10, section 1110 (West¹⁹⁸⁷); Tennessee, *Statev. Johnson*, 574S.W.2d739 (19-5)Aruoodv.Siaie, 62 Tenn.App.453,463 S.W.2d 943 (1970); Texas, Texas Family Code Annotated, Title 3, section 54.03(cj (Vernon 1986); West Virginia, West Virginia Code section 49-5-6 (1986); Wisconsin, Wisconsin Statutes Annotated section 48.31(2) (West 1987); and Wyoming, Wyoming Statutes section 14-6-223(c) (1986). And see Linda A. Szymanski, "Juvenile's Right to a Jury Trial in a Delinquency Hearing," National Center for Juvenile Justice, Pittsburgh (Apr. 1991).

³²See "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Oourt" by Janet E. Ainsworth, jVon/i *Carolina Law Review*, 69 at pp. 1083-1133 and at pp. 1104-6.

³³A "purpose clause" is that part of the juvenile court law in each stale which declares the goalsoffhe court as it addresses the issues brought before it. Examples are listed in footnotes 25 and 35.

³⁴Szymanski, Linda A, *Juvenile Code Purpose Clauses*, National Center for Juvenile Justice, Pittsburgh (Sept. 1990).

³⁵Juvenile Delinquency Legislation: Punishment in Vogue" by Janet Fink, in *Legal Advocacy for Children and Youth*, ABA Center on Children and the Law, Washington, D.C. (1986) 263; Section 202 of the California Welfare and Institutions Code is a good example of the mixed purposes of the Juvenile Court Law thai legislatures have written:

202. Purpose; protective services; reunification with family; guidance for delinquents; accountability for objectives and results; punishment defined.

(a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to thai which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his other parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

(d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public and the best interests of the minor in all deliberations pursuant to thischapter. Participants in the juvenile justice system shall hold themselves "countable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner.

(e) As used in this chapter, "punishment" means the imposition of sanctions which include the following:

- (1) Payment of a fine by the minor.
- (2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.
- (3) Limitations on the minor's liberty imposed as a condition of probation or parole.
- (4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.
- (5) Commitment of the minor to the Department of the Youth Authority.

"Punishment," for the pur poses of this chapter, does not include retribution. Similar language appears in other state legislation. For example, Florida Slat. Ann. section 39.001(2X<0, Colorado Rev. Slat. Ann. section 19-1-102(1Xd), »nd Wash. Rev. Code section 13.40.010 *et seq.* (1977).

³⁶The Role of the District Attorney in Juvenile Court: Is the Juvenile Court Becoming Just Like Adult Court?" by I. J. Sagatun and L.P.Edwards,, *Juvenile &Family Court Journal* 302 (May 1979), at pp. 17-23.

The discretion of the juvenile court judge, once a hallmark of the juvenile court, has been reduced, particularly in cases involving serious violations of the criminal law.³⁷ The jurisdiction of the juvenile court in serious cases and for older children has also been reduced. Waiver hearings³⁸ which determine whether a child should remain in the juvenile court or be referred for prosecution in the criminal courts have changed significantly. In some states such hearings have been eliminated, in others the prosecutor has been given the discretion to determine in which court the child will appear and in others more stringent standards for juvenile court amenability have been passed.³⁹ The result has been more children being processed by the adult criminal justice system.⁴⁰

Far more children commit delinquent acts than ever could or should reach the juvenile court.⁴¹ The juvenile court is the most serious and formal intervention utilized in the juvenile justice system.⁴² Not all delinquent acts are reported,⁴³ and those that are reported are often resolved short of

formal legal action.⁴⁴ Of those that do reach the juvenile court most are disposed of by agreement, and a minority are tried.⁴⁵

The juvenile court is a part of a system which includes police, probation officers, prosecutors, court staff, schools and community organizations. The juvenile court system has a number of responses to delinquent behavior that stop short of formal court action. Police officers often warn and release children after detecting minor law violations.⁴⁶ They also refer children to diversionary programs.⁴⁷ Prosecutors can defer prosecution if a child successfully completes a program of community service or counseling.⁴⁸ Probation departments and schools often resolve delinquency cases if the child agrees to behavior changes. The delinquency system in theory offers a response to each reported delinquent act, a response created to hold the minor accountable, reassert societal norms, and engage the child and family in corrective measures designed to prevent a recurrence of the delinquent behavior.

³⁷See Feld, Barry, "The Transformation of the Juvenile Court," *75 Minnesota Law Review*, 74:691 (1991) at pp. 696-712.

³⁸The name given to the process by which a juvenile court determines whether a child will remain within the jurisdiction of the juvenile court or will be prosecuted by the criminal courts varies from state to state. Thus, the terms fitness, transfer, decline, certification, and waiver all refer to the same procedure. See generally Edwards, L., "The Case for Abolishing the Fitness Hearing in Juvenile Court," *The Santa Clara Law Review*, 173 (1977) at pp. 595-630.

³⁹*Ibid.*, at pp. 701-707. See also "Juveniles in Adult Court," National Center for Juvenile Justice, Pittsburgh (1990). See also Feld, Barry, "The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes," *T&J.Crim.L.&Criminology* (Fall 1987) 471-533.

⁴⁰As a result of Florida statute changes in 1981, the total number of youth in adult court (waiver, direct file, and indictments) rose from 904 in 1975-1976 to 2883 in 1981-82 (a 219% increase). The number continued to skyrocket to a record high of 5877 in 1989-90." Office of State Courts Administrator, State of Florida, Prepared by HRS/CYFJDP Program, cited in "Children in Adult Court" by Kim R. Gorsuch, Center for the Study of Youth Policy, Fort Lauderdale (1991), at p. 1.

⁴¹The resolution of less serious delinquency should not involve the juvenile court. The President's Commission on Law Enforcement and Administration of Justice recommended that community based youth service bureaus be established to resolve such matters and to act as coordinators of community resources. The Commission recognized that successful interventions in children's lives included attention to the societal conditions in which the child and family live." President's Commission on Law Enforcement and Administration of Justice, Task Force Report: *Juvenile Delinquency and Youth Crime* (1967), *op. cit.* footnote 8, at pp. 66-67.

⁴²"[The juvenile court] is properly an agency of last resort for children, holding to a doctrine analogous to that of appeal courts which require that all other remedies be exhausted before a case will be considered. This means that problems accepted for action by the juvenile court will be demonstrably serious by testable evidence ordinarily distinguished by a history of repeated failures at solutions by parents, schools, and community agencies." Lemert, Edwin M., "The Juvenile Court — Quest and Realities," in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, Washington, D.C. (1967), *op. cit.* footnote 8, at pp. 96-7.

⁴³*Criminal Investigation in the United States*, 1989, Justice Department, Washington, D.C.

⁴⁴*Crime in the United States*, 1989, Federal Bureau of Investigation, Washington, D.C.

⁴⁵Snyder, H. M., Sickmund, E., Nimick, T., Finnegan, D., Sullivan, R., Poole and N. Tierney, *Juvenile Court Statistics 1989*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., U.S. Government Printing Office, 1992; H. Ted Rubin, *Juvenile Justice: Policy, Practice and Law*, 2nd ed., New York, Random House (1985); H. Ted Rubin, "The Juvenile Court Landscape," in Albert R. Roberts, *Juvenile Justice*, Dorsey, Chicago (1989), p. 129.

⁴⁶Snyder, Howard N., *Arrests of Youth 1990*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., U.S. Government Printing Office (Jan. 1992) at p. 5.

⁴⁷For a description of the range of interventions police departments have tried with juveniles, see "Police Work and Juveniles" by Roslyn Muraskin, in *Juvenile Justice*, ed. Albert R. Roberts, The Dorsey Press, Chicago (1989), at pp. 93-109.

For example, the Dallas Police Department operates a Youth Services Program. It has two major goals: "To divert juveniles from the juvenile justice system and to reduce recidivism." Serving children from ages 10 to 17, the program offers counseling, treatment, parenting skills, training and behavioral contracts. Collingwood, Thomas R., et al, "Juvenile Diversion: The Dallas Police Department Youth Service Program," in *Effective Correctional Treatment*, Robert R. Ross and Paul Gendreau, eds. Toronto, Butterworths (1980), at pp. 93-100.

"This program was evaluated in 1984. The results of the evaluation indicated that there was a significantly lower recidivism rate among the youths who completed the program than among the youths in the comparison group." Williams, L., "A Police Diversion Alternative for Juvenile Offenders," *Police Chief* 51:2 at 54-7.

See also Dejong, William, "Project DARE: Teaching Kids to Say 'No' to Drugs and Alcohol." *National Institute of Justice Reporter* (Mar. 1986) at pp. 1-5 (Los Angeles); "Cops and TOPS: A Program for Police and Teens that Works." *Police Chief* 49 (1982) at pp. 45-6 (Rochester, N.Y.); *Juvenile Justice*, by Robert W. Drown and Karen M. Hess, St. Paul, West Publishing (1990), at pp. 360-2, 407 (Flint, Michigan).

⁴⁸"Alternatives to Imprisoning Young Offenders: Noteworthy Programs" by Margaret L. Woods, National Council on Crime and Delinquency (1982).

Should a case reach the juvenile court, the process becomes much more formal with greater attention to legal and constitutional rights. The child receives formal notice of the charges, usually in the form of a charging document called a petition. At the outset of the legal proceedings the juvenile court must advise the child of the charges, advise the child and family of the child's right to have counsel at no expense and then provide the due process guarantees available to children in these cases.⁴⁹

Within the context of cases in the juvenile court process, the judge must make several types of decisions. The first is whether to remove the child from his/her parents at the time of the detention hearing. The second is to determine whether the charges in the petition are true. The third is whether to place the child on some sort of probation or community control or whether to remove the child from home and order placement.

In most states if the juvenile court judge determines that the child is under the jurisdiction of the court, the court then may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support of the child.⁵⁰ Insofar as the solution to almost every case will involve working with some or all of the child's family, the juvenile court is also given power over

that family. Parents can usually be required to participate in any plan ordered by the court.⁵¹

The power of the court does not end with the dispositional order. The juvenile court in most states is given the responsibility to ensure that its orders are carried out. If the child is returned to his/her parents with conditions, the court will monitor the progress of the child and the family toward the completion of those conditions. If the child is placed out of home, the court will monitor the child's progress in placement. Juvenile courts vary in their power over children committed to the state for placement.⁵²

As with each area of juvenile law, in delinquency there are seldom standards describing which case should reach the juvenile court and which case should be resolved at the police or probation level. Communities may have different responses to various types of delinquent behavior.⁵³ A theft in one town may be resolved by a police officer warning and may result in a formal court intervention in another. The juvenile justice system in a community may have carefully developed criteria describing which matters should be resolved short of court action, which deserve court intervention and even the type of response preferred in each situation. In other communities there may be no criteria.⁵⁴ Whether the different

⁴⁹See text at footnotes 28 and 29.

⁵⁰When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or Section 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court." California Welfare and Institutions Code, section 727(a), West (1991) and see 42 PA. C.S. sections 6351-6357.

⁵¹Janeksela, "Mandatory Parental Involvement in the Treatment of 'Delinquent' Youth," *Juvenile & Family Court Journal*, 30.1 (1979)45.49; Streib, "Juvenile Courts Should Not Mandate Parental Involvement in Court-Ordered Treatment Programs," *Juvenile and Family Court Journal*, 29 (1973) 49.53. California Welfare and Institutions Code Section 727(c), West (1991). "Juvenile Court Authority Issues" by Linda A. Szymanski, National Center for Juvenile Justice, Pittsburgh (May 1988). On the limits of the court to require parents to participate in services in delinquency cases, see *In re Jason J.*, 233 Ca].App.3d 710 (1991).

⁵²Cases which support judicial authority over placement orders include the following: *Division of Family Services v. Slate* (1975) 319So.2d 72; *In the Interest of Duck* (Pa. Super. 1984) 470 A.2d 1008; *Matter of Lambert* (N.C.App. 1980)264 N.E.2d1279; *In re Welfare of J.E.C.* (1975) Hennepin Co. (Minn.) District Court, Case No. 75604; and *Custody of Two Minors* (1985) 476 N.E.2d 235 (Mass.App.). Cases which do not support judicial authority over placement orders include the following: *People in Interest of M.B.* (S.D. 1981) 312 N.W.2d 714; *In Interest of J.N.* (1973) 179So.2d 50 (Florida); *In re George G.* (Md.App. 1985) 494 A.2d 259; *In re Interest of C.G.* (Neb. 1985) 377 N.W.2d 529; *Stale are!*, *Dept. of Inst. Soc. & Rehab. Serv. v. Jennings* (Ok.Cr.A. 1977) 561 P.2d 99; *In re Doe*, 390 A.2d 390 (R.I. 1978); and *People v. Janet Getty* (1974) 123 Cal.Rptr.704. See also "Dispositional Authority and the Future of the Juvenile Justice System," by Grant R. Grisson, *Ph.D.*, *Juvenile & Family Court Journal* 42.4 (1991) 25-34.

⁵³City Delinquents and Their Country Cousins: A Description of Juvenile Delinquency in Metropolitan and Non-metropolitan Areas," by Howard N. Snyder and Ellen H. Nirnack, *Today's Delinquent 2*, National Center for Juvenile Justice, Pittsburgh (1983), at pp. 45-69.

⁵⁴A study of the Minnesota juvenile justice system by Professor Barry C. Feld supports this assertion. Professor Feld examined the files of »11 17,195 juveniles whose cases were formally petitioned in Minnesota's juvenile courts in 1986. He found that urban courts were more formal in their procedures and strict in their dispositions than suburban and rural courts. See Feld, B., "Justice By Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration," *The Journal of Criminal Law and Criminology* 82.1 at pp. 156-210.

decision-makers in the system are able to communicate and work together will determine the ability of the system to provide consistent responses to delinquent behaviors. Without guidelines or regular communication among decision makers, decisions will reflect individual judgments instead of an ordered response.⁵⁵ Clearly, the larger and more populous the jurisdiction the more complex the delinquency system will be.

The process described can be analyzed as a system in which the various agencies and persons are all working on a common set of problems relating to the control of delinquent behavior. Within the system each person or agency has a role at the different stages, including detection, intake, investigation, prosecution, adjudication, supervision, placement and treatment.

Measuring the effectiveness of the juvenile delinquency court presents formidable obstacles. While data on the recidivism of those who appear in court indicates some degree of success,⁵⁶ the large numbers of informal adjudications are much more difficult to analyze. A true measure of the effectiveness of the juvenile court should include all the children who come in contact with the juvenile delinquency system and the success of each intervention to prevent further delinquency. A successful juvenile justice system will "develop personal responsibility in juvenile offenders by imposing consistent and appropriate sanctions for every criminal act."⁵⁷

B. Status Offenses

Status offenders are children who have committed an offense which would not be crime if committed by an adult. Status offenses include truancy, running away from home, curfew violations, being beyond the control of parents, using tobacco and alcohol, and unruly behavior. Allstate legislatures proscribe such behavior and authorize the juvenile court to take jurisdiction over the child if the behavior is proven.⁵⁸

Status offenses describe children's behaviors society wishes to control. Being truant and misbehaving are hardly dangerous or violent actions, but they have much to do with whether a child is moving in a direction towards responsible citizenship.⁵⁹ Status offenses can be viewed as addressing the socialization process for our children. Failures to adhere to these duties reduces the possibility of normal socialization which ultimately may threaten the viability of the social order.⁶⁰

From its inception the juvenile court law did not distinguish between delinquent and status offending children.⁶¹ Children threatened by immoral associations and incorrigibles were included with criminal lawbreakers. Each was subject to juvenile court jurisdiction, detention and incarceration. Each was entitled to similar due process rights if formal proceedings were initiated. In the 1960s and 1970s many critics argued that status offending children should be removed

⁵⁵Sometimes *i* procedure exists which permits a dissatisfied victim or party to apply to the court for formal legal action if the case does not reach the court. If such a procedure exists, the juvenile court may be in a position to set the standards for the level of delinquency intervention. See California Welfare and Institutions Code section 653.5, and see "Rights of Victims of Juvenile Crimes Statutes Analysis" by Linda A. Szymanski, National Center for Juvenile Justice, Pittsburgh, PA (Sept. 1990).

⁵⁶"The majority of youth referred to the juvenile court were referred only once, the juvenile court careers of 59% of youth ended with the first referral. . ." *Court Careers of Juvenile Offenders*, Snyder, Howard N., National Center for Juvenile Justice, Pittsburgh (1988), *op. en.* footnote 15, xii. "South Carolina Delinquent Males: A Follow-up into Adult Corrections," by Jan Rivers and Trudie Trotti, South Carolina Department of Youth Services, Columbia, S.C. (Aug. 1989). But see Ainsworth, *op. cit.* footnote 32 at p. 1104, who cites authorities that criminal recidivism has "stubbornly refused to wither away."

⁵⁷"Recommendation 1, "Recommendations on Crime and Violence," Self-Esteem Task Force, Sacramento, CA (1990). The Task Force pointed out that when a youthful offender is arrested for a relatively minor crime, "such as petty theft or vandalism, penalties are almost never imposed." The message is given to the youngster that society is not really serious about expecting people to obey the law and that very little, if anything, happens when a juvenile breaks the law. Their answer is to "attach a reasonable sanction to every criminal act, regardless of how minor." This will deliver "the message that committing a crime is a serious act for which one will be held accountable." Also see Greenwood and Zimring, *One More Chance*, Rand Corporation, Santa Monica, CA (1985).

⁵⁸Szymanski, Linda A., "1990 Update and Statutes Analysis of Juvenile Court Jurisdiction Over Children's Conduct," National Center for Juvenile Justice, Pittsburgh, PA (1991).

⁵⁹"The Contemporary Mandate," by Thomas Bearrows, Jeffrey Bleich and Michael Oshima, in *From Children to Citizens: The Mandate for Juvenile Justice*, ed. Mark Harrison Moore, *op. cit.* footnote 7, »t pp. 84-85.

⁶⁰*Ibid.*

⁶¹Schlossman and Wallach, "The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era," 48 *Harvard Educational Review* (1978) at p. 65; Mack, *op. cit.* footnote 19, at p. 107.

from the juvenile justice system or at least be treated significantly differently from delinquents.⁶² They asserted that treatment alternatives and not incarceration should be the juvenile court's response to status offenses. They pointed to large numbers of children incarcerated for long periods of time for merely running away from home or being truant from school.

During this period some states unilaterally began to treat status offenders differently from delinquents,⁶³ but the most significant change occurred at the federal level with the passage of the Juvenile Justice and Delinquency Prevention Act of 1974.^w This law established goals of preventing juvenile delinquency, diverting juveniles from the traditional juvenile justice system and improving the quality of juvenile justice in the United States. States were able to improve their juvenile justice systems by receiving grants from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the federal office created by the act. In order for a state to be eligible for the receipt of federal funds it was required to separate juveniles from adults during incarceration and remove status offenders from secure detention and correctional facilities.

In 1980 Congress amended the 1974 act and allowed states to detain status offenders if detention occurred for the violation of a valid court

order.⁶⁵ Pursuant to this amendment a state's eligibility for federal grant monies is not limited if the status offender is incarcerated for violating a valid court order. Whether a state will incarcerate a status offending child in these circumstances depends on state law and local court decisions.⁶⁶ A 1991 report from the General Accounting Office indicates that the 1974 law has been successful in reducing the number of status offenders detained for longer than 24 hours by almost 95% in all surveyed states since they began participating in the program.⁶⁷

While all states retain some type of status offense jurisdiction, since *Gault* most states have redefined their status jurisdiction.⁶⁸ Many have increased diversionary options resulting in fewer formal court actions and more informal settlements. Because of the federal and state bans on incarcerating status offenders with delinquents,⁶⁹ many jurisdictions have been limited or unable to utilize incarceration for status offenders. Nevertheless, most states still permit detention of status offenders,⁷⁰ and status offenses still comprise a significant portion of many juvenile court dockets.⁷¹

Even with high numbers of status offenders each year, it is no surprise that most status offenses never reach the juvenile court.⁷² School problems such as truancy and unruly behavior are usually

⁶² *Beyond Control: Status Offenders in the Juvenile Court* by Teitelbaum, L. and Gough, A., eds. (1977).

⁶³ In 1961 California was the first state to separate status offenses from the delinquent category. New York followed in 1962 with Illinois in 1965 and Colorado in 1967.

⁶⁴ 42 U.S.C.A. sections 5601-5751.

⁶⁵ Pub.L. No. 96-509, section 11(a)(13), 94 Stat. 2750, 2757. 42 U.S.C.A. section 5633(a)(12)(A)(Supp.1981). States have had different responses to this legislation. California has a typical response in Welfare and Institutions Code section 207:

(b) Notwithstanding the provisions of subdivision (a), no minor shall be detained in any jail lockup, juvenile hall, or other secure facility who is taken in to custody solely upon the ground that he is a person described by Section 601 or adjudged to be such or made a ward of the juvenile court solely upon that ground, except as provided in subdivision (c). If any such minor, other than a minor described in subdivision (c), is detained, he shall be detained in a sheltered-care facility or crisis resolution as provided for in Section 654, or in a non-secure facility provided for in subdivision (a),(b), (c), or (d) of Section 727. Since such sheltered care and crisis resolution facilities are expensive to set up and operate, this has meant that many juvenile court jurisdictions simply do not have secure detention facilities for status offenders.

⁶⁶ See generally Hutzler, John L., and Thomas S. V'rcrb, *State Legislative Compliance with section 223(a)(12)(A) and section 223(a)(13) of the JJDPA: 1980 Statutes Analysis*, National Center for Juvenile Justice, Pittsburgh (June 1980). For a history of the politics behind this act and subsequent developments see Schwartz, Ira M., (*In Justice for Juveniles*, Lexington Books, Lexington, MA(1989). For an example of a juvenile court being given the power to incarcerate a habitually truant minor on a contempt of court rationale, see *In re Michael C.*, 243Cal.Rptr.224 (1988).

⁶⁷ "Non-Criminal Juveniles: Detentions Have Been Reduced But Better Monitoring is Needed," GAO/GGD 91-61, at p. 70. Also see Rubin, H. Ted, *Juvenile Justice: Policy, Practice and Law*, op. cit. footnote 45, at p. 3S4.

⁶⁸ Klein, "Deinstitutionalization and Diversion of Juvenile Offenders: A Litany of Impediments," *Crime and Justice: Annual Review* 145 (1979).

⁶⁹ *Ibid.* at 146 and see *In re Ellery C. v. Redlich*, 32 N.Y.2d 588, 591, 300 N.E.2d 424; 347 N. Y.S.2d 51 (1973) and *State ex rel. Harris v. Calendini*, 160 W.VA 172, 233 S.E.2d 318 (1977).

⁷⁰ Szymanski, Linda A., *Statutes Permitting Secure Detention for Status Offenders*, National Center for Juvenile Justice, Pittsburgh (Feb. 1988).

⁷¹ *Juvenile Court Statistics*, National Center for Juvenile Justice, Pittsburgh (1988) 31.

⁷² It is estimated that from 1.2 to 1.5 million children from ages 10 through 17 run away from home each year in the United States. These numbers reflect only the runaways that come to the attention of public agencies. An even higher number of children are truant from school and are beyond control at home, but no exact statistics exist as to these. See "A Children's Defense Budget: FY 1989," Children's Defense Fund, op. cit. footnote 14, at pp. 220-1.

addressed at the school. Some school systems have elaborate administrative boards which review and resolve student problems by working with the family.⁷³ Some have invited the juvenile court to assist in providing judicial authority in truancy cases.⁷⁴

Many communities have private or court-based agencies which work with families in which children run away or are ungovernable.⁷⁵ These agencies provide non-secure shelter care, counseling and other services designed to assist children and families and enable them to be reunited.⁷⁶ Given the reduced involvement of the juvenile court in status of offense cases, most of these services are voluntary. In addition, other community service providers including churches, recreation departments and counseling and treatment centers assist status offending children and their families.

If these efforts fail, the most serious cases may end up in the juvenile court. In that setting the child generally has the same legal and constitutional rights as a delinquent. While the court usually does not have the same power to detain or incarcerate the status offender under federal law,⁷⁷ it does have the limited power to detain under the valid court order exception. State law may be even more restrictive than the federal guidelines about the power of the court to detain or about the conditions of any detention.⁷⁸

C. Dependency

The juvenile court has also been given the legal authority over children who have been abused, abandoned or neglected. The purpose of the juvenile court law in dependency proceedings is to protect children and preserve families.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible.⁷⁹

In the legislative schemes describing state intervention on behalf of abused and neglected children the statutes outline categories of children over whom the state may take control.³⁰ Once a potential case has been identified and investigated, it will come before the juvenile court if a petition is filed alleging that the child comes within the dependency description of the juvenile law and needs the protection of the court.

⁷³See California Welfare and Institutions Code sections 601.1 *et seq.*

⁷⁴The first such program was developed by Judge David E. Grossmann of Hamilton County, Ohio. See Metropolitan Court Judges Committee, "A New Approach to Runaway, Truant, Substance Abusing and Beyond Control Children," National Council of Juvenile and Family Court Judges, Reno (1990) at pp. 31-49, and also found in *Juvenile & Family Court Journal* 41:38 (1990)27. This type of truancy program is also being utilized under the leadership of Judge James W. Payne in Marion County, Indiana, by Judge W. Donald Reader in Canton, Ohio, and by the author in Santa Clara County, California.

⁷⁵For a description of diversion programs for habitual runaways, children beyond the control of their parents and truant in Sacramento and several other counties, both in and out of California, see Palmer, T., Bohnstedt, M., and Lewis, R., "The Evaluation of Juvenile Diversion Projects: Final Report." Sacramento: California Youth Authority, Division of Research (1975). For an overview of the services which should be available in the community short of court action for runaways and homeless youth, see "A Comprehensive Policy for Runaway/Homeless Youth in the State of California" by The California Child, Youth and Family Coalition, Sacramento, CA (1990).

⁷⁶See "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," *Juvenile & Family Court Journal*, (1989) 45-46.

⁷⁷Szymanski, Linda A., *Statutes Permitting Secure Detention for Status Offenders*, *op. cit.* footnote 70.

⁷⁸See, for example, California Welfare and Institutions Code sections 207 and 207.1 and footnote 67.

⁷⁹California Welfare and Institutions Code Section 300, West (1991).

⁸⁰Those children include the sexually, physically and emotionally abused, as well as the neglected and abandoned. A typical statute describing dependent children is contained in the Commonwealth of Pennsylvania's Juvenile Act, 42 P.A.C.S., section 6302, which read in part as follows: "Dependent Child . . . A child who:

(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals;

(2) has been placed for care or adoption in violation of law;

(3) has been abandoned by his parents, guardian, or other custodian;

(4) is without a parent, guardian, or legal custodian. . ."

Other dependency statutes can be found at section 2151.04 *et seq.*, Page's Ohio Revised Code Annotated; section 31-6-4-3 *et seq.*, Burn's Indiana Statutes Annotated; section 610.010 *et seq.*, Kentucky Revised Statutes Annotated; section 62.040 *et seq.*, Nevada Revised Statutes; and section 78-3a-2 *et seq.*, Utah Code.

Juvenile dependency law in the states is guided by Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. This federal legislation was written in response to concerns that the child welfare system in the United States encouraged out-of-home placement by failing to offer services to children and parents to preserve families and to provide appropriate care and treatment for children in foster care.⁸¹ It is based upon three important principles: (1) the prevention of unnecessary foster care placements; (2) the reunification of children in foster care with their biological parents, when possible; and (3) the timely adoption of children unable to return home. Federal funds are available to assist the states in accomplishing these goals.

The major tenets of this legislation and the state legislation which followed after its passage are as follows:

1. The state must provide services to prevent children's removal from their homes in order to be eligible to receive any federal foster care funds.⁸²
2. In order to qualify for those federal monies the juvenile court must make "reasonable efforts" findings that the state has in fact provided services to enable children to remain safely at home before they are placed in foster care.
3. The juvenile court must also determine whether the state has made "reasonable efforts" to reunite foster children with their biological parents.⁸³

4. The juvenile court must determine that there is a case plan developed to ensure placement "in the least restrictive, most family-like setting available located in close proximity to the parent's home, consistent with the best interests and needs of the child."⁸⁴

5. The juvenile court must ensure that the status of every foster child is regularly reviewed and that a child is given a timely permanent placement, preferably in an adoptive setting, if return to the biological parents is not possible.⁸⁵

As in the other types of cases, the majority of dependency cases are resolved without juvenile court intervention.⁸⁶ When a potentially abused or neglected child is brought to the attention of the police or child protective services agency,⁸⁷ they will investigate the circumstances surrounding the report. At the conclusion of the investigation the policeman or investigator has several options. Among them are (1) take no action, (2) issue a warning to the child's parents, (3) reach an agreement with the parents that if they change their behavior in a specific way and agree to the supervision of a social worker for a time-limited period, then no formal legal action will be taken on behalf of the child, or (4) initiate legal proceedings on behalf of the child.

If a petition is filed the court has a number of legal decisions to make over the life of the case: whether the child should be temporarily removed from parental care, whether the petition is true,

⁸¹ See Fanshel, David Shinn, ed., *Children in Foster Care: A Longitudinal Investigation*, New York, Columbia University Press (1975); Gruber, A., *Children in Foster Care: Destitute, Neglected, Betrayed*, New York, Human Sciences Press (1978); Persico, J., *Who Knows? Who Cares? Forgotten Children in Foster Care*, New York, National Commission on Children in Need of Parents (1979); and R. T. Yoshikami, et al., "Assessing the Implementation of Policy to Reduce the Use of Foster Care," *The Children's Bureau, Administration for Children, Youth and Families* (June 1984).

⁸² See generally Public Law 96-272, 42 U.S.C., sections 670 *a seq.*

⁸³ 42 U.S.C. section 671 (a)(15)(A); "Periodic Judicial Review of Children in Foster Care -- Issues Related to Effective Implementation," by Howard A. Davidson, *Juvenile and Family Court Journal* (May 1981), at pp. 61-69.

⁸⁴ 42 U.S.C. section 675(5)(A), and 45 C.F.R. section 1356.21(a)(d).

⁸⁵ 42 U.S.C. section (a)(15)(B); "The timeliness of the permanent plan is critical if the child is to avoid 'foster care drift,' the movement from foster home to foster home during a child's minority." See *Children in Need of Parents* by H. Maas and R. Engler, New York, N.Y., Columbia University (1959).

⁸⁶ Juvenile and family court proceedings are not necessary, and probably not desirable in most instances of substance exposed infants. Juvenile and family courts should be involved only when alternative services have not been offered or effective in providing support to the family and protection to the child. Where substantial risk of harm remains, the juvenile and family court has jurisdiction to assess the level of risk and determine "what is in the best interest of drug-exposed children and mothers." Introduction to Part II, "Protocol for Making Reasonable Efforts in Drug-Related Dependency Cases," National Council of Juvenile and Family Court Judges, Reno, Nevada (1992).

⁸⁷ A child protective agency is that agency which under federal law must be notified of suspected incidents of child abuse. In most communities a child protective agency is a police or sheriff's department, a county probation department, a county welfare department or other designated agency.

whether the child should be declared a dependent child of the court, what the dispositional plan should be, what services should be provided, what visitation should be ordered and what the permanent plan for the child should be. If the child is found to be a dependent of the court, the court has the power to return the child to the parents on conditions or remove the child from the parents. In either case the court has the responsibility to establish the conditions for the care, custody, control and conduct of the child.

In addition to these decisions, the juvenile court also has the responsibility to monitor the services provided to the family by the social services agency.⁸⁸ The court is mandated to determine whether "reasonable efforts" have been provided by the social services agency to prevent removal of the child from the parents and to facilitate reunification after removal.⁸⁹ In some jurisdictions the court must carry out this responsibility at several stages of the proceedings.⁹⁰ Federal law does not define "reasonable efforts," although state statutes, guidelines and caselaw may give some indication of what standard the judicial officer should use.⁹¹

The legislature has left a great deal of discretion to the juvenile court judge in determining

whether a minor is a dependent child of the court. The statutory language in all states is very general.⁹² Whether a child will be a dependent child of the court is determined by the rulings of the court and by community standards.⁹³

The juvenile court has supervisory powers over a minor who is a dependent child of the court whether that child is returned home or placed out of home. At regularly scheduled hearings the court will review parental progress toward reunification with the child or, if the child remains at home, toward dismissal of the case. If the parents are unsuccessful in their reunification efforts, the court must establish a permanent plan for the child. The preferable permanent plan is termination of parental rights followed by adoption, with guardianship and long-term out-of-home care being the other two options.

The legal focus upon children who have been abused or neglected is a recent phenomenon. While the case of *Mary Ellen* in 1874 was the first child abuse action in the court system, it was not until 1961, when Dr. C. Henry Kempe published "The Battered Child Syndrome,"⁹⁴ that the nation became serious about responding to allegations of child abuse and neglect.⁹⁵ After medical confirmation of the notion that some parents physically

⁸⁸ As the administrator of children's services in San Mateo County, Else Ten Broeck observed: "That's the one beauty of this damned system.' she says. "If he's really serious about it, a judge can say, This is the service I want, and county, you provide it.' This then gives the county the leverage to go to the Board of Supervisors and say, This is mandated; it's on the books; you have to fund it.' Either the judges are going to do that," Ten Broeck predicts, "or someone's going to bring a class action suit." "Making Foster Care Work" by Claudia Moraiu, *California Lawyer* (Jan. 1984), 25-7, at 27.

⁸⁹ "Reasonable efforts" by state welfare agencies are required in every case requiring out-of-home placement under the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) as a condition of federal reimbursement for the state's Foster Care and Adoption Assistance Plan. 42 U.S.C. section 671(a)(15). Additionally, the juvenile court must make an affirmative finding in each case that those services were provided 42 U.S.C. section 672. Subsequently, many states have required "reasonable efforts" as a matter of state law, though there exists some controversy as to whether the state provisions were merely implemented to receive federal reimbursement, or to require "reasonable efforts" as an absolute prerequisite to out-of-home placement. See generally, Ratterman, Debra, *Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation*, 2nd. ed., American Bar Association, Washington, D.C. (1987), and Shotton, Alice C., "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," 26 *Cat. West. Law Rev.* 2 (1989-90) 223-256.

⁹⁰ See, for example, Indiana Code section 31-6-4-6(e).

⁹¹ "Reasonable efforts refers to prevention and reunification services provided by the agency and documented in writing by the judge in the court order. It is the judge who decides whether the agency made reasonable efforts to prevent placement." *Permanency Planning Field Guide*, State of Minnesota, Department of Human Services, n.d.: 8. And *sec Reasonable Efforts*, State of Delaware Department of Human Services, n.d.: 2

⁹² Besharov, Douglas J., "The Need to Narrow the Grounds for State Intervention," in *Protecting Children From Abuse and Neglect*, ed. Besharov, D., Charles C. Thomas, Springfield, 111. (1985) 72-78. "But, in reality, situations labeled as child abuse and neglect cover a > cry broad range of parental actions and failures, differing greatly in their nature and in the severity of harm inflicted on children through them," *Defining Child Abuse* by Jeanne M. Giovannoni and Rosin a M. Becerra, The Free Press, New York (1979)2. "In the absence of clear and specific agency standards and guidelines, each worker is left to his or her own devices." *For Reasons of Poverty* by Leroy H. Pelton, Praeger, New York(1989) 76. *Child Welfare and the Law* by Theodore I. Stein, Longman, New York (1991) 31.

⁹³ "Child Abuse is What the Courts Say It Is," Dr. C. Henry Kempe, *Child in Peril*, Xerox Films, Media Concepts (1972).

⁹⁴ "Kempe, Dr. C. Henry, "The Battered Child Syndrome," *American Medical Journal* (1961).

⁹⁵ "For an understanding of the response to child abuse before Dr. Kempe, see Holler and Friedman, "Child Abuse: Early Case Finding in the Emergency Department," *Pediatrics* 42.1 (1968).

abuse their infants, society responded with the passage of laws designed to protect children.⁹⁶

Perhaps the most significant legal development was the passage of the so-called mandatory reporting laws.⁹⁷ These laws, now effective in every state, require all professionals and many care providers who deal with children to report to a central authority incidents of suspected child abuse or neglect. These laws combined with heightened public awareness of the phenomenon of child maltreatment have led to a dramatic increase in reports of incidents of suspected child abuse and neglect.⁹⁸ From 1985 to 1990 there was a 31% increase in reports of child abuse cases in the United States, reaching a total of 2.5 million reports in 1989-1990.⁹⁹ Shockingly, child abuse is the biggest single cause of death of young children.¹⁰⁰ Another measure of the increase in child abuse reporting is reflected in child sexual abuse statistics. Estimates of the incidence of sexual abuse of children in the United States range from 250,000 victims to as many as 35 million victims annually.¹⁰¹ Other studies have shown that one in every four females will experience some form of sexual abuse by the time she reaches 18.¹⁰² Another phenomenon, drug use by parents and expectant mothers, has had a dramatic impact upon families in the past few years. Estimates are that from 375,000 to 739,200 babies are born substance-exposed each year as a result of maternal drug usage.¹⁰³

The nationally noted upsurge in substance abuse also has served to increase burdens on our nation's juvenile and family court systems. Substance abuse is an element that is present in most dependency cases. Both courts and social services agencies now are struggling with how to evaluate risks to children of substance-abusing families, and identify the family preservation service needs of drug-exposed mothers and children.¹⁰⁴

With this growth has come expansion of those agencies and professionals who have to respond to abuse and neglect allegations. Law enforcement, medical personnel, public health workers, child protective services offices, social service providers, lawyers and judges have all had greater demands placed upon them due to the increase in reporting. The work of the juvenile court has grown so dramatically that most courts now expend equal or greater amounts of time on dependency calendars than they do on delinquency matters.¹⁰⁵

While most dependency cases are resolved without court action, of those that have reached the juvenile court more and more have resulted in removal of the child from parents and placement in foster care. From 1984 to 1989 the number of children in foster care has dramatically risen from 276,000 to 360,000.¹⁰⁶ The most recent estimate is that as of 1990 there were approximately 617,000 children in foster care in the United States.¹⁰⁷ In California alone, the number of foster children

⁹⁶ Seegenerally, Radbill, Samuel, "Children in a World of Violence: A History of Child Abuse," in *The Battered Child* (c A. Heifer and Kempe), Chicago, University of Chicago Press (1980) 3-20.

⁹⁷ For an example of these laws see California Penal Code sections 11116 *et seq.*, and see Besharov, "The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect," 23 *VillRev.* 458 (1977-8).

⁹⁸ "The American public is no longer unaware of child abuse and its consequences. Far from it. The feeling that child abuse constitutes a major and growing problem is widespread, as is the mandate to government and individual action. Americans want something done to prevent child abuse, they may be ready to identify what they can do; it is timely to provide such education. Lou Harris, summarizing the findings of a poll conducted by his organization, and cited in Besharov, Douglas J. and Charles Thomas, Ed., *Protecting Children From Abuse and Neglect*, *op. cil.* footnote 92, at p. 47.

⁹⁹ National Committee on the Prevention of Child Abuse, 1990 Survey, Chicago, Illinois.

¹⁰⁰ Howard, T. "The Children's Ombudsman in Sweden: Spokesperson for All Children." *Social Change in Sweden* (Feb. 1981); Ten Bensel, Robert, et al., "Child Abuse and Neglect," *Juvenile & Family Court Journal*, National Council of Juvenile and Family Court Judges, Reno, Nevada (1985).

¹⁰¹ S. O'Brien, *Child Abuse: A Crying Shame* (1980) 15; Cerkovnik, "The Sexual Abuse of Children: Myths, Research and Policy Implication," 89 *Dickenson Law Review* 691 at 695 (1985).

¹⁰² *Los Angeles Times*, 25 Aug. 1985, Section 1 at p. 1, column 3.

¹⁰³ "Estimating the Number of Substance-Exposed Infants" by Deanna S.Gomby and Patricia H. Shiono, *The Future of Children* 1.1 (Spring 1991) 17-25.

¹⁰⁴ W.D. Reader, Senior Judge, Stark County Family Court, Canton, Ohio, in testimony before Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, April 5, 1990.

¹⁰⁵ The author has discussed the allocation of judicial resources with juvenile court judges around the country. And see Gelber, Seymour, "The Juvenile Justice System: Vision for the Future," *Juvenile & Family Court Journal* 41.2 (1990), at pp. 15-17. "The dependency area is beginning to attract attention away from the delinquency field."

¹⁰⁶ American Public Welfare Association. The APWA also reports that the number of foster homes dropped from 137,000 to 115,000 during the same period.

¹⁰⁷ Talara, J., "Child Substitute Flow Data for FY 1990 and Child Substitute Care Population Trends Since FY 1986 (Revised Estimates)." *VCIS Research Notes* (3 May 1991).

increased from fewer than 40,000 to over 67,000 between 1985 and 1989 with projections for over 90,000 by the year 1994.¹⁰⁸

It appears that some of this increase derives from weakening family structure, but it is also clear that a major portion of the increase results from an inability of the child welfare system to provide services to families in crisis so that they can continue to raise their children safely. Within this context the juvenile court as gatekeeper of the foster care system must determine not only whether a child should be removed from a family or put into permanent placement, but also whether the social services department is adequately fulfilling its responsibilities. Given the enormous increase in foster care placements and the extraordinary social and economic costs, the task of the juvenile court takes on an even greater importance for children and families in the United States.

¹⁰⁸ "Ten Reasons to Invest in the Families of California," California Welfare Directors Association of California, Chief Probation Officers Association of California, California Mental Health Directors Association, Sacramento (Spring 1990) at pp. 8-9.

III. Alternatives to the Juvenile Court

Is the juvenile court the best institution for the functions described? Have our legislatures chosen wisely in entrusting these types of decisions and responsibilities to the juvenile courts?

A. Delinquency

Many have criticized the delinquency function of the juvenile court.¹⁰⁹ The criticisms are varied and sometimes in conflict with one another.¹¹⁰ Some claim that the juvenile delinquency system coddles youthful offenders and places them back in society without sufficient sanctioning.¹¹¹ Some have argued that the delinquency system has failed to live up to its promise, that the child continues to receive "the worst of both worlds,"¹¹² and that the system must be radically changed. Some critics say that it just does not work. They point to crime statistics and recidivism, and question whether the juvenile court has any positive impact upon the children who appear before it.¹¹³ Others assert that

children do not receive the due process guarantees they are entitled to, even after the Supreme Court decisions granting children these protections.¹¹⁴ They look upon the juvenile delinquency system as a social control mechanism with little protection from the state for the children who appear before it.¹¹⁵ Still others point out that demanding for children the identical rights afforded adults is foolish. They point out that children should have special rights such as "the right to be nurtured, the right to be guided, the right to be controlled, the right to grow by gradually being given more freedom to make mistakes and to learn from those mistakes."¹¹⁶

As a result of these and other criticisms, some have called for the abolition of the delinquency system by sending these children into the adult criminal justice system.¹¹⁷ Others have argued for a clear dividing line between younger and older children and offering a treatment model to the younger children and a due process model to the

¹⁰⁹ Schwarzl, *op. cit.*, footnote 66. Feld, Barry C., "Transformed but Unreformed: Juvenile Court and the Criminal Court Alternative," paper presented at the American Society of Criminology, Annual Meeting, 1990, Baltimore, Maryland. Feld, Barry, *op. cit.*, footnote 37.

¹¹⁰ "Conservatives and liberals may disagree on the policies that ought to be implemented to deal with youthful criminal offenders, but both ends of the political spectrum agree that the child-adult distinction is a false dichotomy that can no longer support disparate justice systems." Janet E. Ainsworth, "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court," *op. cit.*, footnote 32 at pp. 1083-1133 and pp. 1103-4 (footnotes omitted).

¹¹¹ Regnery, Alfred, "Getting Away With Murder: Why the Juvenile Justice System Needs an Overhaul," *Policy Review* 34.65 (Fall 1985).

¹¹² This phrase was first used by Justice Fortas in the *Kentv. United States* case (1966) (*op. cit.*, footnote 27), and then repeated in *In re Gault* (*op. cit.*, footnote 3).

¹¹³ "The depressing conclusion, by and large, was that nothing worked," Ainsworth, *op. cit.*, footnote 32, at p. 1104. In footnote 132 Ainsworth cites the following studies to support her conclusion: D. Lipton, R. Martinson, and J. Wilks, "The Effectiveness of Correctional Treatment" (1975); "The Rehabilitation of Criminal Offenders: Problems and Prospects," National Research Council Committee on Law Enforcement and Criminal Justice (1979), Bailey, "Correctional Outcome: An Evaluation of One Hundred Reports," *Journal of Criminal Law, Criminology and Police Science* 57.153 (1966); Martinson, "What Works? — Questions and Answers About Prison Reform," *Public Interest* 35 (1974) at p. 22; Robison and Smith, "The Effectiveness of Correctional Programs," *Crime and Delinquency* 17 (1967) at p. 67. Ainsworth makes no reference to studies which indicate that juvenile court interventions are effective. See footnote 56.

¹¹⁴ They point both to the lack of counsel and to the ineffectiveness of counsel in the representation of children. Some statistics reveal that more than half the children accused of delinquency have no legal representation. Children represented by counsel may not fare as well as those who are unrepresented. Defense counsel may be the least experienced attorneys in the legal community, are likely to have had little training, and may be unclear as to their role in the juvenile court. See generally, Feld, "The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make," *Journal of Criminal Law and Criminology* 79 (Winter 1989), p. 1185; Ainsworth, "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court," *op. cit.*, footnote 32, at pp. 1126-1130.

¹¹⁵ Schwartz, *op. cit.*, footnote 66, at p. 164; "The Constitutional Rights of Children Charged with Crime: Proposal for a Return to the Not So Distant Past," *UCLA Law Review* 27 (1980), 56; and Plait, Anthony, *The Child Savers: The Invention of Delinquency*, *op. cit.*, footnote 6; "The Right to Counsel in Juvenile Courts: Fulfilling *Gault's* Promise" by Professor Barry C. Feld, Center for the Study of Youth Policy, Ann Arbor (1989); and H. Foster, *A Bill of Rights for Children* (1974).

¹¹⁶ Judge Gladstone, *op. cit.*, footnote 12.

¹¹⁷ "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court" by Janet E. Ainsworth, *op. cit.*, footnote 32, at pp. 1083-1133; Feld, *op. cit.*, footnote 111. "The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Legal Rights" by Katherine Hunt Federle, *Journal of Contemporary Law*, 16.1 (1990), at pp. 23-51.

older.¹¹⁸ Still others advocate for a full due process model and would retain the juvenile court, but would insist that the full panoply of rights for children be mandated.

Interestingly, when these critics speak of the juvenile court, they are referring only to the delinquency function of the court. They have little or nothing to say about the other functions of the court or about the relationship between the delinquency function and the other types of cases the court hears.¹¹⁹ The importance of viewing in one court all of the legal matters which impact children and families will be discussed subsequently in this paper.¹²⁰

At the root of much of the criticism is a woefully under-resourced juvenile delinquency system. The lack of resources occurs at every level, including the services available for the delinquent child and the family in the community, what legal assistance the child has during the legal process and what treatment and supervision is available after the court process. The lack of resources particularly in urban settings has frustrated many and led them to call for merging the juvenile delinquency function into the adult criminal court system.

Those who advocate for abolition of the delinquency function of the juvenile court argue that

accused children should receive the same due process afforded adult children defendants. They stress the right to a jury trial and the right to counsel at state expense.¹²¹ Jury trials, however, already exist for children in several states,¹²² but are rarely utilized.¹²³ Those who have the right to demand a jury trial apparently find little advantage for their clients. This may be because of an unwillingness to expose children to adult juries, a recognition that a fair trial can be obtained from a juvenile court judge, or for a number of other reasons.

There are several problems relating to the right to counsel for children in delinquency cases. Often children do not receive counsel, even though that right was guaranteed in *Gault*.¹²⁴ In addition, those attorneys who do appear in juvenile court frequently lack the interest and ability to represent their clients adequately.¹²⁵ To remedy these problems the right to counsel should be more carefully guarded and become more difficult to waive.¹²⁶ In addition the bar must develop a more qualified group of lawyers willing and able to work in juvenile court. Stressing the importance of high quality representation in juvenile court matters, a recently drafted Standard of Judicial Administration in California offers promising suggestions how such goals can be reached.¹²⁷

¹¹⁸ "Abolish the Juvenile Court System" by Marvin E. Wolfgang, *California Lawyer* (Nov. 1982), pp. 12-13; Schwartz, *op. cit.*, footnote 66, at p. 164; and Springer, *op. cit.*, footnote 22.

¹¹⁹ Ainsworth, *op. cit.* footnote 32, at p. 1085, footnote 6. ¹²⁰

See Section V. D. *infra* on the Unified Family Court.

¹²¹ See Ainsworth, *op. cit.* footnote 32.

¹²² See references in footnote 31.

¹²³ Note, "The Right to a Jury Trial Under the Juvenile Justice Act of 1977," 14 *Gonzaga Law Review* 400, at page 418 (1979).

¹²⁴ See the authorities cited in footnote 114.

¹²⁵ "In re Gault Now 20, But..." by Moss, 73.4.B-4. *Journal*, June 1, 1987, at p. 29 discusses a New York State Bar Association study indicating that the attorney who appeared in juvenile court were not only of poor quality, but also lacked any interest in the work of the juvenile court.

¹²⁶ See the authorities cited in footnote 115.

¹²⁷ STANDARDS OF REPRESENTATION IN JUVENILE COURT

PURPOSE

The quality of justice in the juvenile court is in large part dependent upon the quality of the attorneys who appear on behalf of the different parties before the court. The Presiding Judge of the Juvenile Court plays a significant role in ensuring that sufficient attorneys of high quality are available to the parties appearing in juvenile court.

This standard has been written as part of an effort to upgrade the quality of representation of all parties in juvenile court proceedings. In order to accomplish these goals, the Presiding Judge should take the following actions:

I. Require attorneys who practice in juvenile court to continue their practice in juvenile court, including all court-appointed and contract attorneys, for substantial periods of time. A substantial period of time is at least two years and preferably from three to five years.

A. The Presiding Judge of the Juvenile Court should approach the Public Defender, County Counsel, District Attorney and other public law office leaders and encourage them to raise the status of lawyers working in the juvenile courts as follows:

1. Hire lawyers who are interested in serving in the juvenile court for a substantial part of their careers in that office;

2. Permit and encourage attorneys, based on interest and ability, to remain in juvenile court assignments for significant periods of time;

3. Work to ensure that attorneys who have chosen to work in the juvenile court have the same promotional and salary opportunities as the attorneys practicing in other assignments within the law office.

II. The Presiding Judge of the Juvenile Court should ensure that the attorneys who appear in juvenile court have sufficient training to perform their jobs competently, as follows:

A. Require that all court-appointed attorneys meet minimum training and continuing legal education standards as a condition of their appointment to juvenile court matters;

B. Encourage the leaders of public law offices which have responsibilities in juvenile court to require their attorneys who appear in juvenile court to have at least the same training and continuing legal education required of court-appointed attorneys.

III. The Presiding Judge of the Juvenile Court should promote the establishment of a library or other resource center in which information about juvenile court practice (including books, periodicals, videotapes and other training materials) can be collected and made available to all participants in the juvenile system.

IV. The Presiding Judge of the Juvenile Court should, in conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases.

For further information on this Standard contact Diane Nun n, Esq., Judicial Council of California, 303 Second Street, South Tower, San Francisco, California 94107.

Moreover, the abolition of the juvenile court's delinquency function has other undesirable consequences. It would expose children to the inequities of the bail system. It would move them one step closer to some of the harsh aspects of the adult criminal system including life sentences in prison and the death penalty.¹²⁸ It would remove from the court's consideration the rehabilitative goals now embodied in the juvenile court law. It would take the family out of the court process and make such strategies as family preservation unavailable.

In a country which already has one of the world's highest incarceration rates both for adults and children,¹²⁹ it is important that we encourage experiments in deinstitutionalization and community corrections.¹³⁰ Almost without exception such experiments have been conducted in juvenile corrections. That they have been successful, have been replicated and have been strongly supported by the juvenile court are additional reasons why abolition of the delinquency function would be unwise.

In addition to failing to consider strategies to enable the juvenile court to function more effectively, the critics fail to consider the alternatives. The merger of the two courts would consign delinquent children to an even more under-resourced justice system. No one gives the criminal justice system any hope for improvement. No one believes there is any political or social will to increase the resources or improve the quality of justice available there.¹³¹

Perhaps more importantly a merger would remove children from the court which works with families. There is a relationship between delinquent,

status offending and abused and neglected children. Often it is the same child, siblings or other family members who are or have been under the jurisdiction of the court. Having the same court which specializes in all types of family problems retain jurisdiction over the delinquent child is sensible social policy.

The juvenile court is not a static institution. To the extent that changes in children, their behavior and the public's reaction to it have resulted in changes in the delinquency system, the juvenile court has demonstrated its ability to respond to the modern era.

The juvenile court is capable of responding with sufficient authority in most delinquency cases. It can utilize the waiver process for the most serious.¹³² What must happen now is the development of a new vision of what the juvenile court can accomplish and how that vision can be realized. Before we turn over these children to a more tragically under-resourced and insensitive adult criminal justice system, we should examine whether there are realistic possibilities that resources can be obtained for the delinquency system. As it is, the juvenile justice system has more services for children than the adult criminal justice system has for adults.¹³³ Strategies exist which will both raise the status of the juvenile court¹³⁴ and improve the quality of legal representation in juvenile proceedings. Most importantly, the spirit and practice within the juvenile court continues to reaffirm the rehabilitative ideal.¹³⁵ Let us be certain that there is no hope for the juvenile delinquency system before we surrender to the very system whose deficiencies inspired the first juvenile court.¹³⁶

¹²⁸ See *Stanford v. Kentucky* (1989) 491 U.S. 361, 109S.O. 2969, 106L.Ed.2d 306, affirming death penalty sentences for 16 and 17-year-old minors.

¹²⁹ Lynch, James P. *Imprisonment in Four Countries*, Bureau of Justice Statistics, Washington, D.C. (1987). See *A Children's Defense Budget: FY 1989*, Children's Defense Fund, *op. cit.* footnote 14, at pp. 219-231.

¹³⁰ "Reaffirming Rehabilitation in Juvenile Justice" by Dan Macallair, M.P.A., Center on Juvenile Justice, San Francisco, 1991 and "Restructuring Youth Corrections Systems: A Guide for Policy-makers" by Ira M. Schwartz and Edward J. Loughran, Center for the Study of Youth Policy, University of Michigan, Ann Arbor, Michigan (1991).

¹³¹ "230,000 Cases, Zero Justice" by Harry I. Subin, *New York Times* 19 Dec. 1991, p. A24.

¹³² Some commentators argue that the juvenile court can adequately handle even the most serious delinquency cases and that the waiver hearing is unnecessary. Edwards, L., "The Case for Abolishing the Fitness Hearing in Juvenile Court," *Santa Clara Law Review*, *op. cit.* footnote 38, pp. 5 95-6 30, and "The Effects of Transfers from Juvenile Criminal Courts: A Log-Linear Analysis," Sag atun, I., McCollum, L., and Edwards, L., *Journal of Crime and Justice* 8 (1985) 65-92.

¹³³ Feld, B., "The Transformation of the Juvenile Court," 75 *Minnesota Law Review*, 691 (1991), *op. cit.* footnote 37, at p. 719.

¹³⁴ See section V *infra*.

¹³⁵ "Rehabilitation should be a primary goal of the juvenile court." "The Juvenile Court and Serious Offenders: 38 Recommendations." The National Council of Juvenile and Family Court Judges, 35 *Juvenile and Family Court Journal* 35.2 (Summer 1984), at p. 9; Macallair, Dan, "Reaffirming Rehabilitation in Juvenile Justice," *op. cit.*, footnote 130.

¹³⁶ "Retain the Juvenile Court," by H. Ted Rubin, *Crime and Delinquency*, 25.3 (July 1979) at pp. 281-298 and at pp. 296-9.

B. Status Offenses

The debate over the proper role of the juvenile court in the control of status offenses remains heated. Some argue that status offenses should be repealed,¹³⁷ while others say that the juvenile court should have no power to detain or commit status offending children. They insist that the juvenile court has consistently over-incarcerated these children when other less restrictive interventions would have obtained better results. They believe the juvenile court cannot be trusted to use incarceration sparingly.¹³⁸ In addition, they point out that many juvenile courts detain these children in the same setting with delinquent children and adults in contravention to the law and to the spirit of the juvenile court ideal. They would not grant the juvenile court any jurisdiction over these children except to identify services for the child and family.

Others disagree, pointing out that children need to be held accountable, and if the family and school have been unable to control a particular child, the juvenile court must have, as one of its options, the ability to detain.¹³⁹ They argue that just because some jurisdictions have over-utilized incarceration, those which did not should not be prohibited from using this critical dispositional option.¹⁴⁰ They also point out that the incarceration of status offenders has decreased significantly since the passage of the Juvenile Justice and Delinquency Prevention Act of 1974.¹⁴¹

The problem of status offenders is further complicated when it is recognized that many children who run away do so because of physical and sexual abuse at home.¹⁴² More than 60% of the youths in shelters and transitional living facilities nationwide were physically or sexually abused by

parents. One out of four youths experienced violence by other family members.¹⁴³ It may be more appropriate to serve these children through the dependency system or through services designed to teach them life skills leading towards emancipation.

Whether a truant, a runaway, or a homeless child, the state has an interest in intervening on behalf of that young person. The nature of the intervention should depend on the needs of the child, not on the event which called the child to the attention of the state. The runaway may be best served in the dependency system, through emancipation services or through community based programs directed towards family reunification.

The state should not ignore truancy or family dysfunction. It is well-recognized that stability in the home and school attendance are essential for our nation's success.¹⁴⁴ Sometimes the family and school system have insufficient authority to control a child's behavior. Parents and schools have felt particularly helpless in those jurisdictions in which the juvenile court has stopped accepting status offenses. When a child is beyond control of the family and the school, there seems to be no place to turn.

Whether one comes from a rural, suburban or urban setting provides a different perspective for the debate. The urban juvenile courts have been traditionally the most seriously under-resourced both in terms of judicial positions and services available to families. These courts are understandably less interested in taking up court time with school and family problems when they can barely complete the judicial work relating to more serious delinquent behavior.¹⁴⁵

¹³⁷ Rubin, *Juvenile Justice: Policy, Practice and Law*, *op. cit.* footnote 45, at p. 394.

¹³⁸ See generally Schwartz, *op. cit.* footnote 66, and Teitelbaum and Gough, *op. cit.* footnote 62.

¹³⁹ Metropolitan Court Judges Committee Report, "A New Approach to Runaway, Truant, Substance Abusing and Beyond Control Children," *op. cit.* footnote 74, at pp. 15-16.

¹⁴⁰ See Schneider, Anne, "Status Offenders: Anecdotes, Myths, Facts and Realities." Prepared for the Annual Conference of the State Advisory Groups for Juvenile Justice.

¹⁴¹ "The Juvenile Justice and Delinquency Prevention Act: Federal Leadership in State Reform," by Gordon A. Raley and John E. Dean. *La* and Policy* 8-1 (Oct. 1986), pp. 397-417, at 413, and "Non-Criminal Juveniles: Detentions Have Been Reduced But Better Monitoring Is Needed," U.S. General Accounting Office, Washington, D.C. (April 1991) (GAO/GGD-91-65), *op. cit.* footnote 67. See also "Growth in Minority Detentions Attributed to Drug Law Violators" by Howard N. Snyder, OJJDP Update on Statistics, Juvenile Justice Bulletin, U.S. Department of Justice (March 1990), at pp. 5-6.

¹⁴² "How We Are Failing Our Runaway Teens" by Cynthia L. Patrick, *San Jose Mercury News*, 5 Jan. 1992, at p. 1C and 4C.

¹⁴³ "National Survey of Shelters for Runaway and Homeless Youth," The National Association of Social Workers, Washington, D.C. (Oct. 1991).

¹⁴⁴ "A child deprived of an education is a serious community-wide problem. A habitually truant child is a child heading for trouble and a possible runaway, and the best diagnostic and treatment services available should be provided, for the good of the child, and the community." "Deprived Children: A Judicial Response, 73 Recommendations," *Juvenile and Family Court Journal* 37:40 (1986). The costs related to school attendance have been computed. Each year's class of dropouts will, over their lifetime, cost the nation about \$160 billion in lost earnings and foregone taxes. "Turning Points: Preparing American Youth for the 21st Century," Report of the Task Force on Education of Young Adolescents, Carnegie Council on Adolescent Development (June 1989). "Youth most likely to recidivate were those whose first referral was for burglary, truancy, motor vehicle theft, or robbery." "Court Careers of Juvenile Offenders," Howard N. Snyder, National Center for Juvenile Justice, *op. cit.* footnote 15, p. xii. [Emphasis added.]

¹⁴⁵ An indication of the low level of judicial resources in urban settings was recently reported in *Ibectse of Ashley K.*, which described the juvenile court in Cook County. *In the Interest of Ashley K., a minor* (1-90-3635), Appel late Court of Illinois, First District (17 Apr. 1991).

Once again the critics are dissatisfied with what they see, but rather than work to modify the juvenile court system, would rather abolish it. Once again, however, they provide no vision as to the very problems which led to its creation. Status offenders within the juvenile court system are treated significantly differently from in the 1970s and before. Long-term, indiscriminate incarceration is no longer evident. Juvenile courts instead have responded to the law and have significantly reduced the numbers of detained status offenders.¹⁴⁶ Moreover, the work of the juvenile court in truancy cases has been notably successful.¹⁴⁷

If children are going to be held accountable for their conduct, the juvenile court is society's chosen institution for providing that accountability. The juvenile court must remain available for the most serious status offense cases.¹⁴⁸ On the other hand, a system which turns to the juvenile court for the resolution of many of these cases is doomed to fail. The most effective solutions for the problems underlying status offenses involve services to the child and family within the community. In such a system there is a role for the juvenile court, but it is limited and restrained.

Court jurisdiction should be invoked only when it is apparent that community services

have failed or will be ineffective for this population.¹⁴⁹

C. Dependency

There are many critics of the dependency system. Some argue that it is out of control and that in the name of protecting children, our society has unleashed a new system which has resulted in the unnecessary destruction of families.¹⁵⁰ They insist that the child welfare system should provide voluntary services to families and that state coercion is not appropriate or necessary. Others point out that the dependency system and the juvenile court are "abysmal failures, partly because the juvenile court has not followed the law."¹⁵¹

The characterization of the juvenile courts and the child welfare system as "abysmal failures" reflects the magnitude of the failure to provide the courts and child welfare agencies adequate resources.¹⁵² From two recent cases examining urban dependency systems, we have learned how desperate the situation can become.¹⁵³ The cases point to inadequate numbers of judicial officers and attorneys,¹⁵⁴ insufficient services, poor automation, insufficient support staff, and understaffed social service departments,¹⁵⁵ all leading to inexcusable delays for the children caught in the dependency

¹⁴⁶ *Op. cit.* footnote 67 and see Rubin, *Juvenile Justice: Policy, Practice and Law*, *op. cit.* footnote 45, p. 3S4. "Notable progress, however, has been made in accelerating the transfer of responsibility for status offense youth from the court to the community."

¹⁴⁷ As a result of the truancy courts in Marion County, Indiana, and Hamilton County, Ohio, for example, there has been a significant increase in the school attendance rates. Personal interviews with Margaret M. Goldsmith and Judge James Payne from Marion County and "Truancy Court Project: 1989-1990 Year End Report," Hamilton County Juvenile Court, Cincinnati, OH (1990).

¹⁴⁸ Metropolitan Court Judges Committee Report, *op. cit.* footnote 74, at Report pages 15-16. Contrary to some assertions, i.e. Feld, *op. cit.* footnote 37, at p. 696, status offenses have not been removed from the juvenile court. In truancy matters there is a new interest in the utilization of the juvenile court. See footnotes 73, 74 and 146.

¹⁴⁹ Metropolitan Court Judges Committee Report, *op. cit.* footnote 74, at Report page 19.

¹⁵⁰ Wexler, Richard, *Wounded Innocents: The Real Victims of the War Against Child Abuse*, Buffalo, Prometheus Books (1990); Goldstem, Solnit and Freud, *Before the Best Interests of the Child*, Free Press (1980) X 13 and 64; and Pride, Mary, *The Child Abuse Industry*, Westchester, Illinois, Crossway Books (1986).

¹⁵¹ Unfortunately, the judicial system did not respond to her plight. Instead it became a part of the quagmire, adding to Ashley's misfortune." *In re Ashley K.*, *op. cit.* footnote 145, at p. 16 and "Children Cast Adrift: The Failure of the Juvenile Justice System," Grippando, C&T/Corr (Nov. 1990) 17-25. And see footnote 140. See also "Children Lost in the Quagmire," *Newsweek* 13 May 1991: 64.

¹⁵² A judge in a class action brought on behalf of dependent children in Washington, D.C. concluded in his opinion: "The court views the evidence in this case as nothing less than outrageous. The District's dereliction of its responsibilities to the children in its custody is a travesty. Although these children have committed no wrong, they in effect have been punished as though they had. Based upon the foregoing, the court holds that defendants have deprived the children in the District's foster care of their constitutionally protected liberty interests..." *La Shown A. v. Dixon, S.P.*, Civ. No. 89-1754 (D.C. 1991). Interestingly, this decision was written by a federal judge. Whether the District of Columbia Family Court had made "NO REASONABLE EFFORTS" findings on the children comprising the class is not mentioned. A noted child welfare leader agrees: "In addition to the federal law, many states have passed their own reasonable efforts requirements, albeit with wide variations in interpretation of the requirements. All have failed to allocate sufficient resources to meet the requirements of the law." "The Child Welfare Response" by Charlotte B. McCullough, found in *The Future of Children*, 1.1 (Spring 1991) 61-62.

¹⁵³ *In re Ashley K.*, *op. cit.* footnote 145, at p. 16 and *La Shown A. v. Dixon, S.P.*, *op. cit.* footnote 152.

¹⁵⁴ The Office of Inspector General reports that legal resources available for child welfare cases are inadequate. The results include backlogs in filing petitions because there are insufficient attorneys to review cases and prepare documents, legal staff have neither the time or ability to assist child welfare staff for legal proceedings and court cases are poorly prepared and presented in court. *In re Ashley K.*, *ibid.*, at p. 15.

¹⁵⁵ The lack of services to preserve families and assist them to reunite restricts the ability of the dependency system to meet its goals. While the Child Welfare League of America's Standards for Foster Family Service specify that caseworkers should be responsible for no more than 30 children, most social service agencies report average caseloads above this recommended level. In urban areas the indications are that the caseloads are more than double the recommended level. When social service staff turn over rates average 25 to 35% per annum, the ability of the dependency system to respond to the needs of children and families is further limited; Kusserow, Richard P., Inspector General, "Barriers to Freeing Children for Adoption," Office of Inspector General, Department of Health and Human Services, Washington, D.C. (Feb. 1991) 13. "These continuing problems have been due, in part, to the widespread and well-documented facts that caseworkers in public child welfare agencies have been overburdened with excessively high caseloads, that they have received inadequate training, and that they have experienced extremely high turnover rates." *For Reasons of Poverty* by Leroy H. Pelton, *op. cit.* footnote 92, at p. 76.

system.¹⁵⁶ Federal and state researchers support the findings of these cases.¹⁵⁷

Much of the criticism is directed to the juvenile court and its inability or unwillingness to follow the law. In *La Shown A., et al. v. Dixon*, District Judge Thomas F. Hogan wrote that the dependency system operated as if the federal legislation did not exist. "Operating in much the same way as other jurisdictions had operated prior to the passage of the federal Adoption Assistance Act in 1980: as a holding system for children."¹⁵⁸

Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 and the various state and local laws which implement it have been in place for years. Yet the two cases point out how some courts can simply ignore its dictates.¹⁵⁹ In addition to insufficient resources, educating judges about their legal obligations with regard to this law remains a major task if the juvenile court is to fulfill its mandate.¹⁶⁰

In spite of the criticisms, the juvenile court does have a necessary and important role within the dependency system. First, parents sometimes do not acknowledge their need for improved performance with respect to caring for their children and the public must intervene. The courts are a necessary part of this coercive course of action. The courts explain and provide the due process the law has determined is required in these types of proceedings.¹⁶¹

Second, these cases may involve at least temporary transfer of responsibility for the child to a non-parent. The creation and dissolution of legal rights and responsibilities relating to child custody is legal work.¹⁶²

Third, the courts are needed to protect the child's rights even when the child is a ward of the state. The child's situation in a new setting must be monitored by a responsible authority, and the courts can provide that monitoring.

Fourth, through the adjudication process the courts articulate, establish or reinforce community norms governing the care and protection of children. By ruling in individual cases the court instructs the community, including the agencies which serve the child welfare system, on the general standards for parenting within the community.

Fifth, there has been intense public criticism of alleged social worker aggressiveness and over-reaching.¹⁶³ The juvenile court is society's designated check to ensure that children are not improperly removed, that parents are provided due process and that families are fairly treated. The court is more visible and accountable to the public than a social service agency performing these functions.¹⁶⁴

Sixth, some studies indicate that court-ordered services are more likely to be utilized than voluntary

¹⁵⁶"In most of (he states reporting to the Office of the Inspector General, children remain in foster care for an average of 30 to 42 months (2.5 to 3.5 years) before the determination is made that adoption is the best option for them. Thereafter, it takes from three to 12 months to complete the adoption process. The entire process at its worst can take up to 108 months (nine years). "Barriers to Freeing Children for Adoption," *ibid.*, at pp. 7-S. Scheduling delays occur throughout the dependency system and particularly in cases filed to terminate parental rights. These cases must compete on general jurisdiction calendars with other civil matters in already seriously overcrowded courts. More significantly, the large numbers of attorneys and parties in dependency and termination cases complicates the setting of court hearing dates, lengthens the time for hearings, and results in lengthy continuances to accommodate all the parties." "Barriers to Freeing Children for Adoption," *ibid.*, at p. 15. See also "The Child Welfare Response" by Charlotte McCullough, *op. cit.* footnote 152, 64-65.

¹⁵⁷ Kusserow, Richard P., "Barriers to Freeing Children for Adoption," *op. cit.* footnote 155; "Termination Barriers: Speeding Adoption in New York State Through Reducing Delays in Termination of Parental Rights Cases," Final Report, New York State Department of Social Services, by Debrj Ratterman, J.D., ABA Center on Children and the Law, Washington, D.C. (1991).

¹⁵⁸ *La Shown A., et al. v. Sharon Pratt Dixon, et al.*, *supra*, footnote 154, slip opinion at p. IS.

¹⁵⁹ The delays in permanency for children are not confined to urban jurisdictions. In Onondaga County, New York in 1989, a child spent an average of 4.6 years in foster care before being freed for adoption. Children were not identified as appropriate for termination proceedings until they had been in placement 3.5 years. Even after a project designed to speed up this process, the average time from placement to termination is 3.2 years. "Termination Barriers" Report by Debra Ratterman, *op. cit.*, footnote 157.

¹⁶⁰ Judicial training in dependency cases remains a serious national problem. Some judges throughout the country still refuse to hear or grant termination of parental rights petitions, believing that children's best interests are always served by remaining legally tied to their biological parents. *Barriers to Freeing Children for Adoption*, *op. cit.* footnote 155, p. 13. State governments should offer increased training on permanency planning, in general, and on termination of parental rights, in particular, for child welfare staff, judges, public attorneys, and staffs of contractual service providers. *Ibid.*, at p. 19.

¹⁶¹ The reasons listed in numbers 1-4 are derived from the discussion in *Making Reasonable Efforts*, NCTFCJ, CWLA, YLC, NCYL, Edna McConnell Clark Foundation, New York, N.Y. (1987) 35.

¹⁶² See *In the Interest of J.R.T.* 427 So.2d 251 (FLA 1983).

¹⁶³ See footnote 150.

¹⁶⁴ Social welfare agencies addressing non-conforming children and families are likely to be more coercive regarding what is acceptable behavior and in exacting a price for unacceptable behavior -- perhaps as defined by the case worker. And this will be done privately and out of the public view. The public will not even realize that coercive powers are being exercised in its name." Hartmann, *op. cit.* footnote 2 at p. 386.

services. These studies suggest that for many families voluntary services will simply not result in changed parental behavior.¹⁶⁵

Seventh, there has been substantial progress in the compliance with the goals of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272). Social service agencies have restructured their delivery of services to families, and courts have become more effective in monitoring the delivery of those services. A growing number of appellate cases has provided guidance for the legal and social services systems as to the mandates of the law.¹⁶⁶

The dramatic rise in child abuse reports has greatly expanded the dependency system. Some critics complain that the system is too intrusive while others report that it is failing to follow the law and that as a result children are suffering. As a society we have decided that child abuse prevention is worthy of our attention and our energy. Our goal must be to minimize the unjustified intrusions into the family while at the same time maintaining our protections for children. We must identify those juvenile court systems which are failing to follow the law.¹⁶⁷ We must then fashion remedies for each failed system. Juvenile court judges must not only follow the law but inform the community about what is occurring. In most cases it is likely that the failure will be based upon inadequate resources for dependent children and their families. That is a frequent criticism in the United States,¹⁶⁵ but perhaps when each community understands the extent of our failure to these children, a new commitment can be developed.

D. Summary

The juvenile court has critics. They point to its failures and demand changes. Many of the

suggestions are unwise. Turning over the delinquency system to the adult criminal courts is an uninspired solution, a declaration that there is nothing else to do but give up on the juvenile court.¹⁶⁹ Removing status offenders from the juvenile court similarly gives up on them and their families. The difficult cases will never encounter sufficient authority for satisfactory resolutions. Removing the juvenile court from the dependency system surrenders the goal that parental behavior can change even when the family is unwilling to admit that change is necessary.

The juvenile courts are society's means of holding itself accountable on behalf of its children and families.¹⁷⁰ It is not a question whether we need the juvenile courts because our society needs them or a similar institution to fulfill this task. The issues, instead, are when to turn to the juvenile courts for intervention, how to define the role of the juvenile court as it intervenes, what kinds of resources are necessary for the juvenile courts to be able to complete the tasks assigned to them, and what kinds of judges are necessary for the juvenile courts to succeed. As Mark Harrison Moore has stated:

The only institution that can reasonably exercise leadership on behalf of the society and the children is the juvenile court. The reason is simply that no other institution can claim to have an equally broad view of all the interests at stake, to have as wide a range of action, or to be able to make decisions that are designed to reflect the values of society as expressed in its laws and constitution.¹⁷¹

This paper will now turn to the person with the greatest responsibility in the juvenile court, the juvenile court judge. If the juvenile court is to fulfill its mission, the juvenile court judge is critical to its success.

¹⁶⁵ "The Importance of Adjudication in the Treatment of Child Abusers: Some Preliminary Findings," by David A. Wolfe, John Aragona, Keith Kaufman and Jack Sandier, *Child Abuse and Neglect*, 4(1980) at pp. 127-135; "Court-Ordered v. Voluntary Treatment of Abusive and Neglectful Parents" by Ana Maria Irueste-Montes and Francisco Monies, *Child Abuse and Neglect* 12 (1988) at pp. 33-39; "Law and the Abuse of Children" by Donald Ross, *The World and I* (June 1990) 472-488, at 480. And see "The Use of Authority" by Paul V. Nyden, found in *The Battered Child: Selected Readings*, ed. Jerome Leavitt, General Learning Corporation (1974) at 128-134.

¹⁶⁶ See generally "Making Reasonable Efforts in Child Abuse and Neglect Cases" by Alice C. Shotton, *op. cit.* footnote 89, at pp. 223-256.

¹⁶⁷ *Op. cit.* footnotes 145 and 152.

¹⁶⁸ "Shame on U.S." by Marian Wright Edelman, *San Jose Mercury News*, 19 May 1991 [copyright. The Foundation for National Progress (1991)].

¹⁶⁹ "Why Not the Best of Both Worlds? or Another Comment on The Permissible and the Desirable" by Judge Sharon P. McCully for Utah Juvenile Court Judges Workshop, March 28, 1991.

¹⁷⁰ This statement is attributable to Judge David E. Grossmann, Presiding Judge of the Hamilton County Juvenile Court in Ohio.

¹⁷¹ Moore, Mark Harrison, *From Children to Citizens I, The Mandate for Juvenile Justice*, *op. cit.* footnote 7 at p. 176.

IV. The Role of the Juvenile Court Judge

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An important role for the juvenile court judge is to make certain that there are adequate numbers of attorneys of satisfactory quality to complete the work of the court.¹⁸² The juvenile court judge must work with the funding authorities to supply these attorneys and to ensure they are trained. Dependency cases are particularly expensive for the government, as attorneys and guardians ad litem¹⁸³ may represent the state or petitioning party, the child and each parent if there is a conflict of interest. Compared to civil cases, in which the government supplies no attorneys, the juvenile court is an expensive operation.

The role of the juvenile court judge as the provider of due process and the role as fiscal manager may be in conflict in one or more of these areas. Providing free attorneys for accused delinquents has never been politically popular, and funders demand to know why every accused delinquent child needs to have an attorney. It is no wonder that some juvenile court judges do not appoint counsel for children in every case¹⁸⁴ or are

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

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

¹⁷⁷ *Ibid*, at p. 4.

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

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

¹⁸⁰ Gomby and Shiono, *The Future of Children*, *op. cit.* footnote 103.

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

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

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

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

perceived as favoring waiver of that right.¹⁸⁵

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹⁵ See Rubin, *op. cit.* footnote 45, at pp. 358-359.

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

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

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

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

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

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

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

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

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

¹⁹⁸ Torbet, *op. cit.* footnote 193, at pp. 2-13.

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

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

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

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

²⁰³ Hartmann, *op. cit.* footnote 2 at p. 390.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁰⁹ See *Advocating for the Child in Protection Proceedings* by Donald N. Duquette, Lexington Books, Lexington MA (1990) 1-11. For more information on the National CASA Association, write to: National CASA Association, 2722 Eastlake Avenue East, Suite 220, Seattle, Washington 99102.

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

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

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

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

In 1953 in Oakland County, Michigan, Chief Judge Eugene Arthur Moore convened a small group of citizens and community leaders to develop a community-based prevention program. By 1984 there were 26 locally-based youth assistance programs in Oakland County. In 1989 more than 47,000 county residents voluntarily participated in Youth Assistance Primary Prevention programs. The program has been so successful it received the Kendall I. Lingle Community Resources Award from the National Council of Juvenile and Family Court Judges in 1991.²¹³

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

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

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

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

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

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

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

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

Other commentators support this description.²¹⁷

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

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

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

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

V. Fulfilling the Expectations For the Juvenile Court Judge

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

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

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

A. Structure of the Court System

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

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

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

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

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

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

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

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

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

²¹⁹ *Deprived Children*, *op. cit.* footnote 144, Recommendation S, p. 13.

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

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

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

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

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

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

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

B. Attracting Competent Judges

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

civil practitioner or prosecutor to accept a juvenile court assignment with enthusiasm.²³²

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

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

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

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

²²⁹ See Stale Court Caseload Statistics Annual Report, National Center for State Courts, Williamsburg, Virginia (1989)259-261 and 198-208.

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

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

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

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

²³⁴ "Pathfinders Committee Report," *op. cit.* footnote 230, at p. 42.

²³⁵ *Ibid* at p. 41.

C. Retaining Competent Judges

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

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

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

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

Recommendation 8
Deprived Children: A Judicial Response
73 Recommendations

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

The Juvenile Court
And Serious Offenders
38 Recommendations

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

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

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

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

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

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

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

Third, with the possible exception of the presiding judge of all of the trial courts, nojudicial role requires more administrative work than that of the juvenile court judge. To review the duties and responsibilities outlined in Section IV is to understand why the juvenile court judge must remain in the position for a substantial number of years in order to be effective.

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

²⁵⁶ It seems imperative, therefore, that the assignment to the family court be an ongoing assignment for the tenure of that judge." National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention Standards* 8.4 Commentary.

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

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

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

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

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

-serving the court will recognize that there will be no consistent judicial authority supervising their policies and procedures. Such rotation can result in abrogation of the judicial administrative function.²³⁸

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

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

One significant problem limiting the time a judicial officer can be effective in the juvenile court is burnout.^{2,40} Juvenile court work is demanding. As Judge Alexander wrote,

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

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

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

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

D. The Unified Family Court

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

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

²³⁸ Rubin, *op. cit.* footnote 45, at p. 366.

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

²³⁹ Hurst, *op. cit.* footnote 233, at p. 10.

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

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

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

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

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

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

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

officer or social worker assigned to the case.

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

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

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

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

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

²⁴⁴ Rubin, *op. cit.*, footnote 17.

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

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

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

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

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

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

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

E. Purpose of the Juvenile Court

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

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

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

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

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

Fortunately, effective and economical family preservation strategies have been and are being developed which address all of the situations described in this paper.²⁵³ Developed first for dependency cases, family preservation²⁵⁴ has been shown to be effective in delinquency matters also.²⁵⁵ It has always been the preferred strategy in status offense situations.

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

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

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

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

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

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

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

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

F. Resources

... funding does remain our most miserable failing.²⁵⁷

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

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

Second, there must be adequate resources for the court system. This includes a sufficient number of judges,²⁶⁰ staff²⁶¹ and attorneys to do the work of the court. Third, there must be enough persons to support the systems that detect, investigate, monitor, and provide services for juvenile court cases.²⁶² Fourth, there must be adequate resources to provide an effective response to the problems facing the children and families coming before the court. These resources include what is necessary to respond to the problems facing the child and family, whether they be labeled delinquent, dependent or status offenses.²⁶³ Without them the juvenile court is likely to become the "abysmal failure" described by the Illinois Appellate Court.²⁶⁴

²⁵⁶ Peter Forsythe, Director, Program for Children, Edna McConnell Clark Foundation.

²⁵⁷ Gladstone, *op. cit.* footnote 12.

²⁵⁸ One of the long-standing Congressional findings is that "understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help" for juvenile offenders. Section 101(a)(2), 42 U.S.C. section 5601(a)(2). "The juvenile court cannot intervene effectively when the social services and treatment resources it depends on are in tatters." "A limited Role for the Legal System in Responding to Maternal Substance Abuse During Pregnancy" by John E. B. Myers, *Notre Dame Journal of Law, Ethics & Public Policy*, at p. 781. "One reason for the failure of the juvenile courts has been the community's continuing unwillingness to provide resources — the people and facilities and concern — necessary to permit them to realize their potential and prevent them from taking on some of the undesirable features typical of lower criminal courts in this country." "The Administration of Juvenile Justice — The Juvenile Court and Related Methods of Delinquency Control," The President's Commission on Law Enforcement and Administration of Justice, *Juvenile Delinquency, and Youth Crime*, Washington, D.C., U.S. Government Printing Office (1969) at p. 7.

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

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

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

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

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

²⁶⁴ The Cook County juvenile court offers an example of the severe shortages in the resources necessary to complete the work of the court. In August of 1990 the juvenile court was responsible for more than 22,000 abused and neglected children. As that time there were 18 judicial officers hearing these cases, 35 deputy public guardians representing these children, and public defenders representing parents with caseloads of 600 per deputy. *Ashley K.*, *op. cit.* footnote 145.

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

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

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

legislative and executive decisions about these resources. It is a strategy which has been tried successfully in several communities²⁶⁶ and, as juvenile court judges understand the position in which they have been placed, will be tried in many others.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Conclusion

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

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

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

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

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

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

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

²⁷⁰Gladstone, *op. cit.* footnote 12.

²⁷¹Wolfgang, *op. cit.* footnote 118; Feld, *op. cit.* footnote 37; Ainsworth, *op. cit.* footnote 32.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It lies within our reach, before the end of the twentieth century, dramatically to improve the early lives of several million American children growing up at grave risk. We can substantially improve the odds that they will become healthy, sturdy, and productive adults, participants in a twenty-first century America whose aspirations they will share.²⁸²

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

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

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About the Author

Leonard P. Edwards is a Judge of the Santa Clara County Superior Court. In that capacity he has served as Supervising Judge of the Family Court and for six years was the Presiding Judge of the Juvenile Court. He is now the Presiding Judge of the Superior Court.

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²⁸¹ *Within Our Reach: Breaking the Cycle of Disadvantage* by Lisbeth B. Schorr, *op. cit.* footnote 253, at p. 22.

²⁸² *Ibid.* at p. 292.