

The Role of the Juvenile Court Judge Revisited

BY JUDGE LEONARD P. EDWARDS

EDITORS NOTE

INTRODUCTION

Nearly fifteen years ago, the *Juvenile and Family Court Journal* published my article, "The Juvenile Court and the Role of the Juvenile Court Judge" (hereinafter *The Role*). The article was both reflective of trends in American juvenile courts and aspirational, pointing in the direction that judges should be heading as they assumed their responsibilities on the juvenile court bench.

The *Journal* has asked me to reflect on what has happened since *The Role* was published and has republished the most enduring section of the article "The Role of the Juvenile Court Judge" in this volume.

In this Introduction I will address three topics: (1) Does *The Role* capture the special nature of the juvenile court judge's job description? (2) Have juvenile court judges accepted this role as a model of what they should be? And (3) Has "The Role" had any influence on the work of juvenile court judges across the country?

I must add one caveat. I am not an objective outsider looking at juvenile court judges and their work. I have been a juvenile court judge most of my 25 years on the bench and believe that the juvenile court judge can and should fulfill the various roles that I describe. My biases are set out more fully in the speech I gave on November 18, 2004 when I received the National

Center for State Courts' 2004 William H. Rehnquist Award for Judicial Excellence to Judge Leonard P. Edwards—the first time in the award's history that this honor has gone to a juvenile court judge. The award was presented by Justice Anthony Kennedy in the Great Hall of the United States Supreme Court. Following you will find not only Judge Edwards' moving acceptance speech, but also a republication of his 1992 article, "The Role of the Juvenile Court Judge." This article was included as Chapter IV of Judge Edwards' seminal work on "The Juvenile Court and the Role of the Juvenile Court Judge," published in the *Juvenile and Family Court Journal* (Vol. 43, No. 2). We are pleased to include both pieces in this issue of the *Journal* with Judge Edwards' following words of introduction.

Center for State Courts' 2004 William H. Rehnquist Award for Judicial Excellence at the United States Supreme Court in Washington, D.C. (the speech appears on page ____). From that speech my positions regarding the juvenile court and the juvenile court judge are clear. I believe that the juvenile court is the institution that is in the best position to play a critical role in the lives of

our nation's most vulnerable children and their families. But I also believe that the juvenile court will not reach its potential without strong leadership from juvenile court judges. It is clear to me that these statements have been born out during the past fifteen years.

Does *The Role* capture the special nature of the juvenile court judge's job description? Indeed it does. Upon rereading and reflecting on this section, I would only make small changes in the content and one major addition. I would include a full discussion of the ethical implications of judicial leadership. Ethical issues must be addressed by every member of the judiciary, but when the role of the juvenile court judge is described, many judges fear that they will be crossing ethical boundaries when fulfilling that role. Fortunately, ethical considerations do not prevent the juvenile court judge from fulfilling the various roles I have described. Moreover, there is assistance for judges who have questions about ethical

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issues. The judiciary in most states has developed a rich source of ethical opinions that describe the “do’s” and “don’ts” relating to judicial activities. Trainings at most judicial educational institutes and conferences address ethical issues, and online references, telephone hot lines, and e-mail communications enable judges to learn about ethical constraints very quickly. Additionally, more judicial leaders are pointing out the affirmative duties for juvenile court judges to assume leadership roles in their courts and their communities. “Improvement of the law, the legal system [and] the administration of the law” are clearly an integral part of the job of the juvenile court judge.¹

Have juvenile court judges accepted this model? Yes, in increasing numbers, but not everywhere in the country. Increased interstate contact and trainings, court improvement efforts, and work by the National Council of Juvenile and Family Court Judges and other national organizations have spread the word about how juvenile court judges need to take a leadership role in their courts. The best examples of the growth of leadership are the Court Improvement projects active in every state and the Model Courts Project of the NCJFCJ’s Permanency Planning for Children Department. In the Court Improvement projects, a small amount of money given annually by the federal government to each state to improve the juvenile dependency process has produced remarkably positive results. State judiciaries have experimented, borrowed best practices from each other, and made significant improvements in their juvenile courts.

The Model Courts Project has brought together 25 juvenile courts, their presiding judges, child welfare directors, and teams of professionals from each court system into a laboratory of experimentation regarding improving court practice. The project has been ongoing for over eight years and the results include dramatic reductions in the number of children in foster care, children spending less time in foster care, and children receiving more timely permanency. There is no question that there are more and more successful juvenile court systems around the country, and that success begins with strong judicial leadership.

I believe that *The Role* has influenced juvenile court

judges around the country, even those who have not read it. The article captured the uniqueness of being a juvenile court judge and, when combined with court improvement resources or Model Court publications, gave judges permission to utilize their creativity to make their court systems work better. For many judges coming to the juvenile court, *The Role* was one of the first articles they read during their orientation process. Combined with trainings sponsored by the NCJFCJ, *The Role* articulated the expectations and possibilities for new judges.

In *The Role* I praised the work of particularly outstanding juvenile court judges who, through their leadership and creativity, improved their court systems and outcomes for children and families. Were I to rewrite the article, I could multiply that number by 10 or 20 or even 50. That is the extent to which successes in the juvenile court have expanded. Where there were a few outstanding bright stars in 1992, now the country is sparkling with model courts from coast to coast. More will be coming on board and the process will take many more years, but I believe that juvenile courts will never slip back again. Court improvement is here to stay, and the juvenile court judge as community leader is an accepted role.

In my November speech, I highlighted many of the successes of the juvenile court and also name some of the most effective juvenile court leaders in the country. Since then, I have apologized to many colleagues who deserved to be mentioned, but who were omitted because of time constraints. Indeed, I probably exceeded my allotted time by a substantial amount on November 18th, but I believe I had an important story to tell and a critical audience before me. It was a once in a lifetime opportunity.

The impact of *The Role* is also evident when I conduct training programs around the country. Providing training in different states has been one of the most rewarding experiences of my judicial career. I have consistently encountered judges who are eager to learn and to improve their court systems and the outcomes for the children and families who appear before them. It was not always so. In trainings I conducted in the 1980s and early 1990s, I often encountered the “we’re doing just fine and do not need to make any changes,”

¹ Canon 4, Judicial Canons of Ethics

or “you people from out of state don’t have the same problems that we have so we are not interested in what you have to say,” or even “judges shouldn’t be doing that kind of work in the community” attitudes. My most memorable training was in New York when (possibly for the first time) the Chief Judge of the New York Courts, Judge Judith Kaye, invited four of us from the NCJFCJ to train the New York juvenile dependency judges. Judges David Grossmann, Nancy Salyers and I were joined by Steve Baron, an expert in dependency mediation. After our presentations on court improvement issues, Judge Kaye turned to her judges and said, “I never thought I would be asking Ohio and California for advice on how to improve our New York court system.” But she had and under her great leadership, New York has made and continues to make significant improvements in its

juvenile courts.

Times have changed and I have to believe that The Role played a small part in the new approach juvenile court judges are taking toward their jobs. Judges are now ready to ask questions about court operations and institute changes to improve those operations.

I invite you to read or re-read the section of The Role that is printed herein and then read the speech I delivered in Washington, D.C., on November 18, 2004. The role of the juvenile court judge has now been firmly secured and embraced by the judiciary across the country. The results are there to see. Moreover, there is considerable momentum in the court improvement movement, and the results over the next decade should surpass all that we have seen to date. It is a time for optimism about the juvenile court.

THE ROLE OF THE JUVENILE COURT JUDGE

BY JUDGE LEONARD P. EDWARDS

The most important person in the juvenile court is the juvenile court judge.¹ 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.²

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 case.

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,³ 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 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.⁴ Juvenile courts in many jurisdictions are understaffed and overworked.⁵ 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.⁶ Sometimes this lack of judicial resources exists throughout the judiciary,⁷ but more frequently the juvenile court receives fewer positions because it is perceived as less important.⁸ The problem has been exacerbated with the marked increase in dependency cases over the past five years.⁹ 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.¹⁰ 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.¹¹ 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 litem¹² 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 cases. 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 case¹³ or are perceived as favoring waiver of that right.¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷

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.¹⁸

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.¹⁹

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.²⁰ 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 available.²¹ 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.²² 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.²³ On the other hand, the juvenile court judge as administrator is ideally situated to coordinate services between the court and probation departments.²⁴

Some critics have argued that this administrative role is inappropriate for the juvenile court judge.²⁵ 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.²⁶ In some states, the juvenile court has no administrative oversight of probation services, while in some states the court has limited control over the selection and administration of probation services.²⁷ 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.²⁸

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.²⁹ The juvenile court judge both informs and advocates within the community on behalf of children and their families.³⁰ 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.³¹

The Role of the Juvenile Court Judge Revisited

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 acquires itself of its own responsibilities.³²

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.³³

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 who come before the court can be well-served.³⁴ This may be the most untraditional role for the juvenile court judge, but it may be the most important.³⁵

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.³⁶

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.³⁷ 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.³⁸ Other judges have been noteworthy for their leadership in initiating change within their court systems.³⁹

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.⁴⁰

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 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.⁴¹

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 1991.⁴²

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.⁴³ Many other examples exist in juvenile courts throughout the country.⁴⁴

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.
- (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.⁴⁵

Other commentators support this description.⁴⁶

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.

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END NOTES

- 1 "But within the juvenile court itself the judge, regardless of ability, holds the highest status. The judge is the ultimate decision-maker. The coterie of probation, social service, legal and clerical attendants rivet their eyes and ears on his nonverbal language and his utterances." Rubin, H. Ted, *Juvenile Justice: Policy, Practice and Law*, 2nd ed., New York: Random House (1985), 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." Emerson, Robert, *Judging Delinquents*, Chicago: Aldine Publishing Company (1969), at p. 13.
 - 2 Dugger, C. W., "Care Ordered for Children in Abuse Cases," *The New York Times* (29 May 1991), section B, p. 1.
 - 3 Children in delinquency cases are entitled to counsel at state expense. *In re Gault* (1967) 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527, at p. 4. 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.
 - 4 "Judicial Authority and Responsibility: 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions," National Council of Juvenile and Family Court Judges (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."
 - 5 "The present system permits overloading of non-jury calendars. Because the family (juvenile) courts are non-jury courts, there is almost no limit to the number of non-jury matters that might be assigned to those courts." Senate Task Force on Family Relations Court, Final Report, Sacramento (1990), pp. 8-10. Also see *In the Interest of Ashley K., a minor* (1-90-3635), Appellate Court of Illinois, First District (17 Apr. 1991).
 - 6 *Ibid.* at p. 4.
 - 7 Lucas, Malcolm M., "Is Inadequate Funding Threatening Our System of Justice?" *Judicature*, 74(April-May 1991), p. 292.
 - 8 Senate Task Force on Family Relations Court, Final Report, *op. cit.* footnote 5, at p. 4, and see Section V.A. *infra* on the "Structure of the Court System."
 - 9 Gomby, Deanna S. & Patricia H. Shiono, "Estimating the Number of Substance-Exposed Infants," *The Future of Children* 1.1 (Spring 1991), pp. 17-25.
 - 10 Senate Task Force on Family Relations Court, Final Report, *op. cit.* footnote 5, at p. 2 and *In re Ashley K., op. cit.* footnote 5, 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.
 - 11 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: Steps for Keeping Families Together*, New York: Edna McConnell Clark Foundation (1987), at p. 62. Also see McCullough, Charlotte B., "The Child Welfare Response," *The Future of Children*, Vol. 1, No. 1 (Spring 1991), at p. 59.
 - 12 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, DC (1990).
 - 13 See Feld, Barry C., "The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Differences They Make," *Journal of Criminal Law & Criminology*, 79, pp. 1185-1346; and Schwartz, Ira M., *(In)Justice for Juveniles*, Lexington, MA: Lexington Books (1989), at pp. 40-51.
 - 14 See Schwartz, *ibid.*, at pp. 152-158; Feld, Barry C., "The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes," *Journal of Criminal Law and Criminology*, 78(3), 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 1, 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, Calif., 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.

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- Of course, if the jurisdiction has no resources to employ counsel, the judge may be less willing to engage in this type of *voire 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*.
- 15 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 11, at pp. 31-32.
- 16 Moore, Mark Harrison, "Toward Juvenile Justice," *From Children to Citizens*, New York: Springer-Verlag (1987), at p. 177.
- 17 "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," *Juvenile and Family Court Journal*, 40(2), (1989), 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 J. 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.*, 184 Cal. App. 3d 650, 229 Cal. Rptr. 247 (1986). See Pachota, Sue, "The Court: A Child's Last Hope for Protection," *The Rocky Mountain Child Advocate*, 1(2), (June/July 1991) at pp. 4-5.
- 18 Rule 1404(a) Juvenile Court Rules, West's California Juvenile Laws and Court Rules (1991).
- 19 See "Deprived Children: A Judicial Response," *Juvenile and Family Court Journal*, 37(4), (1986), at p. 10. "The public reasonably expects the judiciary is, or ought to be, ultimately accountable for what happens to abused or neglected children who are reported to or handled by governmental agencies."
- 20 Jones, Judge William G., "The Special Responsibilities of Juvenile Court Judges," *The Rocky Mountain Child Advocate*, 1(2), (June/July 1991), p. 3.
- 21 "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;
 - (3) Understand 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;
 - (6) 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;
 - (7) Ensure that the child welfare agency is aware that the failure to make reasonable efforts will result in a failure to receive federal reimbursement;
 - (8) Establish a training program for all attorneys representing parents and children and require attorneys who are appointed by the court to attend this program;
 - (9) Be aware of local experts who can testify on the reasonableness and appropriateness of services provided to keep a child in the home and what harm, if any, a child will experience if removed from the home or continued in an out-of-home placement; and
 - (10) Monitor the court's own record on compliance with the reasonable efforts requirement by monitoring court of appeals' affirmances or reversals of decision on reasonable efforts.
- Making Reasonable Efforts: Steps for Keeping Families Together*, *op. cit.* footnote 11, pp. 41-59.
- 22 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 Torbet, Patricia McFall, *Organization and Administration of Juvenile Services: Probation, Aftercare, and State Delinquent Institutions*, Pittsburgh, PA: National Center for Juvenile Justice (1990), at p. iv.

END NOTES

- 23 See *Doe v. County of Lake, Indiana* (1975) 399 F. Supp. 553 and *Santiago v. City of Philadelphia* (1977) 435 F. Supp. 136, 146.
- 24 See Rubin, *op. cit.* footnote 1, at pp. 358-359.
- 25 Gilman, David, "The Constitutionality of Juvenile Court Administration of Court Services" in *Major Issues in Juvenile Justice Information and Training*, Columbus, OH: Academy for Contemporary Problems (1981), pp. 465-474. Foster, Jack D., "Courts as Social Service Agencies: An Idea Carried to Its Illogical Extension," pp. 475-490; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, DC: 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.
- 26 Gary, Holland M., "The Juvenile Court's Administrative Responsibilities," pp. 337-342, and Rubin, *op. cit.* footnote 1, at pp. 358-359.
- 27 Torbet, *op. cit.* footnote 22, at pp. 2-13.
- 28 White, Joseph L., "Major Issues in Juvenile Justice Information and Training: Services to Children in Juvenile Courts: The Judicial-Executive Controversy," Columbus, OH: Academy for Contemporary Problems (1981), cited in Torbet, *op. cit.* footnote 22, at p. i.
- 29 "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 16, at p. 181.
- 30 "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." Gelber, Seymour, "The Juvenile Justice System: Vision for the Future," *Juvenile and Family Court Journal*, 41(2), (1990), at p. 18.
- 31 Dugger, Celia W., "As Mother Killed Her Son, Protectors Observed Privacy," *The New York Times*, (10 Feb. 1992), at p. A1 and A16; Dugger, Celia W., "Child Deaths Reveal Failings of System," *The New York Times*, (23 Jan. 1992).
- 32 Hartmann, Francis, *From Children to Citizens II, The Role of the Juvenile Court*, New York: Springer-Verlag (1987), at p. 390.
- 33 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 Wettinck, 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.
- 34 "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*, National Council of Juvenile and Family Court Judges (1992), at p. 4.
- 35 "He can't go out on the street corner 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.” Fort, Judge William S., “The Juvenile Court Examines Itself,” *NPPA Journal* 5, 404-413, at p. 411.
- 36 *Deprived Children, op. cit.* footnote 19, 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, op. cit.* footnote 34, at p. 4.
- 37 “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.” Bartollas, Clemens, *Juvenile Delinquency*, New York: MacMillan (1985), at p. 456.
- 38 See Duquette, Donald N., *Advocating for the Child in Protection Proceedings*, Lexington, MA: Lexington Books (1990), pp. 1-11. For more information on the National CASA Association, write to: National CASA Association, 100 W. Harrison, North Tower, Suite 500, Seattle WA 98119.
- 39 For example, see Mastrofski, Jennifer, “Family Court Reform in Six Pennsylvania Counties: Profiles of Judges as Reform Activists,” *Family and Conciliation Courts Review*, 29(2), (Apr. 1991), pp. 129-149; Whitman, Sylvia, “Judge Ernestine Gray throws the book at young offenders—and then expects them to read it,” *Student Lawyer* (Apr. 1987), pp. 12-13. For different examples of juvenile court judges, their backgrounds and accomplishments, see Rubin, H. Ted, *Behind the Black Robes: Juvenile Court Judges and the Court* (1985), Beverly Hills, CA: Sage Library of Social Research.
- 40 McGee, Judge Thomas P., “Preventing Juvenile Crime: What a Judge Can Do,” *The Judges’ Journal*, 24 (1986), at pp. 20-23 and 51-52. Also see Sikorsky, John B. and Judge Thomas P. McGee, *Learning Disabilities and the Juvenile Justice System*, National Council of Juvenile and Family Court Judges (1986).
- 41 For further information about the Children’s Cabinet, contact The Children’s Cabinet, 1090 So. Rock Blvd., Reno, Nevada, 89502.
- 42 For further information, contact Chief Judge Eugene Arthur Moore, Probate Court, County of Oakland, 1200 N. Telegraph Road, Pontiac, Michigan 48341-1043.
- 43 For more information about the Children’s Network write: Children’s Network, County Government Center, 2nd Floor, 385 North Arrowhead Avenue, San Bernardino, California 92415-0049, (909) 387-8966.
- 44 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).
- 45 Standards of Judicial Administration Recommended by the Judicial Council, Rule 24, Juvenile Matters, West (1991). Not 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 a long way to resolving the conflicts now experienced, and toward improving the administration of juvenile and family justice.” Moore, Mark Harrison, Review of “Resolving the Ethical, Moral and Social Mandates of the Juvenile and Family Court,” Memo to Hunter Hurst, National Center for Juvenile Justice (1990).
- 46 “Judges must assert community leadership for prevention and treatment of substance abuse among juveniles and their families.” *Drugs—The American Family in Crisis*, National Council of Juvenile and Family Court Judges (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 19.

REMARKS OF LEONARD P. EDWARDS

ON THE OCCASION OF WILLIAM H. REHNQUIST
AWARD PRESENTATION—NOVEMBER 18, 2004

This is an historic occasion for me and for all of my colleagues who sit on the juvenile court bench. It is worthy of comment that someone who every day presides over the cases of children should appear in this Great Hall to receive the nation's most prestigious judicial award. How can it be that someone who has devoted his professional life to the well-being of abused and neglected children, to the correction and rehabilitation of youth, and to the rights of victims of violence emerge from all of the more well-known judges in our country? After all, the United States Supreme Court has had very little to say about the work that I and hundreds of colleagues around the country perform. Since the case of *In re Gault* in 1968, there have been less than 10 Supreme Court decisions regarding juvenile delinquency issues. There have been even fewer decisions regarding the law relating to child abuse and neglect. I cannot ever recall finding references to United States Supreme Court decisions in the legal briefs or arguments presented by attorneys in my court. In a way we juvenile judges have worked in the shadows of the court system.

So it is a unique event that the Supreme Court and the National Center for State Courts are honoring a juvenile court judge. The Rehnquist Award is a clear and powerful statement that a judge working with abused and neglected children and their families is important; that to work with the victims of domestic violence is important; that to convene the community around issues relating to at-risk children and families is important; that to oversee family crises in order to provide good outcomes for children is important. For that is what we in the juvenile court are charged to do. This award will help to move the juvenile court out of the shadows of the court system and into the mainstream where it belongs.

I believe the work of our juvenile and family court judges is critical to the future of our nation. That is a bold claim, but let me explain. Judges in the juvenile court are charged with keeping children safe, restoring families, finding permanency for children, and holding youth, families, and service providers accountable. Every day, hundreds of judges make thousands of decisions

regarding children in crisis. We decide whether a child should be removed from parental care, whether a child has committed a delinquent act, whether a child should be committed to the state for correction, whether parental rights should be terminated, and similar issues. When parenting fails, when informal community responses are inadequate, our juvenile and family courts provide the state's official intervention in the most serious cases involving children and families. We are the legal equivalent to an emergency room in the medical profession. We intervene in crises and figure out the best response on a case-by-case, individualized basis. In addition, we have to get off of the bench and work in the community. We have to convene child- and family-serving agencies, schools, and the community around the problems facing our most vulnerable and troubled children. We have to ask these agencies and the community to work together to support our efforts so that the orders we make on the bench can be fulfilled. We have to be the champions of collaboration.

Many of these roles are not traditional for a judge. Yet for juvenile court judges, they are essential if the work of the court is to be successful, and if court orders will be carried out. The role of the juvenile court judge is unlike any other. In the traditional judicial role, deciding a legal issue may complete the judge's task; however, in deciding the future of a child or family member, the juvenile court judge must, in addition to making a legal decision, also be prepared to take on the role of an administrator, a collaborator, a convener, and an advocate.

Perhaps I can give you an idea of these multiple roles in the context of a typical case. When I removed three children from a young drug-abusing mother last month, at the initial hearing I was able to recommend that she receive a substance abuse assessment available in our courthouse and administered by experts from the drug and alcohol service providers in our community. When her attorney nominated her for our dependency drug treatment court, our drug court team, including representatives from a wide range of service providers, accepted her on condition that she enter a residential drug treatment facility, engage in substance abuse treat-

ment, and participate in counseling. In the months ahead, she will receive services from a social worker, a public health nurse, a housing expert, a mentor from our Mentor Moms program that utilizes graduates from the drug court to counsel current clients, a special parenting class that will bring her and her children together with other mothers, their children, and Head Start and Early Start teachers, and other services as needed. All of her children will be represented by an experienced attorney. Moreover, one or more of her children will have a trained volunteer, a court appointed special advocate assigned to assist them through this difficult time in their lives.

All of this has become possible because in my role as a juvenile court judge I have been able to reach out to agencies, service providers, and to the community with the request that they work with me and the other members of the court system on behalf of children and families who come before the juvenile court. In essence, I asked for help and they responded to my request. I met with leaders of agencies and service providers, and I convened meetings bringing all members of the drug court team together in order to organize the drug court, to provide expert substance abuse assessors available in the courthouse, and to have the substance abuse treatment community work with the court. These are examples of the non-traditional work of the juvenile court judge. These are the kinds of tasks that I and my colleagues undertake every day as juvenile court judges. These tasks also exemplify the complexities that recovery and rehabilitation involve during the family reunification process in juvenile dependency court.

It is very likely that this mother will reunify safely with her children—the majority in our juvenile court do—but even if she does not, the children will have a permanent home. They will likely be adopted by a family member or a foster family, the same family they have been placed in concurrently during the reunification period.

Each day juvenile court judges hear cases, one by one. Although a single case will obviously make an immense difference for a particular family, it may not seem significant to the entire community. Yet these cases in the aggregate will make a great difference to our society. Last year I did some research with the staff at the National Council of Juvenile and Family Court Judges to determine just how many judicial decisions

are made on a daily basis in our country in our juvenile courts. We concluded that there are approximately 30,800 hearings held each working day in our nation's juvenile courts. That is, at least 30,800 children and their families come before a judicial officer who will decide as to their status. The child may be a baby or a teen. The case may involve abuse or neglect, children in need of supervision, or delinquency. The hearing may be at the beginning, the middle, or the end of the case. Some may be review hearings to determine whether a plan is working out, others may be much more serious: whether a child is to be removed from her parent's home, whether a youth will be committed to the state for correction, and whether parental rights will be terminated. This is the law in action—as judge after judge tries to determine what intervention is necessary on behalf of a child in crisis.

You all know about problem-solving courts. Every state judiciary has drug courts, and many are developing mental health courts and other types of courts dedicated to solving challenging issues facing our citizens. The juvenile court is the original problem-solving court. The juvenile court was America's first and most significant contribution to world criminology. Originated as a reform, the juvenile court combines social and legal attributes to serve public interests relating to children and families. It was founded in recognition that children are different from adults, and that the law should address children's issues from a perspective that acknowledges those differences. The juvenile court was envisioned as the setting where societal intervention on behalf of children would take place if parenting had failed to ensure that children are properly raised. The hallmark of the juvenile court is individualized justice. From the beginnings of the juvenile court over 100 years ago, juvenile court judges have worked with social workers, probation officers, and others to devise individual plans for each child who comes before the court.

All 50 states and the District of Columbia have a juvenile court. All state legislatures have recognized the importance of having a legal institution devoted to the well being of children. I would like to give you an update on the state of juvenile courts today. The juvenile court is one of the unsung success stories in our country. Our juvenile court judges are doing a good job. This may come as a surprise to some of you. After all, some com-

mentators have criticized the juvenile court. Because of the confidentiality that shrouds much of what happens in the juvenile court, many in the public do not know what happens there. Many in this room are working to make the juvenile court process more transparent. Yet, as over-crowded as our courtrooms are, as stressful as is the work of these courts, and as difficult as the decisions that judges have to make every day, our juvenile and family courts have never been stronger or more effective as they are today.

Unfortunately, the nation has a distorted picture of what happens in our juvenile courts. We seem to read only about the tragedies, the children who are killed by their parents or who are lost in foster care or who commit terrible crimes. These sensational news accounts are utterly misleading. Yes, tragedies do happen, but the real news, the good news, is that the juvenile court is a strong, vibrant institution. Perhaps more significantly, our juvenile courts are making improvements to their operations at a pace never before imagined.

Just as drug courts have demonstrated their effectiveness through research and evaluation, so too have our juvenile courts begun to demonstrate excellent results. Even in those jurisdictions where individual juvenile courts are struggling with a lack of resources, they have started the court improvement process. Court practice has improved in every state, principally because of national court improvement efforts by such organizations as the National Council of Juvenile and Family Court Judges and the National Center for State Courts and because of the support of the federal government (in particular, the Office of Juvenile Justice and Delinquency Prevention) and charitable foundations such as the David and Lucile Packard Foundation, the Pew Charitable Trust, the Dave Thomas Foundation, and the Robert Wood Johnson Foundation. These organizations, working with judges and researchers, have developed what we refer to as best practices for juvenile courts. Improved technology, technical assistance, and a broad array of training opportunities have resulted in courts learning quickly about what is happening in other courts. Initiatives such as the federal Court Improvement Program and the Model Courts Project of the National Council of Juvenile and Family Court Judges have given courts the opportunity to learn about best practices being utilized in other jurisdictions.

Judicial leadership has made it possible for these courts to make significant improvements in court operations.

Let me give some examples. Ten years ago, the National Council of Juvenile and Family Court Judges published a book called *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. It carefully outlined the time and judicial resources necessary to operate a successful child protection courtroom. This had never been done before. The **Resource Guidelines** were immediately embraced by the Conference of Chief Justices and the American Bar Association, but more importantly the Guidelines became a practice guide for courts across the country. Now, after we have watched court after court aspire to follow them, we know that best practices result in fewer children coming into foster care and that those who do enter care have fewer placements and reach permanency more quickly.

The better results can be measured. Seven years ago, three jurisdictions—New York City, Los Angeles County and Cook County, Illinois—accounted for approximately 150,000 children in out-of-home care under the supervision of the juvenile court, almost one-third of the national total of children in foster care. All three of these courts are part of the Model Courts initiative directed by the National Council of Juvenile and Family Court Judges. All three committed to improve practice by reference to the *Resource Guidelines*. All three had strong judicial leadership, Presiding Judges Nancy Salyers and Patricia Martin Bishop in Chicago, Chief Judge Judith Kaye and Presiding Judge Joe Lauria in New York, and Presiding Judge Mike Nash in Los Angeles. Today there are less than 60,000 children in care in these jurisdictions, a decline of over 60%. Using the best practices recommendations of the *Resource Guidelines*, fewer children are in out-of-home care, and those who do enter care stay there for a shorter period of time.

Another example involves Pima County (Tucson), Arizona, also a Model Court site, under the leadership of Judge Steve Rubin. The National Center for Juvenile Justice recently completed an exhaustive study of juvenile court practice in the Tucson juvenile court after best practices based on the *Resource Guidelines* were implemented. The results were dramatic. Following the *Resource Guidelines*, the Tucson juvenile court reduced the time that a child waits for a permanent home, the time a child remains in out-of-home care, and the time it

takes to dismiss a child protection case, all by from 30% to 60%. These results are positive for children, but they also resulted in significant foster care cost savings to the local, state, and federal governments. The Chief Justice of Arizona and other state leaders were so impressed by the results that they took steps to make every juvenile court in Arizona a model court and to have all of Arizona's juvenile courts implement best practices as described by the *Resource Guidelines*. In Minnesota, under the leadership of Chief Justice Kathleen Blatz, the entire state judiciary has organized a juvenile court project with the title "Through the Eyes of the Child." Chief Justice Blatz has utilized the similar organizational techniques as those of the Model Courts, brought together and created teams in each jurisdiction, and set goals for court improvement for each and every county in Minnesota. I have seen the enthusiasm that the Minnesota judges, court administrators, and attorneys have for this project and for their collaboration with children's services administrators and service providers. This is court improvement at its best.

For those of you who have not visited the new Washington, D.C., juvenile court, I urge you to do so. Under the leadership of the Presiding Judge Rufus King and Supervising Judge Lee Satterfield, and following the *Resource Guidelines*, our nation's capital (another Model Court) has adopted best practices that will quickly show positive results for the children who appear in their family court. They have a beautiful new courthouse as well.

At a recent meeting of the Model Courts here in Washington, D.C., our lead judges and National Council of Juvenile and Family Court Judges staff discussed strategies that would make it possible to expand best practices statewide across the country. We discussed how Arizona, New Jersey, Minnesota, and Georgia are expanding model court practices to the entire state. With our successes over the past few years, we are confident this type of expansion can be accomplished in all states in the next decade.

Be prepared for another revolution in juvenile court improvement. Next year, the National Council of Juvenile and Family Court Judges will publish the *Resource Guidelines for Juvenile Delinquency cases* addressing best practices in our nation's juvenile courts. These Guidelines should usher in a new national confidence

in the juvenile delinquency court and a legislative shift to keep more children in the juvenile court where they belong, where they will receive individualized justice, where accountability and rehabilitation go hand in hand, and where programs that have been proven successful are utilized by the court and court-serving agencies. The national trend of waiving youth to the criminal court has already started to reverse itself—the *Delinquency Resource Guidelines* will accelerate that process. The *Delinquency Resource Guidelines* and court improvement efforts that will flow from that publication will lead to a fresh look at the juvenile court by judicial leaders, policy makers, and members of the community.

Court improvement successes have led to a new spirit among juvenile and family court judges across the nation. More and more judges are choosing the juvenile court as an assignment and as a career. In most court systems, the juvenile court is no longer the training ground for other judicial assignments. Many chief justices and presiding judges have taken an interest in the juvenile court and have devoted time and energy towards juvenile court improvement. Juvenile and family courts are getting more respect from the judiciary and from the community. We on the juvenile court appreciate this interest and attention because we believe that our work is critical to the well-being of our communities and of our nation. We respectfully ask for more. We ask that juvenile courts be placed at the same level in the judicial hierarchy as the highest level of trial court in each of our states. That is what we do in California where we have one level of trial court, the Superior Court, and all judicial business, including juvenile court matters, is conducted at that level. We know that placing the juvenile court on an equal status with criminal and civil trial courts has sent a clear message that the judiciary values the work of the juvenile court. Perhaps not surprisingly, more California judges are choosing the juvenile court not as a stepping-stone to a different assignment, but as an important part of their judicial career. When I first took the juvenile court assignment in 1985, I was the only judge who indicated an interest in remaining there. Now numerous younger colleagues ask me when I am going to retire—they would like my job.

Over the years I've traveled to more than 40 states as a judicial educator. I've seen a new spirit every place I visit. In state after state, judicial leaders have shown

The Role of the Juvenile Court Judge Revisited

an increased desire to learn from other states and from organizations with expertise to offer. Judges are asking, “How can I do my job better?” “How can I improve outcomes for the children and families who come before me?” This spirit is all that it takes to start courts on the path to excellence. A little competitive edge mixed in can accelerate the process. When I tell a court system that the court in a neighboring jurisdiction has made significant improvements in court operations, the quick response is often, “We can do better than they can.” For example, when I learned that Judge Cindy Lederman in Miami, Florida, Sheryl Dicker in New York, and the Zero to Three Project in Washington, D.C., had creative ideas for the care of infants in foster care, I read what they had written, consulted with them, and invited some of them to come to one of our trainings in my home county. My purpose was clear—I wanted to see if they could teach us how to do our job better. Based on what we learned, we have made numerous changes in how we deal with infants and their families in our court system.

One message I care deeply about and deliver wherever I go is that children belong in families, preferably their own families, and that congregate care and large detention centers are seldom the best choice for a child. Social science and child development expertise have demonstrated that congregate care is developmentally inappropriate and often harmful to children. This should not be a surprise to anyone who has studied juvenile law, since this conclusion reflects the legal principles established in both state and federal law. Over the past 25 years, Congress has passed two major pieces of legislation relating to the judicial role in child protection and finding permanent homes for children: The Adoptions Assistance and Child Welfare Act of 1980 and in the Adoption and Safe Families Act of 1997. These federal statutes and the state statutes implemented to conform to them govern what we as juvenile court judges do in child abuse and neglect cases. Moreover, it was Congress that passed the Juvenile Justice and Delinquency Prevention Act of 1974, 30 years ago. Acknowledging the harm that can be done to children by older, hardened criminals, this legislation forbade children to be placed in adult jails and prison. Now we realize that even same-age peers can teach each other about crime while in custody. Nevertheless, juvenile courts throughout our country and in many parts of the world

continue to place children in institutions—orphans, group homes, large youth prisons, and other forms of congregate care. My colleagues often respond that they have no choice.

The good news I have to report is that in many cases we do have a choice. Utilizing modern technology we can and do find family members for children. Did you know that most of us in this room have over 75 living relatives? This statement is based on the work of Kevin Campbell of Catholic Community Services in Western Washington. This statement applies to everyone in this room and, more significantly, every child in foster care. Our job as caretakers and overseers is to find that family and let them know that one of their relatives—a child, a member of their family—needs them. We have the technology today to find families, technology that was not available 10 years ago. Web technology and search engines make this possible. This search is worth our effort because we have learned that just because one or both parents are in jail or prison, we should not assume that other family members are either unavailable or unfit. Many of you have seen the movie “Antwone Fisher” and the remarkable story of a young boy caught in a foster care system because his father was dead and his mother in prison. What he did not learn until adulthood was that he had a large and loving extended family that lived very near him while he suffered through a childhood in multiple foster homes. When we in the juvenile court system learn that a child’s father has disappeared and his mother is in prison, we must not assume that the child has no relatives or that the relatives are unworthy of consideration. We need to start the search for relatives immediately. I can tell you that Antwone Fisher’s story about finding family can be a reality in every community in the country if we start paying more attention to family finding. It is my dream that the expanded use of family finding will literally dry up the foster care system.

Does family finding work? Will the family respond? In most cases they do. Can families find solutions for the crises facing their children? I believe they can. There is something special about family. I am not a scientist, but child development experts tell me that we have a special relationship with those who carry our DNA. We are more likely to take that extra step and to make sacrifices for the person who is related to us. I have seen the power of family finding both in my own county

and in Hawai'i where they practice Ohana Family Conferencing. I have been to a family group conference where 25 family members participated, some who traveled from other states. They all came for the same reason—the child. They all had something to contribute to the future of that child. They all helped devise a family plan. Large groups of family members ensure good results for a child even when the biological parents are unavailable.

Can we find families? One tactic is to ask about families throughout the entire case. That is what the State of Washington legislature mandated two years ago when they passed legislation requiring social workers to ask about extended family at every stage of a child's case. The results have been an almost two-fold increase in family placements, from 19% to 37%—just by asking. I wouldn't be surprised to see similar legislation introduced in California next year.

That is not to say that there are not wonderful foster and adoptive homes for children, and we in the court system use them. It is also not to say that all children must remain with family. But we have been half-hearted in our search for families for children in out-of-home care. We can do much better, and some courts and social service agencies around the country are proving this today. After all, our goal is to find permanent homes for children so we in the public sector can dismiss their cases and let them live normal lives. Family finding, family group conferencing, team decision making, and similar innovations permit us to identify family members, convene them, and permit them to come up with the best plan for each child's future. Then we in the court and social services system can get out of the way. There is nothing more satisfying for a judge than to see a happy ending with a child in a loving home and to dismiss the case. I feel privileged to preside over that type of happy ending almost every day. It is what keeps me coming back to the emotional environment of the juvenile court each morning.

Of all the work that I do the most rewarding is the work with individual children and families—it is work in the courtroom. When children first come to the attention of the court, they have been beaten, neglected, traumatized, unloved, and are in need of a stable, loving family. Parents come before the court as drug addicted, victims, or perpetrators of violence, with few or no

parenting skills, with mental health and maturity challenges, and without support systems. The initial hearings are so sad that people in the room are in tears, as they reflect on the tragedy of their lives and the lives of their children. Kleenex boxes line the tables. Juvenile court orders place children in safe, temporary homes, preferably with relatives, and the parents start the difficult process of reconstructing their lives. They participate in services, many substance-abusing parents (mostly mothers) enter our drug treatment court, some participate in groups focusing on the effects of domestic violence, and many utilize mental health services. Most family members participate in substance abuse assessments and treatment plans as well as individual and family counseling. Parenting classes are frequently a part of the plan, including specialized classes, such as Parenting Without Violence. Child advocates will support the child through the process and attorneys/guardians *ad litem* will speak for the child in all court hearings. Specialized services such as wraparound services will enable many children to remain with families rather than in congregate care.

The court frequently reviews the progress of the parents and children at subsequent hearings, and the structure of our court system ensures that the same judge presides over all hearings for the same family from beginning to end. Some parents do not participate in services or are unsuccessful in their efforts to reunify safely with their children. These children will usually be adopted by relatives or foster parents. Other families—the majority—will make significant changes in their lives and be reunified with their children.

One reason for the optimism I have about the future of the juvenile court is the development of new services for children and families, services that have demonstrated success and that have resulted in better outcomes for children. When 14-year-old Sally (not her real name) came before me several years ago, she had been abused by her mother, her father was not available, and she was so depressed she had attempted suicide on several occasions. The social worker recommended she be placed in a mental hospital. I made that placement believing it was necessary to save her life. A few months later at a review hearing, the social worker recommended that Sally be placed with a family member utilizing wrap-around services. I was shocked. How could this be a safe placement when I had removed Sally from her home

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only a few months earlier? I was not familiar with wrap-around services, but the agency had been using them successfully for over a year. Wraparound services take an ecological approach to the care and safety of a child. The services are developed by a team of professionals, relatives, and community members who work together to create an individualized 24-hour plan of supervision while the child lives with a family in the community.

I returned Sally to the relative and nine months later was able safely to dismiss her case. Since that time I have been able to place over a hundred children with their families using wraparound services. It is an example of how the juvenile court can utilize newly developed, carefully evaluated services to place children safely with families, where before they would be committed to institutions. Professionally and personally, it has been nothing less than a miracle.

There is no greater joy than seeing a family successfully reunited, to see a parent turn his or her life around, to gain self-esteem, to proudly walk into court with the confidence that she has become a competent parent, to see a child happily accompanying her parent. I feel privileged to be able to preside over cases that produce such remarkable outcomes for children and families. Even in the cases in which the parents are unsuccessful, juvenile court judges are able to conduct adoption hearings, another joyful occasion where families and the court system celebrate the building of a new family through the adoption process. These are the main reasons I have remained in the juvenile court for most of my judicial career. Without these uplifting moments, the job of a juvenile court judge would be too emotionally draining for me and for most judges.

So when I tell you that in my own court in Santa Clara County we have reduced the number of children in foster care by 40%, we are reducing the number of children in congregate care dramatically by utilizing family finding and wraparound services, adoptions have increased four-fold, trials have been reduced significantly with the use of confidential mediation, our juvenile dependency drug treatment court has provided a new and effective system of support for substance-abusing mothers, our juvenile mental health court (the first in the world) has demonstrated to the country that youth with mental illness can be humanely and effectively treated by the juvenile court system, and that with judi-

cial leadership in concert with community commitment a Court Appointed Special Advocate (CASA) program has been created with over 900 volunteer advocates who are advocating on behalf of over 1,000 children, you will understand that the good feelings I and my colleagues in the juvenile court have are based on data and evaluation, not anecdotes.

Much of this work would not be possible if it were not for the support for the work of juvenile and family court judges by our judicial leaders. When Chief Justice Ron George and the Administrative Director of the California Courts, Bill Vickrey, make children and families a priority in their administration of the California court system, that means that our judges have a better opportunity to operate successful courts. When the California Judicial Council approved of Standard of Judicial Administration #24 over 10 years ago, it gave permission to all of our juvenile court judges to get off the bench and step up their advocacy on behalf of children, knowing that we are supported by our leaders in our efforts to work both in and out of the courtroom to secure better results for children and families. When organizations such as the National Council of Juvenile and Family Court Judges provide technical assistance and guidance to assist us, and when the United States Supreme Court and the National Center for State Courts award the William H. Rehnquist Award for Judicial Excellence to a juvenile court judge, that sends a message across this country that the work of the juvenile court is important and that to serve in the juvenile court is to make a significant contribution to children and families in crisis, to the community, and ultimately to the nation.

Mr. Justice Kennedy, thank you for this opportunity to speak to you tonight and for this wonderful award. I accept it personally and on behalf of juvenile court judges in California and across the country. We are all grateful for this recognition.