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Families in Court Recommendations

from a
National Symposium

May, 1989

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Preamble

Change is difficult. And yet, it is constant. Justice for children and families can be assured only if change is proposed and guided by thoughtful individuals who understand the complexities of the system and have not lost their ability to see beyond those complexities.

The recommendations and solutions presented by symposium participants represent decades of understanding. These participants recognize that there are barriers to be overcome if these recommendations are to be implemented. Among the hurdles are resource deficits, resistance to change, uncertainty over outcome, and good old fashioned disagreement as to priorities and preferred practice.

This agenda for change is presented with the hope that it will provide the guidance necessary to lead and the impetus necessary to move forward.

The recommendations that follow were developed by 50 invited participants at the Families in Court: A National Symposium held May 14-17, 1989, at The National Judicial College in Reno, Nevada. It is the sincere hope of the co-sponsors that the Symposium will mark the beginning of a process of change which will result in better justice for families in court.

I. Mission

A redefinition of the mission of the court in dealing with child and family issues is necessary at the national, state, and local level.

- A. The new definition must recognize that child and family related proceedings are distinctively different from other legal proceedings.
- B. The process of redefinition should involve broad participation to include the executive and legislative branches of government, state court leadership (judges, managers), legal and social services personnel, consumers, and interested public members. The process should include a reexamination of which cases require special intervention and what the impact of that intervention will be or should be on all affected parties - victims, children, families, etc. Further, the re-examination should include, where appropriate, the potential for resolving family problems in a non-judicial community oriented fashion.
- C. For those cases requiring court intervention, processes should be developed which,
 - 1) ensure that all family members and victims receive protection and justice,
 - 2) support the interests of the child,
 - 3) examine the extent to which the court need not directly involve the child to effect a solution, and
 - 4) assure that the child has an advocate.

- D. This national, state, and local process should be supported by policy-driven research, examining how legislative policies related to children and families are interpreted and implemented by courts. At the conclusion of this redefinition process, local courts, supported by state leadership and national organizations, should actively communicate their redefined role.

Minority Proposal

Although it failed to receive a majority vote, nearly half of the participants supported the following additional statement:

Court intervention and judicial action should be considered the necessary response in all cases involving intrafamilial violence and child maltreatment to ensure the protection of all family members, and to hold accountable the perpetrator of that violence.

II. Information

There must be assurances that courts will receive adequate data for proper decisions to be made.

- A. New information systems must be designed to enable courts to be informed of all relevant and admissible information concerning other cases involving the same family.
- B. Courts should use advanced technology including automation to maximize information retrieval and utility. This implies a standardized, coordinated, computerized data base retrieval system. Courts should have the ability to communicate electronically within their own and between other courts, both intrastate and interstate, in order to share this information.
- C. Attorneys and parties should be required to provide information to the courts as to current and prior family-related judicial matters.
- D. To facilitate the improved flow of information, there should be a re-examination of current confidentiality requirements in order to define more precisely their applicability and to determine who is being protected and why.
- E. To aid in the process of information sharing, courts should establish a family proceedings community coordinating council, composed of the leadership of the court and other agencies, to develop rules for sharing information.

- F. There should be more research and education about the nature and extent of the interrelationship of juvenile, family, and criminal court referrals and incidents. The research should be designed to inform policy decisions particularly as regards pre-adjudicatory decision making, impact on victims, dispositional interventions, judicial structure, and information systems.

- G. A national case level data base describing case characteristics and system response to the full range of family matters in the courts should be established.

III. Resources

Courts with jurisdiction over children's and family issues should be allocated sufficient resources to carry out their mission.

- A. Those in judicial leadership positions and judges assigned to hear juvenile and family matters must advocate for adequate resources for child and family justice. This should include the education of legislators, senior judicial officers, and state and county executives. The local coordinating council and the bar association should examine the allocation of resources and develop strategies to make more effective use of existing resources.
- B. To provide adequate resources nationally for children and families, relevant judicial and other national organizations should educate the public, governmental funding bodies, and foundations as to problems, needs, and potential solutions for families in the courts.
- C. Courts should have sufficient intake and screening resources to refer cases, where appropriate, to ancillary and complementary services and to coordinate the provision of those services.
- D. Courts should examine the increased use of home-based services as an alternative to out-of-home placement.

- E. Courts should examine the use of validated risk assessment procedures in neglect and abuse matters to determine their utility and their potential to better allocate scarce agency resources, to enhance the quality of information presented to the court by the agency, and to help assure system accountability.
- F. Courts should identify non-traditional resources such as the elderly, volunteers, church programs, service clubs, etc. both to aid individual clients and to help secure support for enhanced court services.
- G. Individual courts should identify and seek alternative sources of funding including support from private foundations for services to families and children.
- H. Courts should require the provision of specific services mandated by federal and state legislation to ensure constitutional rights.
- I. Sufficient personnel should be provided:
 - 1. To guide the child and family through the system;
 - 2. To achieve prompt case processing;
 - 3. To ensure social service and mental health support for children and families involved in the courts.
- J. Additional resources should be allocated to community legal services, court-appointed child advocates, and other mechanisms to ensure the availability of quality representation in child and family cases.

- K. Following evaluation and research, staff and space standards for courts, individual judges, and court personnel should be developed along with standards for performance measurement.
- L. The selective employment of special masters, court-appointed diagnostic or treatment specialists, panels, and multi-disciplinary assessment teams to assist courts with their responsibilities should be explored.
- M. There should be developed a system of regional support services for courts that lack certain forensic, mental health evaluation, and other resources needed to serve children and families in special cases.
- N. Multiple non-judicial techniques for dispute resolutions should be available and, where appropriate, provided at an early stage in order to reduce unnecessary adversarial postures.
- O. Adequate federal support should be provided to courts when they are impacted by federal laws, regulations, and policies that impose additional responsibilities.

IV. Structure

Courts with jurisdiction over family and children's issues deal with matters of great complexity and of great importance to our society.

- A. Judicial treatment of the family in the court of general jurisdiction, handling both civil and criminal family matters, is likely to enhance the status of family matters and provide a basis for the organizational and resource support necessary to carry out the mission. Whether organized as a family division or not, the coordination of the multiple issues involving families requires the structuring of processes within the court system.
- B. There must be better identification, preparation, selection, and education of juvenile and family court judges, particularly those in leadership positions.
- C. Judges hearing juvenile and family matters should have a special interest in these matters and willingness to make a long-term commitment. Judges assigned to family matters should be capable of exercising their responsibilities.
- D. The role and status of court administrators in the family division should be strengthened and adequate resources provided.
- E. Increasing use of case consolidation should be made in order to coordinate and integrate case plans.

- F. Courts should improve and adapt physical facilities to respond to the needs of families and children.
- G. There should be a streamlined, user-friendly, integrated intake for all family-related cases.
- H. Following study and discussion by a national commission, a model code of family justice, including model rules of procedure, should be developed. States should codify child and family proceedings based on this model.

V. Enforcement

Courts with jurisdiction over family and children's issues must be responsible for follow-up on their orders.

- A. Court orders must be clear and enforceable to those who must carry them out. There should be periodic reviews in appropriate cases to ensure compliance.
- B. There should be regular court review of all children placed outside of the home.
- C. Courts should enforce their orders and monitor compliance. There should be easy access to information about problems with compliance to allow for appropriate enforcement and modification of court orders.

VI. Bias

Courts must be without bias as to race, gender, ethnicity, handicap, age, or religion, both in fact and in the perception of the community.

- A. Court personnel should be representative of the composition of the community.
- B. Judges and court personnel should have continuing training to address and to be sensitized regarding bias by reason of gender, race, culture, age, and economics.
- C. Every state should create a state level task force on bias and the courts.
- D. Local bias review committees should be established to audit court practices and review systemic problems.
- E. Codes of judicial conduct should address judicial bias and treat it as a severe transgression. The findings of any judicial disciplinary board, made after notice and opportunity to be heard, should be available to the public.

VII. Delay

Prompt and effective case processing is an essential element of justice, especially in cases involving the safety, security, and welfare of children and victims of family violence.

- A. Case processing time standards for every case type should be developed, adopted, enforced, and used for evaluation of courts, judges, court personnel, and other support agencies. The results of such evaluations should be furnished to the judge or agencies involved, to the court, to the jurisdiction's highest court, and to the public at large. Case scheduling should be improved to minimize inconvenience to the public.
- B. Methods of differential case management should be developed in cases involving children and other sensitive parties with particular priority given to cases involving child abuse, family violence, and detained youth.
- C. Courts should impose sanctions on lawyers who contribute to excessive delay.
- D. Judges responsible for excessive delay should be held accountable.
- E. Appellate courts should establish special procedures to assure prompt disposition of appeals in sensitive child and family cases.

VIII. Role Definition

Judges and other personnel involved in the decisions and services which courts provide or obtain for families and children must fully appreciate the importance of the responsibilities which are assigned to them.

- A. Each professional in the system has a duty to know and understand the ethical responsibilities and functions of other professionals in the system. There should be a mechanism for judges, attorneys, and other professionals to communicate regularly about shared frustrations, resource allocations, professional responsibilities, and interagency coordination.
- B. Judges should periodically conduct site visits to residential and non-residential service providers.
- C. There should be mandatory intensive training utilizing an interdisciplinary approach at the local, state, and national level for juvenile and family court judges and introductory training concerning juvenile and family court matters for all general trial court judges.
- D. In the interest of expanding judicial knowledge, judges should be afforded the opportunity to take educational sabbaticals.

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