UNIFIED FAMILY COURT
Connection
Spring 2009
UNIVERSITY OF BALTIMORE SCHOOL OF LAW ◆ CENTER FOR FAMILIES, CHILDREN AND THE COURTS

Unified Court Systems Can Help Children in Turmoil

By Judge Patricia A. Macias

Multiple case files piling up with inconsistent orders, parents trying to comply with orders from different courts on different floors of the same courthouse building, varying judicial styles, chaotic and seemingly never-ending modifications to court orders in an effort to get it right. That succinctly describes the "mess" that existed prior to the creation of a Unified Family Court (UFC) in El Paso, Texas.

If children were in turmoil before their families' cases entered these multiple courts, then the non-unified system truly was the gateway to full-blown family crises.

A child's life becomes "at risk" when even the best and most conscientious parents make the decision to divorce. A single lawsuit to dissolve a marriage that includes a road map for how a child is to be parented, by whom and when, is loaded with emotion, indecision, and self-doubt. Add family violence, non-payment of child support, child abuse and neglect, juvenile delinquency, mental illness, drug addiction, and an unreliable extended family to the legal case, and the possibility for trauma to a child increases dramatically.

Children bear the unintended consequences of a disjointed court system. The very system charged with ensuring that the child's best interests are met could issue orders that ultimately cause chaos. For example, a court order generated in a family court may grant primary custody to one parent and order child support (calculated without taking that into consideration) be paid by the non-custodial parent. If that same custodial parent, under a protective order issued in the domestic violence court, is required to participate in supervised access, then that child's living arrangements are further complicated. The parent who is the domestic violence victim may be subject to a criminal charge for interference with child custody if she does not comply with the visitation order out of concern for the child.

No child deserves less than the highest quality justice—whether the child enters the courts as a subject of a civil suit affecting the parent-child relationship; as a victim of abuse, neglect or child support arrearage; as a witness to violence toward a parent; or involved in the juvenile delinquency system.

Take, for example, the hypothetical Jones family. Jessica and Steven married and had a son, Keith, currently fifteen. They divorced when Keith was nine, with Jessica awarded primary custody. Steven co-parented under a standard parenting plan. Jessica soon met Tom on the Internet. They dated, partied, married, used cocaine together, and engaged in physical violence (resulting in a protective order, which they ignored by remaining in the same household). They had three children: Amy, Bob, and Caleb.

see page 4

Mediation and Family Group Conferencing Provide Stability and a Voice for Foster Children

By Andrew Schepard

The formative years of the approximately 500,000 children in foster care are often characterized by movement from placement to placement, disruption of schooling, and the severing of ties with all that is familiar, including parents, siblings, and extended family.

In New York City, over 40 percent of foster children pass through three or more placements. The average amount of time children in New York await adoption is over five years. A troubled beginning and growing up in instability create barriers to successful entry into adulthood.

According to national studies, 75 percent of children in foster care are performing below grade level, nearly half do not complete high school, and as few as 15 percent attend college. ["Challenges In Legislative Implementation: Common Themes, New Approaches and Systemic Solutions," Hearing before Cal. Assem. Select Comm. on Foster Care and Health and Human Services Comm., (Mar. 7, 2006) (statement of Miriam Aroni Krinsky, Executive Director, Children's Law Center of Los Angeles) available at *www.clcla.org*.] Foster youth continue to struggle when they "age out" of foster care. Within four years of leaving their foster placements, more than half of these young people are unemployed, nearly a third are on public assistance, a quarter are homeless, and another quarter are incarcerated. ("Foster Care Facts," *www.clcla.org*).

There is no miracle cure for the misfortune, violence, poverty, substance abuse, and poor judgment that result from child placements,

see page 2

Protecting Children is a Central Goal of Unified Family Courts

Helping children is one of the core tenets of Unified Family Courts (UFCs). In this issue, we take a close look at how children are affected when families in crisis come to the courts for help in resolving their legal, personal, emotional and social needs.

In the end, all of the work that UFCs do to create a holistic and therapeutic approach to families in crisis ultimately translates into safeguarding this country's children.

The articles in this issue address that very goal of protecting the children:

Judge Patricia Macias, president of the National Council of Juvenile and Family Court Judges, discusses how courts can help children by providing a coordinated, holistic, and respectful approach to their cases.

Hofstra University School of Law Professor **Andrew Schepard** describes how mediation and family group conferencing provide a way to resolve child placement issues, allowing the children to have a voice in the process.

Andrea Khoury, director of the American Bar Association's Youth at Risk Bar-Youth Empowerment Project, takes an in-depth look at how communities are creating meaningful court experiences for youths appearing in courts.

Risa Garon, executive director and co-founder of the National Family Resiliency Center, Inc. in Maryland, offers a therapist's view of how to help children survive the grief of divorce and how her center helps families navigate this painful transition.

Diane Sickles shares a mother's reflection on her divorce 18 years ago and how she and her ex-husband learned a valuable lesson all divorcing parents should consider—the importance of listening to their children and making decisions based on their children's needs and not their own.

We hope this issue provides perspectives and suggestions that will help achieve the ultimate goal of ensuring the highest quality of justice for children and families.

The Center for Families, Children and the Courts
University of Baltimore School of Law
1420 North Charles Street
Baltimore, Maryland 21201
Telephone: *410–837–5750*
Fax: *410–837–5737*
E-Mail: *cfcc@ubalt.edu*
Web site: *law.ubalt.edu/cfcc*

Barbara Babb, *Associate Professor of Law and Director*
Gloria Danziger, *Senior Fellow*
Judith Moran, *Senior Fellow*
Sharon Curley, *Program Administrative Specialist*
Mimi Lumeh, *Administrative Assistant*
Alice Cherbonnier, *Design/Production*

Providing Stability and a Voice for Foster Children

from pg. 1

Within four years of leaving their foster placements, more than half of these young people are unemployed, nearly a third are on public assistance, a quarter are homeless, and another quarter are incarcerated.

nor is there a magic bullet that ensures we keep the promise to provide the children placed in foster care with a reasonable chance at a stable childhood and adulthood.

This article, however, focuses on two increasingly useful processes for providing some measure of stability and a voice for foster children—Child Protection Mediation (CPM) and Family Group Conferencing (FGC).

The January 2009 issue of the *Family Court Review* brings together experts—judges, law professors, policymakers, researchers, mediators—to assess the state of CPM and FGC. The papers establish that both these consensus-building processes are valuable supplements to decision-making by contested hearing and court order, and both make positive contributions to the child protection process.

This article provides a brief history and comparison of CPM and FGC and summarizes evaluation data for CPM from many studies to date.

HISTORY OF CPM AND FGC

Both CPM and FGC involve the family and professionals in planning for the future of abused or neglected children or children in care. The role of professionals and families is, however, different in each process.

In CPM, the family meets with a mediator, the child welfare caseworker, and attorneys and engages in confidential discussions aimed at addressing the abuse or neglect that has led to placement in care and a permanency plan for the child. The mediation can begin at any stage in the case and often results from a court referral. [Nancy Thoennes, "What We Know Now: Findings From Dependency Mediation Research," 47 *Fam. Ct. Rev.* 21 (2009)].

see next page

Helping Children and Families Survive the Grief of Divorce

By Risa Garon

Ben lives a life embroiled in constant conflict. When he attends supervised visitation with his father at his grandparents' and aunt's home, he repeatedly hears that his mom is trying to taint Ben against dad and his family. Ben listens to his grandmother's phone message, filled with hatred toward his mother and destructive accusations that Ben is a baby and "running to his mom for cover." When these occurrences happen, Ben closes his eyes and goes to a place in his brain "where I am all alone, just me on a stool with nothing but a book."

Describing himself as "numb" at age 16, Jamie drives with a parent who is intoxicated, remembers seeing his other parent being physically abused for years, and now is supposed to work out his issues with each parent as soon as possible. "I don't feel anything—I can't, it hurts too much and no one cares anyway," he says. "If I say anything to one of my parents about yelling at me or drinking while driving, I am yelled at and punished."

At 14, Jack is learning the culture of alienation. "My dad told me before I left for my grandparents in New Mexico that if Mom's family said anything against him, I could call him and he would fly me home immediately. I know that all Mom is interested in is dating and drinking." When questioned about how he knows this, he cannot answer.

These children have much in common. They live in the middle of their parents' conflicts about divorce, and they are made privy to points of view that further one parent's interests at the expense of the other.

> *Divorce is a form of death for adults and children.*

Divorce is a form of death for adults and children. It means the loss of a familiar and beloved family, daily relationships between parents and children, and the demise of financial and psychological security, adult companionship, and shared parenting. When there are losses, people grieve. No one is taught how to grieve for a divorce. No one is taught how to help families in transition deal with such grief.

With the advent of no-fault divorce laws and high divorce and remarriage rates, divorce continues to be a major stressor in our society. Many adults say that if they knew how difficult the legal, emotional, and financial impacts of the process were, they might not have made the decision to end their marriage.

After many years of trying to explain to judges, attorneys, and other mental health professionals that grief is a major contributing factor to problems parents have in handling divorce, PET scans now depict areas of the brain that are affected by such trauma, particularly when the losses related to grief remain embedded in the

see page 5

Mediation and Family Group Conferencing *from previous page*

The formal development of court-connected CPM began in 1983 in Los Angeles. [Leonard Edwards, "Child Protection Mediation: A 25 -Year Perspective," 47 *Fam. Ct. Rev.* 69 (2009)]. The Los Angeles program involved a juvenile court referee talking with parties before their hearings. Because this comparatively modest effort produced excellent results, Los Angeles County formalized CPM several years later. This step complemented California's decision to become the first state to mandate mediation in child custody proceedings. New CPM programs developed in different counties throughout California and spread to other states. Some programs struggled, and some prospered. Lessons were learned from all of them.

Today, CPM programs are widespread throughout the United States and foreign jurisdictions. Recent surveys show that the majority of programs conduct more than 50 mediations a year. [Joan Kathol, "Trends in Child Protection Mediation: Results of the Think Tank Survey and Interviews," 47 *Fam. Ct. Rev.* 116 (2009)].

The origin of court-connected FGC, which began in New Zealand in the early 1980s, is very different from that of CPM. [Jesse Lubin, Note: "Are We Really Looking Out for the Best Interests of the Child?: Applying the New Zealand Model of Family Group Conferences to Cases of Child Neglect in the United States," 47 *Fam. Ct. Rev.* 129 (2009)]. FGC developed because indigenous Maori tribes felt that their culture was in danger of being eradicated as New Zealand's white majority society and economy evolved. Maori children were the subjects of a disproportionate number of child protection complaints. The Maori believed that the complaints resulted from the child welfare system placing responsibility for the child solely with the parents and not with the extended family of tribe and community.

In response, New Zealand's Department of Social Welfare developed a decision-making process for its child protection system that emphasized the role of the extended family in accepting responsibility for raising children. The FGC recognized, acknowledged, and utilized Maori customs, values and beliefs and used Maori methods of decision-making to identify and support services for Maori children and families. This system was codified in New Zealand as the Children, Young Persons and their Families Act of 1989 and became the primary decision-making system for civil actions relating to the protection of children. Since then, various models of FGC spread to many other jurisdictions, including several states.

CPM COMPARED TO FGC

The mediator in CPM must be a neutral party trained in mediation and familiar with the child protection system, whether she or he is a private contractor or works directly for the court. [Kelly Browe Olson, "Family Group Conferencing and Child Protection Mediation: Essential Tools for Prioritizing Family Engagement in Child Welfare Cases," 47 *Fam. Ct. Rev.* 53 (2009)]. All the parties

see page 7

How Unified Courts Can Help Children in Turmoil *from pg. 1*

Meanwhile, Steven (Husband #1) met Maria, who had two children from two prior relationships (the fathers of her children failed to pay child support and were subjects of child support contempt orders). Maria never married either father and no formal paternity or parenting time orders ever were issued. Access to those children by the fathers was sporadic.

Jessica separated from Tom (Husband #2) due to his increased violence and use of pornography. She created a MySpace page looking for another relationship. She continued to have multiple relationships, use cocaine, and engage in illicit activities while her four children remained in her care. Tom stayed single. While living with his mother, as she partied outside of the household, Kevin, then twelve, took his half-brother Bob, then three, into the bathroom and perpetrated acts of sexual abuse on the child.

Kevin was arrested for his behavior and entered the juvenile justice system. Child Protective Services (CPS) investigated a complaint against Jessica for neglect and removed Kevin from his mother's care under a safety plan providing for placement with his father. Kevin's father filed a petition to modify custody. Jessica's three younger children were placed with their father, Tom, after another CPS allegation was filed with the court against Jessica for failure to protect. Tom filed for divorce from Jessica, seeking custody of their three children.

Under the delinquency court's order, Kevin was sent to a residential treatment center to address sexual perpetrator behavior toward his younger brother and was diagnosed with oppositional defiant disorder and hyperactivity. His father filed a modification of custody petition in family court #1. The child abuse and neglect case regarding Kevin was filed in the child protection court. A second child abuse and neglect case was filed regarding Kevin's half-siblings. Tom filed for his divorce from Jessica in family court #2. The Attorney General child support court had cases involving all six children in this blended family. In total, that is six courts, six judges, and six separate court orders, amounting to one disjointed system.

If this hypothetical makes your head spin, imagine what it does to the children in this mixed and blended sibling group. Each child has distinct reactions to the family's legal issues. Each child, depending on age and developmental level, may have questions about his or her relationship to the parent, sibling, and extended family. One child may have a particular sensitivity to frequent change. Changing homes may heighten that child's stress level. The three year old victim may feel responsible for the prohibition restricting his older brother from being in the home when the victim is there. Another child may be just plain angry that his life is disrupted. How is justice dispensed in this scenario?

Justice in the context of the "best interests of a child" requires one judge orchestrating a coordinated, holistic, and respectful approach. It recognizes that children and their families enter court with a myriad of emotions, joined with other challenges woven through their legal issues. It is not just the best interests of the child at that moment in time, but also that justice for families takes into account the dynamic and changing nature of the family unit.

What should a court do?

- Unify all cases under one court. Use the children as the unifying factor if the children live in the same household. They may or may not be related by blood. If the UFC system has not taken hold in your jurisdiction or is meeting with some resistance, then an immediate step may be to "unify" the court process by bringing all judges together to staff each existing court order, ensuring consistency and maximizing compliance. Using a judicial team approach may be an initial step to fusing jurisdiction.
- Use an effective case management system. Information and data systems are key to keeping track of all the family's legal proceedings. Case management is a critical component for uniform judicial decision-making. An initial case screening instrument prepared by the movant's attorney and attached to each initial pleading is a simple method of identifying existing legal actions related to each member of the family.
- Measure court performance. Create an evaluation tool to determine whether UFC procedures are working. Gather data, analyze results, and modify procedures accordingly.
- Educate attorneys, court personnel, and court-appointed therapeutic professionals in the UFC philosophy. Create consensus that continuity and consistency for children and families are required if the legal system is to meet the "best interests" mandate.
- Secure commitment from judges that presiding in family court means being skilled in multi-disciplinary areas. Presiding over family issues calls for judges who are motivated to learn about family dynamics, child development, child interviewing, therapeutic intervention, and community resources.

Once in court, the resolution of a family's legal issues includes appropriate therapeutic interventions. Increasing a parent's capacity to parent through counseling, drug rehabilitation, access to social services, and other personal management tools may not only help the immediate crisis but also secure generational functionality.

The National Council of Juvenile and Family Court Judges, the oldest and largest judicial organization in the country, has supported the implementation of UFCs since 1994. It joins other distinguished organizations, such as the American Bar Association and the Association of Family and Conciliation Courts, in promoting the philosophy and implementation of UFCs.

The creation of UFCs supports and benefits good judicial practice, increases confidence in the judiciary, and, most importantly, ensures our courts truly meet the best interests of children and their families. ▪

Judge Patricia A. Macías is a Family Court judge in El Paso, Texas, and is the President of the National Council of Juvenile and Family Court Judges.

Helping Children and Families Survive Divorce *from pg. 3*

psyche. Simply put, psychologically embedded grief involves two parts of the brain that fail to communicate: the "feeling" part, or limbic system, does not send messages back and forth to the "filtering" or "thinking" part of the brain, the cortical system.

There are two typical reactions when people are immersed in the grieving process. They may withdraw, become depressed, and feel helpless; or they may react and turn the pain into anger. The grief is linked to the conflict that professionals deal with as they try to help their clients navigate the path to emotional disengagement from the trauma of divorce.

For children of divorce, the emotional fallout often translates to hyper-vigilant behavior, over-identification with the feelings and thoughts of their parents, and efforts to predict their parents' reactions while keeping feelings to themselves. Knowing when not to approach a parent, these children do not question their parents' statements and reactions because they soon learn that the parent may withdraw love, attention, and affection in retribution for their queries. Children of divorce learn not to rock the boat or say anything that will create tension in relating to one or both parents.

It is equally alarming to see these children and teens separate their emotions and act as if they are mummies without beating hearts. These behaviors are protective mechanisms to attenuate the hurt caused by family strife. In a frightening way, these children and teens generalize their life experiences and use them as hypotheses about other relationships, particularly romantic ones. Teens like Ben and Jamie end up in risky interpersonal situations without the ability to rely on their parents for proper guidance. If they do not work through their issues, they may wind up in abusive or other unhealthy relationships.

It is our professional and ethical responsibility to help families deal with grief and prevent conflict. When there is conflict, we must step back and teach families strategies to reduce the discord and to cope with change. Without this intervention, the sort of grief-driven conflicts that typify many families in transition may result in lasting negative effects for the parents and children involved.

We all know that children want to be loved by each parent. When they are put in the middle of an argument, children feel like they have to choose one parent over the other or are conditioned to do so by their parents. It becomes so overwhelming to determine which parent is "right" that it is easier for children to cut off their emotions toward one parent and align with the other as a solution. This process resembles a cult-like response, where the notion that one parent is "evil" is solidly implanted in the child's emotional landscape. The child or teen does not question this idea anymore and, in order to survive, adopts a blank stare as a response.

There are other factors that affect children of divorce. In some cases, a child has never formed an attachment to one parent. When the family transition occurs, suddenly this virtually unknown parent wants legal and physical custody. As one 10-year-old child recently has said: "How would you like to be told to pack your bags and spend half your week with a stranger?" The parent with whom the child has a relationship is torn between doing as he or she is "told" by the court or responding to her child's needs.

Children of divorce learn to separate their emotions and act as if they are mummies without beating hearts. These behaviors are protective mechanisms to attenuate the hurt caused by family strife.

The court system has accomplished many positive changes in warding off situations like the ones described above. Parent education, mediation, arbitration, and bifurcation of the custody and access parts of the court case are some of the strategies that courts employ to defuse conflict. More work needs to be done, however, to prevent conflict and to hold parents accountable for their actions. It is our ethical and moral responsibility to see each family as unique and to determine how they have lived prior to the transition, to understand how they handle the transition, and to discover what is needed to help them through the stressful period of marital dissolution so that family members can move ahead and live a healthy life.

There is no cookie cutter approach to making decisions about families. There is, however, a unifying element that can help determine what the child and parent need. This entails understanding the children thoroughly and comprehensively and assessing parenting and co-parenting skills.

Courts can further assist families in transition by:

- Training judges, attorneys, and other court staff in child development, family dynamics, responsible parenting, and the impact of transitions on parenting.
- Providing early assessments to determine the type of conflict, the emotional strengths of each family member, and the community resources available.
- Holding parents accountable for the consequences of conflict for children.
- Using tools, like Family Connex, an online program that provides resources such as a needs assessment, parent plan, and manual to assist parents in keeping the focus on their children.
- Providing parent programs to teach parents about their children's needs, effective communication styles, and how to work collaboratively to raise their children.
- Defining therapeutic jurisprudence in behavioral terms and expecting professionals to orient their practice to the best interests

see page 8

National Center Helping Families Transition Through Divorce

By Risa Garon

The National Family Resiliency Center, Inc. (NFRC) utilizes a comprehensive approach to assist families in transition during the period of separation and divorce.

The goal of all of our work at the center, formerly known as Children of Separation and Divorce Center, Inc., located in Maryland, is to foster healthy adult relationships, constructive co-parenting, and loving and child-focused interactions between children and parents. We have learned early on that a multi-faceted approach, which is comprehensive and includes all family members, is necessary in order to prevent conflict and the ensuing destructive consequences of divorce for children.

Our mission is to promote an effective way to work through transitions so that parents and children may resume their lives in the healthiest way possible. NFRC is guided by research that demonstrates predictors of sound divorce adjustment. In addition to evidence-based practices, our work is informed by qualitative findings based upon our experience treating more than 24,000 family members over the past 24 years.

NFRC can be viewed as a one-stop shopping center for families in transition. The center offers an array of services, ranging from educational programs to individual, family, and group therapy for adults and children as young as three years through those in late adolescence. Reconciliation therapy also is provided. In particular, NFRC is able to arm many parents in transition with the requisite knowledge and skills to collaborate effectively as co-parents.

As professionals working with families, all of us want parents to make appropriate decisions about their children. In the course of our therapeutic endeavors, we have seen parents who do not speak to each other, interrupt each other, and blame each other. We ask parents to bring in pictures of their children, put them on the table, and tell us about them. By the time we have completed the therapeutic process with parents, they contact each other at designated times, cooperate with each other under the most difficult circumstances, and join together in ways they often were not able to do when they were together. In fact, some children get very upset because they can no longer manipulate one parent against the other.

NFRC staff members facilitate special co-parenting training sessions. Many parents request co-parent work voluntarily; others are referred or mandated by the court. Our staff finds that very few parents are formally trained to be parents. How can any of us expect parents to make rational, child-focused decisions during one of the most stressful times of their lives? Through co-parent education classes, co-parent counseling, and an online program developed by NFRC, we see positive changes that parents make focusing on their children's needs and working together as co-parents.

The theoretical underpinning of our program and the specific tools that we use to assist parents are based on the co-parent model articulated in the Child and Family Focused Model of Decision-Making we have created.

This paradigm considers the critical dimensions of child development in four generic areas (self-concept, intellectual functioning, interpersonal functioning and safety/security), as well as the possible impact of family transition on development, parenting considerations, and the degree of conflict in co-parent relationships. While not dictating what a decision about a child should be, the model directs the parent or professional to focus on psychosocial development, particularly:

Self -Concept: self-esteem, self-worth, competency and gender identity.

Intellectual Functioning: acquiring knowledge, mastering language and the ability to label and express emotions, develop higher order thinking skills, formulate and exercise moral judgment, and make and evaluate decisions.

Interpersonal Functioning: ability to trust others, make and keep friends, ability to empathize and get close to others, development of gender identity and validation, and overall socialization skills, including communication, problem solving, and anger management.

Safety and Security: feelings of being protected from external and internal threats, inner control, predictability and consistency in caregiving and guidance, awareness of safety rules, and awareness of rules and consequences.

In contrast with the adversarial model of custody decision-making, which focuses on what parents want, this model is based on children's current and future needs.

In working with co-parents, we emphasize the importance of parents completing a parent agreement that addresses the child's developmental needs, challenges, personality attributes, and attachments to each parent, as well as how parents will maintain a businesslike co-parent relationship. The parent plan becomes part of the parent's legal agreement. This plan is a blueprint that guides parents throughout their children's development. It also incorporates renegotiation as a natural evolution (not a crisis situation) as parents' situations and children's needs change over time.

Our staff finds that parents have not been able to focus on their children's needs and often "fight" to own the children and have a percentage of them. The process of discussing what children need and how parents are parenting and can work together becomes an eye-opening experience for parents. They learn that the process is about their children, not about themselves.

How can parents do this in the midst of working with attorneys, finding jobs, moving, and taking care of their children? NFRC has

see page 8

Mediation and Family Group Conferencing Provide Stability from page 3

and professionals assigned to a case collaborate in a confidential setting to make decisions about appropriate interventions and care of the children involved. [Bernie Mayer, "Reflections on the State of Consensus Based Decision Making in Child Welfare," 47 *Fam. Ct. Rev.* 10 (2009)]. While professionals provide the legal context and safety requirements of a case, families are empowered in CPM because they are full participants. The goal is a solution with which everyone, parties and attorneys, voluntarily agrees. Families alone, however, are not given full decision-making power in CPM. This is its primary difference from FGC.

There is no mediator in FGC, but there is a care and protection coordinator. The coordinator, who is almost always an independent contractor rather than a full-time court employee, is trained to organize the conference, contact all participants, encourage them to participate, and then serve as a neutral facilitator. Other participants in FGC include extended family members, close friends of the family, religious and community leaders, social workers, and anyone else the coordinator feels could be helpful to the family in reaching a positive solution, including service providers.

What distinguishes FGC from CPM is the stage of the conference reserved for family members only, when they discuss the issues and come up with a solution. All professionals leave the room, and family members are free to discuss anything they feel is necessary to reach a resolution. The family members who attend the conference are the decision-makers.

EVALUATION OF CPM

There is a good deal of research about the effect that both FGC and CPM have on child protection decision-making. This analysis focuses on the data concerning CPM, as it is the process most family courts use.

In an article in the January 2009 issue of the *Family Court Review*, Nancy Thoennes, a respected researcher of court-based programs, reviews 15 years of empirical research on CPM in many states, including Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Louisiana, Michigan, New Jersey, New York, Iowa, Ohio and Virginia. Here are a few of her major conclusions:

- One of the most consistent findings throughout the studies is that mediation is successful in producing agreements . . . [I]n most programs, 60 to 80 percent of the cases end with agreements that address all of the issues before the court. At most sites, another 10 to 20 percent of the cases result in partial agreements.
- [M]ediation results in agreements across a wide range of cases…Cases that are predisposition provide the opportunity to craft a service plan with family input. Mediation is used in some programs to deal with compliance problems or to revise plans to suit changing circumstances. Cases at the end of the case processing spectrum, those facing termination of parental rights (TPR), have settlement rates that are closer to 50 to 60 percent than to the 70 to 80 percent in new cases. Few programs, however, see this as less than cost-effective. The issues open for discussion at TPR can range from open adoption discussions with adoptive parents to discussion of other permanency alternatives.
- The visitation provisions in mediated as opposed to non-mediated treatment plans tend to be both more specific and often more generous.
- Mediated plans often discuss relationship and communication issues that rarely are seen in non-mediated agreements.
- The research indicates that most professionals who take part in mediation perceive the process to engage parents.
- While compliance with plans is hard to measure, a number of evaluations, but not all, have found greater compliance among cases with mediated agreements relative to non-mediated cases.

An especially valuable, albeit more intangible, benefit of CPM that is reported more informally by many is the opportunity it gives youth in care, especially the older ones and those who are "aging out," to have a voice in the decisions that affect them. An informal mediation session offers a comfortable environment for children and teens to address difficult issues and to participate in planning their futures with their attorneys.

Although young people now are encouraged to attend their court hearings, many teens are estranged from "the system," notes Jaclyn Jenkins in "Listen to Me: Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings" [46 *Fam. Ct. Rev.* 163 (2008)]. Mediation can help these teens become more receptive to assistance by offering a safe setting in which they can express their frustrations and can be heard. With the mediators' preparation and support, young people can meet with birth parents, foster parents, case workers, or anyone else who will help them prepare to move forward in their lives.

CONCLUSION

In the January 2009 *Family Court Review*, Bernie Mayer, the issue's co-guest editor and a national expert on CPM and FGC, observes: "Obtaining the buy-in of key system players—child protection workers and supervisors, attorneys, advocates for children, and the judiciary—is a constant challenge to [CPM and FGC] program administrators. The key variable that leads to successful programs appears to be the degree to which this buy-in and support is developed and maintained." Experience and systematic research suggest that "buy-in" is continuing to gain momentum as stakeholder and public confidence grows in these cost-effective, empowering initiatives in consensus building for the future of our most vulnerable children. ▪

Andrew Schepard

Andrew Schepard is a Professor of Law, Hofstra University School of Law, Director of the Center for Children, Families and the Law and Editor, *Family Court Review*. Jesse Lubin, Hofstra Law School class of 2009, provided research assistance for this column.

Helping Children and Families Survive Divorce

from pg. 5

of children and their families. For example, do not require a child who has not had a relationship or has had a dysfunctional relationship with a parent to instantly attach to that parent.

- Requiring that professionals treat families with respect and integrity.
- Using developmentally appropriate models, which are helpful in keeping the focus on the children and in answering their questions, particularly when faced with opposing sides of a story.

In sum, judges and attorneys are leaders in their communities. Their views and philosophies are heard and respected, and they are well positioned to provide leadership in family justice system reform aimed at minimizing trauma to children. ▪

Risa Garon, LCSW C, BCD, CFLE, is Executive Director and Co-Founder of the National Family Resiliency Center, Inc. in Maryland. She can be reached at 301–384–0079, Ext. 203 or *Risa.Garon@verizon.net*.

NFRC Assisting Families in Transition

from pg. 6

developed an online program, "Family Connex," that each parent can complete separately at home.

Family Connex has three tools for assisting parents. First, the needs assessment, which is completed for each child, looks at the child's critical aspects of development, including psychological, intellectual, interpersonal, and safety and security. In addition, the needs assessment requires parents to address the history of their relationship with their child and how they spend time with him/her. The second tool is a parent plan, a guide for parents on what to include in the parent agreement. The third tool is a manual on how to address challenges such as children's learning styles, mental illness in the family, and conflict between parents.

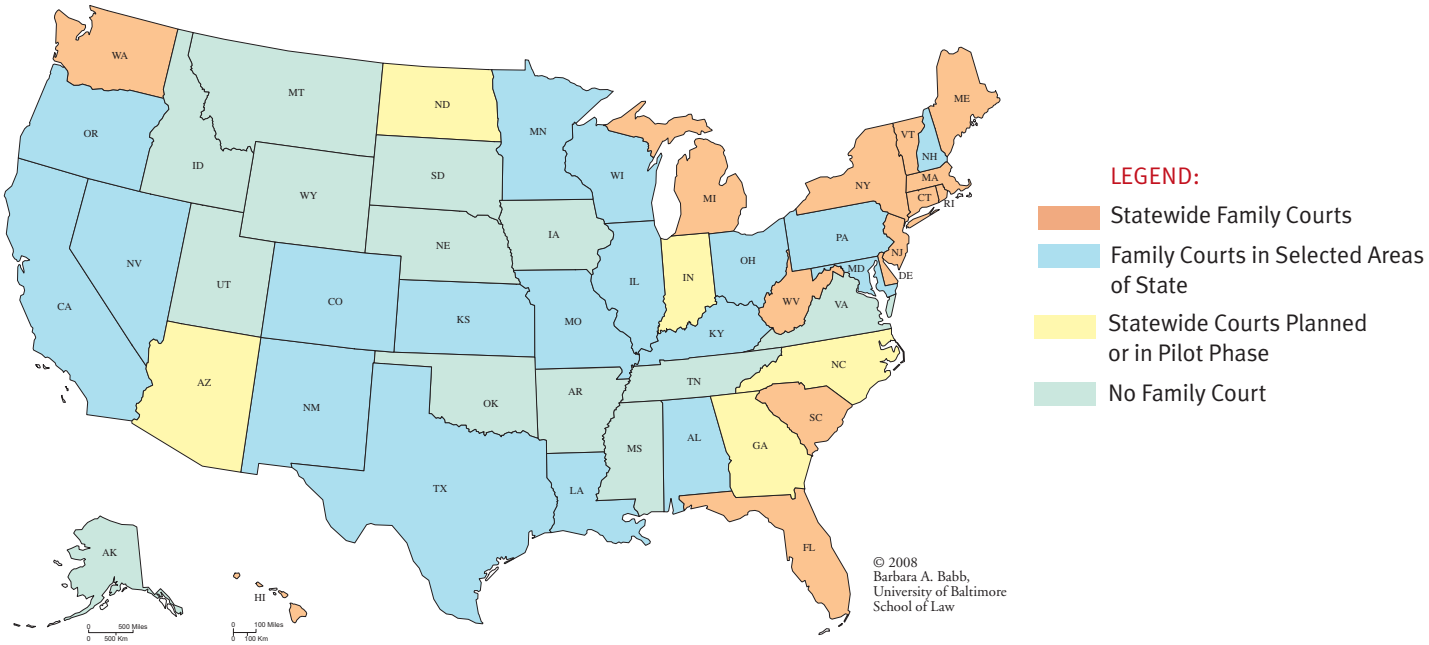
This program has become a key component to helping parents stay out of court, to retain decision-making prerogatives about their children, and to learn to communicate as co-parents. One divorcing set of parents has recommended that this program be taught to parents before they leave the hospital with their first child. Parents often choose to complete the online program, then work with NFRC staff to resolve remaining issues and learn more about how best to complete the parent agreements.

A major benefit of Family Connex is that it is "portable." Parents can work with their own therapists, mediators, and attorneys, regardless of where they live. NFRC staff also is available to consult with parents about Family Connex. Our staff helps parents from all over the country to create their post-divorce plans.

All of these tools are intended to fashion optimal adult relationships, effective co-parenting enterprises, and loving, child-focused interactions between children and parents. ▪

The National Family Resiliency Center, Inc. developed the Child and Family-Focused Decision-Making Model ® that supports the best interests of the child and is utilized by judges, lawyers, mediators and mental health professionals nationwide. This model forms the basis for the co-parent work that NFRC uses with parents and children in transition, as well as in training programs for judges and best interests attorneys.

Family Courts, by State



Creating a Meaningful Court Experience for Youth

By Andrea Khoury

"You are the one who makes the decisions, and I need to be heard so people may understand how I feel or what I need. Listen to me, since no one else will, and try to understand where I'm coming from. Maybe I am a child, but I'm not dumb; I know right from wrong. I need to know that you will make the right decisions for me, so that I can live life the way it's supposed to be." —Foster Youth

More and more communities around the country are providing youth with the opportunity to attend and participate in their dependency court hearings. This phenomenon enables youth to know who the decision-makers are in their cases and to ensure their ideas and opinions are heard. To make these hearings meaningful for youth and their participation useful to other parties, however, lawyers must prepare and debrief youth, and judges must properly involve them during the hearings.

Benefits of Youth Participation

SENSE OF CONTROL

When a young person is removed from her home, she generally has little control over when or why that occurs, where she goes to live, and what happens to her parents. Important things in her life are taken away, including her ability to make decisions. When a youth attends the court hearing and is able to provide input into what is happening with her case, she regains a portion of that control. She feels heard and understood, even if the result is not what she wanted, and she also feels that she is connected to and a part of the process.

UNDERSTANDING THE PROCESS

When a youth attends her court hearings, she learns about the child dependency process and what to expect next in her court proceedings. She also has an advocate who can explain what is happening and how the parties are progressing in the family's case plan, connections to services, and visitation. She witnesses her parents talking about their progress and the judge's reasons for making certain decisions. Attending court hearings gives her an important forum to ask questions and to advocate for her interests.

INFORMATION FOR THE COURT

The youth's presence brings the case to life for the judge, who no longer is making a decision based on a case file, but on a child who has desires, hopes, and fears. If the child is verbal, the judge can talk to and learn from the child. If the child is not verbal, the judge can watch the child interact with caregivers and observe her developmental stage.

The child's lawyer must have regular contact with the child to establish a trusting relationship.

Challenges of Youth Participation

There are some valid concerns about having youth attend court hearings. Some critics argue:

- Youth may hear and see things that upset them.
- Judges may make orders that are contrary to the youth's wishes.
- Youth may miss school to attend court, especially when they are kept waiting for long periods of time.
- Many youth simply do not want to attend the hearings.

While these are legitimate issues, most can be resolved with proper preparation and debriefing. By adequately preparing the subject of a child dependency case, advocates help ensure that the young person can meaningfully contribute and take something away from the process.

Preparation by the Child's Attorney

Before professionals prepare a young person for a court appearance, they must decide who is going to participate in the preparation and what information must be provided. The answers to these questions need to be made on an individual basis. On some occasions, all of the relevant professionals play a role in preparation.

Before any preparation can take place, the child's lawyer must have regular contact with the child to establish a trusting relationship in which the child feels comfortable sharing her views. Minimal contact before court hearings may not be enough, and lawyers should try to meet with the youth in settings where she is comfortable, such as her foster care/kinship placement, her school, or her community center.

A few weeks before the hearing, the lawyer should determine whether the youth wants to attend court. In helping the child to make that decision, the lawyer should:

- Give the youth adequate notice of the hearing date and time.
- Explain the judge's role in making permanent decisions regarding placement.
- Discuss the importance of the youth's input into those decisions.
- Address any concerns or fears the youth has about attending court.
- Answer any other questions that may be of concern to the child.

Once the youth has decided to attend the hearing, the lawyer should prepare the youth for what to expect in court. The lawyer should discuss:

- The length of time required for the court process and how to make good use of waiting periods by bringing schoolwork or other activities to occupy the youth's time.

see page 10

Creating a Meaningful Court Experience for Youth *from pg. 9*

- Who will be present at the hearing and their roles.
- What the youth wants the judge to know.
- What the judge may ask the youth.
- Whether the youth wants to speak to the judge.
- Whether the youth would like a support person present.

The lawyer either should show the child any documents the court will consider or should explain the relevant portions so the youth is armed with information about what will occur during the hearing. The lawyer also should help the youth identify issues she wants to address during the court hearing and should maintain a list to ensure that they are covered.

After preparing the youth for the hearing, the lawyer, adhering to all applicable evidentiary and other court rules, should alert the court to any issues that may surface. The judge is likely to be interested in:

- Whether the youth will attend.
- Whether the youth would like to speak to the judge privately (adhering to all applicable procedural rules).
- Whether the youth should be excused for any portion of the hearing.
- Whether there is a particular issue the youth would like to address with the court.
- Whether the youth would like a support person present.

The attorney should make sure that other professionals help the youth have a meaningful experience. When a young person participates in court proceedings, the lawyer should monitor whether:

- The social worker informs the school that the youth will be absent and obtains any school work for the youth to complete while waiting for hearings.
- The youth's caretaker or social worker transports or arranges transportation to court hearings.
- The foster parent has appropriate clothes for the youth to wear to the hearings.
- If necessary, the youth's mental health professional has prepared the young person.
- Parents' counsel are aware that the youth will be attending and prepare their clients accordingly.

During the hearing

LAWYER

The lawyer should introduce the youth to the judge. If the youth has questions during the hearing, the lawyer should request a moment to consult with the child. It is important that the youth feels involved and understands what is happening. If the youth has prepared something to say, the attorney should give her time to talk to the judge. If she is intimidated by the process and does not want to speak extemporaneously, the attorney can allow her to read her statement to the judge.

JUDGE

When a judge learns that a young person is to be present, the judge should attempt to hear that case first so the youth can return to school. If there are going to be sensitive issues discussed, the judge may clear the courtroom of any non-parties in order to respect the youth's privacy. If the youth would like a support person to be present, the judge should allow that person to remain.

The judge should:

- Address the youth directly and make her feel welcome.
- Answer her questions and take time to address her comments.
- Ask the youth and her lawyer questions about education, placement, visitation, health, and permanency needs, if appropriate.
- Avoid acronyms or legal jargon that the youth will not understand.
- Ensure the youth understands what is ordered and why.
- Encourage the youth to attend future hearings.

DEBRIEFING

As important as preparation is, debriefing the youth following the hearing is also a critical aspect of the lawyer's role. During the hearing, the youth mostly likely will have heard considerable information from the social worker, her parents, and the judge. The lawyer should explain what happened and answer the youth's questions. The lawyer should let the youth know what will happen before the next court date and encourage her to contact the lawyer if she has additional questions. If a court order is available, the lawyer should review it with the youth. If the order is not yet available, the lawyer should contact the youth to discuss the judge's decision when the order is received.

If the youth is upset about something that happened at the hearing, the lawyer should attempt to calm the youth and address the youth's concerns. The lawyer also should involve the social worker and caregiver. If the youth needs more intensive support and debriefing, the social worker should consult or have the youth meet with a mental health professional.

In conclusion, with a little extra time and commitment, lawyers and judges have the ability to make the court process more meaningful for young persons who are the subjects of child dependency cases. The result is a more informed and engaged youth and improved permanency outcomes. ▪

Andrea Khoury, JD, is the director of the ABA Youth at Risk Bar–Youth Empowerment Project and an Assistant Director of Child Welfare for the National Child Welfare Resource Center on Legal and Judicial Issues. Visit the BarYouth Empowerment Project Web site at *http://www.abanet.org/child/empowerment/home.html*

Listen to the Voices of Children During Divorce: A Mother's Reflection 18 Years Later

By Diane Sickles

The Children of Separation and Divorce Center became a lifeline for my daughter, as she learned how to relate to each of her parents individually and how to talk to us in such a way that she felt she was being heard and appreciated.

The telling moment came when my daughter was in fifth grade, soon after starting a new school. Jennifer went "on strike," crouching under the small desk in her classroom and simply refusing to budge.

Just months before, her father and I had separated. I had moved into my parents' home, and Jennifer's father was in the family home, which was for sale. On top of it all, on the first day of classes at her new Montessori school, 10-year-old Jennifer came home to find that our 12- year-old Black Labrador, Pepper, had died.

On the day her "strike" began, I remember her teacher calling me to say that Jennifer was curled up under the small desk. She simply would not come out. Her teacher suggested that we try to find out what was wrong. I immediately called my estranged husband.

Jennifer's "strike" became a turning point for all three of us. Her dad and I realized that we absolutely needed to pay attention to what Jennifer was feeling and to listen to what she had to say. The dreams of our marriage were fractured, but our parenting would continue for years to come. The struggle to end our marriage could not be about us anymore. It had to be all about Jennifer.

In desperation, I reached out for help from what was then the Children of Separation and Divorce Center, Inc., now known as the National Family Resiliency Center, Inc., in Columbia, Maryland. I enrolled Jennifer in a children's group there early in our divorce. I drove 45 minutes each way in rush-hour traffic to get to her group session every week. Since Jennifer was an only child, she did not have siblings to rely on during this traumatic time in her life. She learned how to cope with being an only child of divorcing parents. She learned other coping skills, as well as how to deal with her inner anger about our divorce. The center became a lifeline for Jennifer, as she learned how to relate to each of her parents individually and how to talk to us in such a way that she felt she was being heard and appreciated.

Jennifer found her voice and a new sense of security that everything would be okay for our family. My ex-husband and I forged a truce with each other, even to the point where we both served as coaches for Jennifer's baseball team. We learned to focus on Jennifer, not on us.

Jennifer, now 28 and a master electrician at a theater in Washington, D.C., became a peer counselor at the center, helping other children learn how to cope with their parents' divorces. She eventually was given awards for her peer counseling work.

I also became a peer counselor at the center, helping other parents and working with a mothers' group. Both my daughter and I participated on panels geared toward helping parents and children struggling with the traumatic aspects of divorce.

Our overall experience has made me realize how important it is for judges, lawyers, parents, and teachers to remember to listen to the voices of children when the family is going through the throes of separation and divorce.

During the difficult process of divorce, the focus sometimes centers around the parents first and the children second. Parents often tend to justify their unrealistic demands on the other parent by "this is what your child needs," when they themselves may not have checked in to understand what the child wants and needs. Some parents doubt that the other parent is using the child support money for the children and resent having to pay.

As hard as it is, the decisions parents make about what is in the best interests of their children must take into account all the information available, such as each child's developmental, emotional, and financial needs. Seeking information about your child's feelings also is an essential element in making the process of divorce healthier for everyone.

It is in everyone's best interests to make this life-changing event as positive as possible under the circumstances. ▪

Diane Sickles, shown at left with her daughter, Jennifer, is a manager at a statistical research firm and still works as a peer counselor at the National Family Resiliency Center, Inc., in Maryland.

OVERVIEW:

Prevalence of Family Courts in the U.S.

COMPARISON: 1998 STATUS TO PRESENT

Nationwide Figures	1998	2006
Statewide Family Courts	11	15
Family Courts in Selected Areas of State	14	18
Pilot/Planned Family Courts	9	5
No Family Court	17	13

DVD on Unified Family Courts Now Available

A compelling DVD, "Unified Family Courts: Efficient, Effective, Responsible," puts a human face on the Unified Family Court (UFC), a court model designed to address therapeutically and holistically the complex nature of family law cases. The DVD contrasts the experiences of two women in their divorce proceedings.

As portrayed in the DVD, one woman was subject to a traditional court system, while the other's divorce was handled in a UFC. The University of Baltimore School of Law's Center for Families Children and the Courts produced the DVD, which includes interviews with judges, attorneys, services providers, and UFC experts.

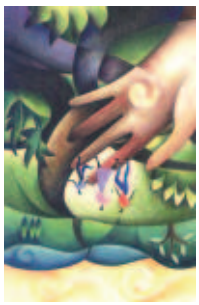
For a free copy of the DVD, please email Professor Barbara A. Babb at *bbabb@ubalt.edu*. ▪

ASK THE EDITOR: Unified Family Courts encompass a myriad of issues, problems and innovations. If you have topics for us to address or want to contribute to the newsletter, please email us your suggestions. If you have photos of recent accomplishments, we can include them in future editions of the *Unified Family Court Connection*. Send your questions or contributions to *cfcc@ubalt.edu*.

FEEDBACK: Your opinions and comments are important to us. Send them to *cfcc@ubalt.edu*.

MAILING LIST: If you want us to add you to our mailing list for the newsletter or if you know of others who would like to receive the *Unified Family Court Connection*, please send your request (with name, mailing address and e-mail) to *cfcc@ubalt.edu*.

The Center for Families, Children and the Courts
University of Baltimore School of Law
1420 N. Charles Street
Baltimore, MD 21201



First Class Presort
U.S. Postage
PAID
Baltimore, Md.
Permit No. 4903