



Connection

UNIVERSITY OF BALTIMORE SCHOOL OF LAW ■ CENTER FOR FAMILIES, CHILDREN AND THE COURTS

Nation's Divorce Culture Now Overburdening Our Court Systems

BY JUSTICE LEAH WARD SEARS, RET.

Marriage, in our society, has become optional, contingent and conditional. This cultural phenomenon is having a detrimental impact on our judicial system.

I served on the Supreme Court of Georgia for 17 years. While most of my time was taken up with deciding cases, I also fulfilled administrative duties that dramatically increased when I became Chief Justice. It was in that role of chief judicial administrator in Georgia that I dealt with one of the most critical challenges facing the judicial system today—the explosion in the last 40 years of the number of divorces as well as the number of children born out of wedlock.

The trial courts in every state are busy and, in many localities, overburdened. Judicial resources are stretched to the limit and it often takes many months, if not years, to accomplish justice.

Typically, however, crime and criminals receive most of the attention and blame for this. The criminal justice system is seen as a revolving door for repeat offenders, most of them regularly committing crimes that, in one way or another, serve the illegal drug trade and lead to community violence. As a result, taxpayers spend millions of dollars each year to prosecute these offenders and put them behind bars.

On the other hand, we seldom hear much about the civil justice system and the heavy domestic relations caseload. The costs associated with that burden (increased poverty, crime and illness) have, for some reason, gone unnoticed for many years. While the problem may not lend itself to headlines and 30-second sound bites on the evening news, that does not mean we do not have a family law caseload problem in our courts, because we do.

In Georgia, for instance, not only do domestic relations cases outnumber all the other civil cases filed in our Superior Courts by better than two-to-one, but they outnumber all felony and misdemeanor criminal cases, as well. In fact, the Superior Courts in Georgia devote more time to domestic relations cases than to all felony and misdemeanor criminal cases combined.

Consider this as well. Across the country, child support enforcement agencies are collecting and distributing hundreds of millions of dollars in child support every year. The vast majority of those funds is collected and distributed pursuant to a support order entered by a judge.

It is not only the trial courts, though, that have a burden to bear when it comes to families and children. The juvenile courts also are busy, with most of the children coming from broken families or unstable homes.

KEYNOTE SPEECH AT FAMILIES MATTER SYMPOSIUM: Maryland's Chief Judge Calls for Innovative Legal Approaches to Address Family Law Matters

BY CHIEF JUDGE ROBERT M. BELL

Thank you for the invitation to speak to you this morning. It is always a pleasure to speak to professionals like yourselves who work in an area of the law that overwhelmingly impacts the public's trust and confidence in our legal system.

I must thank the American Bar Association Family Law Section and the University of Baltimore School of Law Center for Families, Children and the Courts, led by Barbara A. Babb, its director and associate professor of law.

I am grateful for the leadership, guidance and expertise that Professor Babb and her staff have brought to the Maryland judiciary. Your work has truly been instrumental in improving the family justice system in Maryland and across the nation.

I promise to be brief as I know that you have quite an exciting agenda ahead of you. I am going to take just a few moments to highlight some of the initiatives the judiciary has undertaken to better meet the growing legal needs of families across the state because we do believe that families matter.

First, I must acknowledge the successful work of those of you who joined us in the effort to secure funding for Maryland Legal Services. A healthy civil justice system is a critical component of a just and civil society. The rule of law operates most effectively if individuals have full and fair access to that system.

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Families Matter Symposium Calls for Interdisciplinary Approach to Make Family Law Proceedings Less Destructive

Finding a way to make family law proceedings less destructive is critical, and the reform effort must be based on an interdisciplinary approach among professions. That was the consensus of the recent Families Matter Symposium in Baltimore.

The Symposium, co-sponsored by the University of Baltimore School of Law Center for Families, Children and the Courts (CFCC) and the American Bar Association Section of Family Law (ABA FLS), brought together an interdisciplinary group of experts in the fields of psychology, human behavior, law, accounting, domestic violence, family systems, and mediation to brainstorm about reducing the harmful effects of the legal process in family law cases.

The Symposium launched a three-year undertaking by the ABA FLS, in partnership with CFCC, to address the devastating consequences of family law matters and the family law process on families, children, extended families, businesses and the community.

In this issue, a range of experts on family law matters reflect upon the Symposium:

- **Retired Georgia Chief Justice Leah Ward Sears** looks at the sociology affecting family courts.
- **Mindy Mitnick** discusses the Symposium from the perspective of domestic violence.
- **Philip Stahl** writes about the importance of the custody evaluator in family law cases.
- **Louise Phipps Senft** considers the role of mediation in family law.
- **Diane Nunn** and **Charlene Depner** review how court administrations can be effective in reforming family law.
- **Paul Capuzziello** discusses the need for financial experts in family law.
- **Judge Hugh Starnes** focuses on how judges can be effective in improving family courts.
- **Peter Salem** writes about interdisciplinary collaboration.
- **Professor Andrew Schepard** proposes that family law curricula at law schools should be overhauled to help prepare students for the challenges of practice.
- **Barton Resnicoff** offers an attorney's perspective on the state of family law.

In addition, we also include:

- **Maryland Court of Appeals Chief Judge Robert M. Bell's** keynote speech from the Symposium.
- "A More Humane Vision of Family Law: Holistic Approach Needed to Shield Children from the Trauma of Breakups," a reprint of an opinion editorial piece written by **Professor Barbara Babb** and **Mitchell Karpf** for the *Baltimore Sun*.

We hope this issue provides you with an illuminating overview of the Symposium and the issues facing family justice reform today. ■

An Interdisciplinary Approach to Handling Divorce Cases

BY PAUL T. CAPUZZIELLO

"Am I going to survive financially?" As a Certified Divorce Financial Analyst™ (CDFA), I get that question a lot from the individuals and couples whom I help to navigate the divorce process. Whether in mediation, collaborative law, or litigation, the question is the same.

It is a perfectly reasonable thing to wonder about—we all know divorce can take a terrible financial toll on either party. But, as I was reminded at a recent conference, the real impact of a family split often goes far beyond money.

The Families Matter Symposium shed light on the far-reaching implications that divorce has on our society as a whole.

Consider, for example, divorce's impact on workplace productivity. Between distractions caused by paperwork and meetings with attorneys, not to mention mental preoccupation throughout the process, divorce can dramatically affect workers' output. And, as a stress-inducing event, it can be linked to health issues related to anxiety and depression.

The fallout does not stop there. Divorces—particularly those that result in prolonged, contentious legal battles or significant emotional distress—can cause stress and anxiety in children involved. This, in turn, can lead to negative behavior in schools and elsewhere.

In a nutshell, we all pay some sort of price for divorce.

REDESIGNING THE PROCESS

Symposium participants came away with two basic missions: to work toward building a better and more consistent divorce process and to develop an interdisciplinary approach to handling family law cases.

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Innovative Legal Approaches to Family Law Needed *from pg. 1*

As a result of the coordinated efforts of legal services advocates, the state bar, and other supporters, last month, Gov. Martin O'Malley signed into law Senate Bill 248, which increased funding for civil legal services in Maryland by increasing the filing fee surcharge for civil cases in Circuit Courts from \$25 to \$55, and in the District Court, from \$5 to \$8 in summary ejectment cases and from \$10 to \$15 in all other civil cases. Though painful for members of the bar and the public, these increases do much to fill the revenue gap created by the precipitous decline in interest on lawyers' trust accounts (IOLTA) income, once the primary funding source for legal services in the state.

While there are slowly emerging signs of recovery in the nation's economy, the legal needs of Marylanders continue to increase. The assistance provided by legal services organizations is critical to families in crisis, children at risk, and individuals working to meet their parental obligations. Providing civil justice to all Marylanders requires ensuring that all individuals can obtain legal representation when they need it. As the legendary jurist Learned Hand said: *"If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."*

Along those lines, the judiciary continues, through its grant funding, to provide core monies to fund self-help centers in jurisdictions across the state. We want to help people help themselves when and where it is appropriate. It is imperative that litigants forced to represent themselves in court or who face language and other barriers to access, can ask for, and receive, justice.

ACCESS TO JUSTICE

One of the Maryland judiciary's guiding principles is creating fuller access to justice for our citizens. As a result, we have embarked on a journey to hear from citizens and develop resources, solutions, and provide input and insight on how we, as a branch of government, can improve that access for those who visit the courts across the state of Maryland.

In October 2008, I appointed a 47-member body with representatives and designees from the Maryland courts, executive branch agencies, legislators, attorneys, the faith and social services communities, and legal services providers, to create the Maryland Access to Justice Commission. Its mission is to identify and address existing barriers to accessing the courts and legal services in Maryland, and expand opportunities for our citizens to benefit from the protections, rights and resources the law provides.

The commission, chaired by Retired Court of Appeals Judge Irma Raker, has issued an interim report citing insufficient funding for legal services for the poor, among other barriers, which leaves countless Marylanders without meaningful access to the courts or the help they need to resolve their legal problems. The report con-

It is imperative that litigants forced to represent themselves in court...can ask for, and receive, justice.

tains 62 substantive recommendations that reflect three general areas that will require collaborative problem-solving by the judiciary and its justice system partners. Pam Ortiz serves as executive director of the commission and she is attending the conference today. She will attest to the fact that we have already put in place a number of creative initiatives—utilizing self-help centers through-

out our Circuit Courts and piloting new technologies in our District Courts to better equip citizens who need to file court actions or who need assistance responding to legal actions. In addition, through our Department of Family Administration, the judiciary provides funding to pay attorneys to represent individuals who need legal assistance, particularly in domestic violence and contested custody cases.

The judiciary is also pleased to see the public service commitment demonstrated by members of the legal community. Greater numbers of attorneys are donating their services at no cost to help individuals who cannot afford legal representation on their own.

But we continue to find that it is very difficult to get attorneys to take pro bono or low bono family law cases. As you know, these cases are often very complicated, emotionally charged and involve protracted litigation. Family law cases are truly unlike any other genre of cases that come before the courts.

One of the recommendations in the commission's report, however, focuses on a new concept called limited scope or discrete task representation to better assist families in crisis. The Department of Family Administration is working with the commission to draft a new rule to allow attorneys to take a portion of a family law case to provide representation to ensure a fairer outcome. We know from experience that when judges have all of the facts and the information is accurate, particularly in complex cases, judges make better decisions.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

While it has taken a while for the appellate courts to catch on, the judiciary has embraced and is refining the use of mediation in our trial courts. The head of the Maryland Mediation and Conflict Resolution office—Rachel Wohl—is here today.

As a result of judiciary inter-departmental collaboration, a huge priority for the Department of Family Administration has been increasing opportunities for families to resolve their conflicts in more civil and harmonious ways through alternative dispute resolution. Connie Kratovil-Lavelle, who heads the judiciary's Department of Family Administration, is here today.

In the last year-and-a-half, her staff has begun piloting programs across the state using community mediation centers as a collaborative partnership with Community Mediation Maryland. These centers provide free services to the public and parties are partnered with

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Nation's Divorce Culture Overburdens Our Court Systems *from pg. 1*

I am sure many would argue that perhaps the crisis facing our family law system has not made it to the front page of the newspaper because family problems are viewed as essentially private. Right?

Wrong! Even though family problems begin in private, statistics show they have a tendency to become public problems with major social and financial consequences. The burden they place on our government, particularly the judicial system, is significant and cannot be overlooked as merely a "private" issue.

Marriage is more than a private emotional relationship. It is also a social good. I am not saying that every person can or should marry. Nor am I saying that, once married, every couple has to stay together. I also am not willing to be so shortsighted as to say that every child reared outside of marriage is damaged as a result. Many single parents succeed as parents against steep odds.

To me, there is little question that our social and legal policies should continue to direct substantial resources toward providing protection and support for children, regardless of the family structure into which they were born. I also strongly believe, however, that building a viable marriage culture in America is a legitimate concern for family law as well as the courts.

Fortunately, I am not alone in these sentiments. The American Bar Association Section of Family Law (ABA FLS) and the University of Baltimore School of Law Center for Families, Children and the Courts (CFCC) are working together to respond to these growing problems in the current and adversarial family law process.

At the Families Matter Symposium in June at the University of Baltimore, under the leadership of CFCC, family law practitioners and Section of Family Law Chair Justice Debra Lehrmann, Chair-Elect Randy Kessler, Secretary Scott Friedman, and Immediate Past Chair Mitchell Karpf, over 60 interdisciplinary experts, including myself, gathered

together to discuss the family law system and the family court's management of domestic relations caseloads. From this meeting, the group walked away agreeing to devote the next several years as a part of the Families Matters initiative of the CFCC and ABA FLS to develop legal practice methods and approaches to minimize the damaging consequences of family legal proceedings.

I believe these efforts desperately are needed now in our society. Both lawyers and lawmakers must advocate for specific legal changes in the area of family law. Perhaps we need to reform our state divorce laws and develop more pro-marriage legislation and incentives, state and federal. Perhaps not. There may be other ways. Our long-term purpose, however, is to try and fix the problems we see affecting the judicial system.

In doing so, this does not mean we must foreclose important legal, moral, and policy debates about equality, poverty, support for children in alternative family forms, unilateral divorce, same-sex marriage or the prudent expanses or limits of the law. Instead, what we need to do is add to, not subtract from, the national civic agenda by bringing attention to one of the most critical issues of our time. I believe that our first step is to define and create a consensus around this goal, and I am glad to see the Families Matter initiative is leading the way in that direction. ■



The Honorable Leah Ward Sears is a retired Chief Justice of the Georgia Supreme Court and currently a partner at the Atlanta office of Schiff Hardin LLP. Justice Sears also serves as the William Thomas Sears Distinguished Fellow in Family Law at the Institute for American Values.

Interdisciplinary Approach to Handling Divorce Cases *from pg. 2*

CDFAs fit into the financial side of the divorce equation.

Many attorneys believe that financial experts are needed only for large cases. But, given the complexity of today's financial landscape, CDFAs can provide useful expertise on issues that affect estates of every size, including investment accounts, tax and estate planning and pension plans.

I have seen many cases in which a seemingly "fair" settlement at the time of divorce resulted in unexpected financial hardship on one party by the very next year.

Financial experts can help manage a client's expectations, value assets and expenses properly, and deliver a detailed analysis that shows both sides the clear implications of different settlement options. For the client, knowing the information has been evaluated properly can help reduce stress and the likelihood of a return to court for modifications. And for

the professionals involved, effective collaboration increases the likelihood of referrals from satisfied clients.

In the end, an interdisciplinary approach is the best way to be able to look your client in the eye and say, "You are going to be OK overall."



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Making the Legal Process Less Disruptive Is Key in Divorce

BY BARTON R. RESNICOFF

After 30 years in private practice as a family law attorney, I remain interested in what can be done to make the divorce process, along with other family law issues, less contentious and expensive, both emotionally and financially.

When invited to the two-day Families Matter Symposium at the University of Baltimore School of Law, as an active participant in the American Bar Association Section of Family Law, I was intrigued with what could come from this undertaking. I wondered whether the professionals involved in the legal process could make it less disruptive on children and their families. Like others involved in the legal world, I had my own ideas, prejudices and thoughts on the matter.

Although I still enjoy practicing matrimonial litigation, over the years I have seen problems with the process involving divorce and other family law cases. When clients or potential clients ask how expensive divorce, support or custody litigation will be, I explain that it is primarily dependent on four people—the two attorneys and the two litigants. All it takes for the divorce to be more expensive than it should be is one of those individuals to act unreasonably. I always have further explained that, at least according to New York law, marriage is an economic partnership and a divorce is merely the termination of that partnership and a business deal. My goal is to try and make my clients act reasonably and rationally through the process.

I was impressed with the attendees at the Symposium and the exchange of ideas. I also was impressed with the cross-section of individuals present—litigators, law school professors, judges, mental health professionals and financial experts.

The Symposium started with a process of exploring both the helpful aspects and the problems involved in litigation. We then spent the balance of the time identifying and attempting to come up with solutions to the problems. One problem mentioned, but really not dealt with, concerns the attorneys who create problems, stir up a client, and create more and unnecessary litigation. I know that the concept of sanctions does exist for such instances in New York, but it is, at best, a flawed tool because many judges are loathe to utilize it. Where does aggressive representation of a client step over the line? In that regard, education to sensitize judges might control the litigation process better. In fact, education for the public, attorneys and the judiciary was a constant theme in the solutions suggested by Symposium participants.

Another key issue discussed was the self-represented litigant. There were suggestions in support of “Civil Gideon” and additional educational programs for the self represented, but their lack of representation can create problems not easily resolved. I have had cases that became much more involved and expensive because a person was self-represented. Two divorce actions come to mind. In one, a self-represented plaintiff (a law student) made it almost impossible

to resolve the case. She went through two retained attorneys and had an attorney appointed on custody issues. There were still problems, however, regardless of how fair I attempted to be or how fair the proposed agreement was. The divorce began when the wife started law school and ended around the time she was scheduled to graduate.

I am involved in another case where the self-represented defendant’s apparent goal is to punish with motion practice her now former husband. She has filed a demand for a jury trial on grounds, stay requests, and the like for over three and a half years. She also went through more than one retained counsel and nothing ever made her happy. As I write this article, while a divorce decree has been signed, the financial issues are yet to be resolved. In these situations, education of the self-represented litigant will not help. Education of the judiciary on these matters and a sure hand on the controls from the bench might help.

The real problems are the emotions and unrealistic expectations of the parties. Will education of the public alleviate this problem? It might. Would counseling of the litigants alleviate this problem? Should we insist on using mediation to move the parties past their problems? Does collaborative law help? Frankly, while I believe that a good mediator might remove some of a party’s unreasonable expectations or tone down his or her emotions, mediation is just part of the solution.

Education and steps to reduce or downplay litigants’ emotions and unreasonable expectations are key to making the legal process less destructive to the individuals involved and their children. In fact, we all have to keep in mind that whether it is a divorce action, a custody proceeding, or a support matter, the reality is that we are not terminating anything. We merely are restructuring the family unit. Even after divorce or physical separation for out-of-wedlock children, the parties always will be parents and will have to deal with each other and the child or children, even after the child or children are emancipated. There will be weddings and the birth of grandchildren. In that regard, I always have done everything in my power to remove or downplay those emotions and unreasonable expectations. I caution the parties that once I am finished with their representation, they must still deal with each other. I guess that approach is one all of us attempt to achieve. If we can get the parties to cooperate with each other, it is to everyone’s advantage.



Barton R. Resnicoff has been in practice limited to matrimonial and family law matters for over 30 years on Long Island, New York. He has been designated as a Board Certified Family Law Trial Specialist by the National Board of Trial Advocacy.

A More Humane Vision of Family Law

Holistic approach needed to shield children from the trauma of breakups

BY BARBARA BABB AND MITCHELL KARPf

Unfortunately for so many in our society, family breakup is a fact of life. When a family dissolves, there is much more than furniture, houses or cars at stake—the identity of that family, including its children, is in the mix. That’s why the way our legal system and our society respond to family dissolution needs to change.

While people read about the travails of celebrities who commit marital infidelity, perhaps we should be upset that the huge headlines are not about the everyday families—those who often are devastated by their trek through the adversarial legal process that constitutes much of family law. The parties may emerge having disposed of a marriage but also having traumatized loved ones, exhausted their resources and diminished the well-being and self-esteem of their children and of each other.

Such pain and suffering are all too common for the tens of thousands of children and families involved in justice systems throughout the United States—the institutions on which our society relies to resolve the full range of family law matters, including divorce, custody, visitation, child support, alimony, property division, domestic violence, and child abuse and neglect. Family law courts are brought into marital disputes at the brink of dissolution, when emotions are most raw and the finality of marital failure is most certain. The process often is damaging because its inherently adversarial nature can intensify already frayed relations and can harm extended families, schools, religious institutions, businesses and communities of those involved.

The American Bar Association Section of Family Law and the University of Baltimore School of Law Center for Families, Children and the Courts are partnering to respond to the need for deep and meaningful reform of the family law process. Over the next several years, the Families Matter initiative of the ABA Section of Family Law intends to develop legal practice methods and approaches to minimize the damaging consequences of family legal proceedings. Since its founding in 2000, the mission of the Center for Families, Children and the Courts has been to push for reforms in the family justice system that improve children’s and families’ lives. Together, the ABA Section of Family Law and Center for Families, Children and the Courts recently hosted the inaugural Families Matter Symposium, a major national conference attended by more than 60 interdisciplinary experts at the University of Baltimore, to launch this important initiative.

After two days of intense sessions, the clear consensus of the group is that the best outcomes for family law cases require more than lawyers. Mental health professionals, social scientists, media-

Family law cases consume a large share of court resources, necessitating finding non-adversarial alternatives such as Unified Family Courts.

tors, judges, academics, policy-makers and financial experts also need to be involved. Moreover, the resolution of these cases must not be “win or lose.” Instead, a major shift in tone is needed. The reform work generated by the

Symposium intends to focus on ways to expand the assistance that family law can provide children and families and to include those professionals who too often must do damage control after the legal process has harmed vulnerable participants.

Specifically, we call for: the creation of unified family courts with a holistic and therapeutic focus; making a broad range of family and individual services available to separating families; greater use of alternative dispute resolution at the earliest stages of a case; and retraining law students, lawyers, judges, and court personnel toward a non-adversarial, therapeutic, holistic focus when dealing with family law matters. We hope that these steps can be implemented nationwide, so that children and their families can receive more of the help they need from the family law process.

The need for change is great, not only because lives are so profoundly affected, but also because these cases consume such a large share of court resources. Statistics offer a hint about how pervasive the issue is. According to the 2009 Annual Report of the Maryland Circuit Court, family law cases constitute more than 45 percent of that court’s total trial court filings, exceeding the portion devoted to the totals for either criminal or tort cases. Clearly, we must do a better job to ensure that the family justice system works to help children and families.

Families will continue to separate, but through the kind of collaboration in which we now are engaged, we can protect children and families and can minimize the suffering caused by broken relationships. It is up to us to see that tragic family law stories become the exception rather than the norm, and to demonstrate that the justice system cares about children and families.

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Improving our Family Courts and Services: A Call for Interdisciplinary Collaboration

BY PETER SALEM

*"I not only use all the brains that I have, but all that I can borrow."
—President Woodrow Wilson*

An interdisciplinary approach to improving family law systems is essential, according to a broad spectrum of experts who met recently to address the challenges of developing effective methods of dealing with the separation and divorce process.

The two-day Families Matter Symposium, co-sponsored by the American Bar Association Section of Family Law (ABA FLS) and the University of Baltimore School of Law Center for Families, Children and the Courts (CFCC) on June 24-25, 2010, presented exciting opportunities for several reasons:

Participants included leading thinkers, reformers and practitioners in the family law area. They included lawyers, judges, mediators, mental health professionals, and social science and legal scholars. (I would be remiss if I bypassed this opportunity to note that nearly half of these leaders were members of the Association of Family and Conciliation Courts (AFCC), an interdisciplinary association comprised of members of the above-mentioned disciplines, of which I am privileged to serve as executive director).

The meeting provided AFCC an opportunity to work in a new context with colleagues at the ABA FLS (with whom we have collaborated on many issues extending back more than two decades) and our friends at CFCC (with whom we have a longstanding and ongoing training partnership).

Participants devoted two days to learning about different perspectives on issues to which we have dedicated our professional lives: court services, domestic violence, legal education, case management, family dispute resolution processes, and more. Given the extremely busy schedules of most participants, this extended time without distraction seemed like a luxury.

The interdisciplinary nature of the Symposium made an important statement: the challenges facing families in the legal system and the system itself require an interdisciplinary approach. The fact that this statement comes from the ABA FLS is not insignificant. It acknowledges a fundamental change in the practice of family law and the conveners are to be commended for taking this important step.

NEW PROFESSIONALS, NEW ROLES

Legal institutions remain at the center of the family law system (although at least one person I met suggested perhaps this should not be the case). Over the last three decades, however, professionals from mental health, dispute resolution and other fields have played an increasing and vital role in child-related disputes. These include mediators, non-legal advocates, Court Appointed Special Advocates volunteers, child custody evaluators, parent education providers,

The challenges facing families in the legal system and the system itself require an interdisciplinary approach.

parenting coordinators, family court counselors, supervised visitation providers, and providers of an emerging number of hybrid dispute resolution processes.

Moreover, the lawyer's role has evolved along with the practice of family law. Lawyers continue to offer traditional legal representation along with myriad other services, including: mediation; mediation advocacy (representing a party in mediation); discrete task representation; collaborative law; cooperative law; parenting coordination; parent education; or serving as judge, magistrate, or referee in a Unified Family Court or a specialized problem-solving court. Although few practicing lawyers are trained for these roles in law school, their existence represents an important trend: the mutual influence on the process of multiple professions, all of which focus on serving children and families.

CONVERGENCE

Some commentators have referred to the many changes in the family law system and corresponding practice of law as a paradigm shift. Professor Julie Macfarlane provides a thoughtful alternative in her book, *The New Lawyer*. Writing about the practice of law, she states:

Insisting on 'paradigm change,' which in Thomas Kuhn's original thesis means the elimination of the old and its replacement with something entirely new, is throwing the baby out with the bathwater. Lawyers will continue to use and build on their foundational skills of negotiation, information assimilation and analysis, advocacy and advice giving. Rather than eliminating the old paradigm and substituting a new one, the better analogy for the evolution of the new lawyer is a convergence between litigation and consensus building, representing both the old and new approaches to dispute resolution. What is meant by convergence is mutual influence and cross-fertilization, whereby the old informs the new and the new builds on the old (Macfarlane, 2008, p. 20).

Professor Macfarlane's notion of a convergence applies directly to family law. Not only are the old and new approaches converging, but so are approaches of multiple disciplines. This has led to new ideas, practices, processes and initiatives. It was on this very premise

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Judges Play a Crucial Role in Improving Family Courts

BY JUDGE HUGH STARNES

The Families Matter Symposium was an ambitious effort to begin an interdisciplinary process of reforming the practice of family law among the professions and the management of the family law system in the courts and related agencies.

This is a significant dynamic. The Symposium co-sponsors, the American Bar Association Section of Family Law (ABA FLS) and the University of Baltimore School of Law Center for Families, Children and the Courts (CFCC), could ensure the ability to spread change widely throughout legal practice and to enhance sustainability through more effective training and education of future lawyers. With the maturing of the non-adversarial

approach in family law practice across the nation, there is considerable reason for optimism.

Former Speaker of the U.S. House of Representatives Tip O'Neill put it best: "All politics is local." In family law, all change must be implemented locally or it will not have meaning or be effective. The real frontier in modern family law is the difficulty in changing the local professional culture and practice. Making headway in this local metamorphosis requires a strategy for managing hostile cases, even when one attorney desires to handle the case in a non-adversarial manner but the other will not cooperate.

It is at this juncture that the role of the family law judge is crucial. This professional is often the nominal leader by default. He or she has some natural clout because of the continuing ability to decide cases, award fees and talk about practice behaviors.

My belief is that you must start with a small cadre of leading practitioners. Ideally, this would be an interdisciplinary group, including lawyers, mental health professionals, financial professionals, judges, social workers and court staff. A judge and a few progressive lawyers may be able to start the process and expand by inviting other respected professionals.

The organizing group could then hold an event, combining a social function with a discussion or educational session. There should be a focus on systemic changes, but incorporating practice methods that support the systemic changes is equally important. The changes must include user-friendly practices.

Some examples are:

Open house: The judge is available at a set time each week, for an hour in chambers, to meet with attorneys, who voluntarily attend. The attorneys could pose questions about a case that may be dispositive and get the judge's non-binding opinion of a range of

With the maturing of the non-adversarial approach in family law practice across the nation, there is considerable reason for optimism....The real frontier in modern family law is the difficulty in changing the local professional and cultural practice.

possible outcomes based on a stated set of facts. This not only helps resolve cases, but spreads the concept of problem-solving thinking.

Discovery policy: Written in language directed to clients, the court states a policy of awarding an attorney's fee of \$250 at any hearing on a discovery motion where the party fails to give an excuse for not providing timely discovery.

Seminars: These provide opportunities for interdisciplinary efforts that forge bonds between professionals as well as offer valuable cross-education. If the seminars focus on areas of needed change in the system, a lot of good can come about beyond pure skills building.

Explore and refine alternative dispute resolution (ADR) processes: The heart of any efficient family law system is the ADR process.

By working on improving the use, quality and diversity of these valuable processes, the whole legal culture can evolve into a more cooperative problem-solving atmosphere.

Judges must enforce good: The judges must serve as role models, demand even-tempered and progressive behavior in handling family law cases and search for efficient and low-cost solutions. The awarding of attorney's fees is a powerful tool; they actually may also be effective in changing the behavior of those who hear about the ruling, in addition to those attorneys who directly are involved and tend to be defensive.

All of these approaches are enhanced if the professionals are forced to focus on the interests of children in a conflict-free family life. Could any moral person not want to avoid hurting innocent children by minimizing conflict between their parents?

Through the creative use of these techniques, the judge can be a powerful agent of change in reforming the local family law system from one that is adversarial to one that is progressive and problem solving. By starting the journey toward change, the judge will likely find a substantial following from a diverse group of willing professional partners. The journey can be exciting and fulfilling for all.



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Innovative Legal Approaches to Family Law Needed *from pg. 3*

appropriate co-mediators. Two co-mediators are used to provide each party with an individual who is neutral but yet feels like a peer. It has been very successful in several jurisdictions already, including Anne Arundel, Talbot, Kent and Dorchester counties. Family administration staff members have also developed a uniform protocol for the courts in referring contested custody cases to these community mediation centers. We are continuing to expand the program to other jurisdictions and we are working with them to increase their capacity to handle even more referrals from the courts.

The judiciary is seeing tremendous support from judges, masters and other family division staff. We have tried to streamline the process by providing participating courts with special kits that contain sample orders and sample mediation agreements. In the end, it is really a benefit to the courts in that it helps to avoid protracted litigation that ties up court resources and families often feel more positive about the outcomes as they are more involved in determining their destinies.

Our preliminary data suggests that in more than 80 percent of these cases, families are reaching agreements and our exit interviews with participants indicate that participants are satisfied with the process and believe the end result was fair.

The judiciary is currently piloting a very unique program in Caroline County in which mediators are actually sitting in the courtroom so that when a case is called before a judge and is a good candidate for mediation, a trained professional mediator is ready at a moment's notice to assist and mediate the dispute. We are continuing to monitor the results in this jurisdiction for further determination of its efficacy.

The Department of Family Administration also has launched another unique partnership with the Community Conferencing Center of Maryland. For the last nine months, select juvenile justice cases are being referred for community conferencing, which is another form of alternative dispute resolution. In these cases, a neutral "facilitator" brings an offender and his or her support circle, along with others that have been affected by the bad behavior, to a meeting with the victim and his/her support circle. The victim is able to discuss how he or she was impacted by the offender's behavior and the offender has to accept responsibility and make restitution. In Baltimore City, more than 90 percent of these cases reach an agreement and more than 80 percent of the offenders make restitution.

Preliminary data provided by the court's research and development office suggests that the recidivism rates are much lower for offenders in this program than in the traditional court adjudication process. Similar pilots are being conducted in Baltimore County and Prince George's County. We are seeing signs that perhaps there is

Attorneys should agree to full disclosure on both sides and try to save clients time, money and emotional distress.

more accountability in this process than in the traditional court response. We are seeing promising signs that kids are not re-offending.

The judiciary is truly committed to exploring new and innovative legal approaches to addressing family law matters. In September, the Department of Family Administration sponsored a three-day training for attorneys, judges and masters in the

collaborative law process, which is another form of alternative dispute resolution. Recognizing that this is an emerging and new legal practice, I believe that it is a great way to formalize what good attorneys should be doing for their clients by agreeing to full disclosure on both sides and making the effort to save their clients time, money and emotional distress. We recognize that the court process, by its very architecture, is very adversarial and it polarizes parties. We want to see attorneys working in family matters defuse these situations and try to find common ground that benefits both parties. In these cases, using collaborative law ensures that parties have legal advice and there is informed consent among parties. This is one of the best and most practical approaches for more complicated family law cases.

We know that in family law, the people involved usually have lifelong ties and so it is in the best interests of all involved to work these matters out amicably. In conjunction with MACRO (Maryland Mediation and Conflict Resolution Office) and the Maryland State Bar Association, we are working to train a core group of attorneys in this new approach.

Although we are a separate and independent branch of government, we recognize the value of working with our justice partners in the other branches of government. Staff from the Department of Family Administration meets quarterly with our criminal justice partners in the executive branch to resolve issues using a more holistic approach, particularly with respect to juvenile justice matters.

The judiciary is collaborating with the Department of Juvenile Services to provide input on how they screen cases, risk assessment for children and what kinds of treatment services are needed. In a landmark effort, judiciary staff is working with the department as they develop new screening tools and refine their pre-disposition reports, which provide courts with specific recommendations in the adjudication process. Overall, the judiciary is starting to take a hard look at how courts are responding to juvenile justice issues to ensure necessary reforms do occur. Our goal is to develop better court responses in these cases.

For example, next fall, the Court of Appeals will consider a proposed rule to create a "parent coordinator" position to assist parents in resolving issues before the courts.

Efforts to work collectively with the Department of Human Resources have increased, as judiciary staff partner with the Child

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Interdisciplinary Collaboration *from pg. 7*

that AFCC was founded as an interdisciplinary association nearly fifty years ago. The Families Matter Symposium is evidence that an interdisciplinary approach is now the mainstream.

CONCLUSION

An interdisciplinary approach to improving and reforming family law systems is critical. Multiple professional perspectives will create a fuller understanding of the needs and interests of all actors in the family court system which, in turn, creates reform that is developed and owned by those who implement it. The more perspectives that are heard, the more numerous (and better) are the ideas that emerge.

Moving forward, we must be committed to ongoing efforts to engage all stakeholders, including multiple professional organizations, and to work together to educate the bar, bench, mental health, dispute resolution, domestic violence, financial and other professionals. Families and children deserve no less.



Reference: Macfarlane, J. (2008) *The New Lawyer*. Vancouver: UBC Press

Peter Salem, M.A., is Executive Director of the Association of Family and Conciliation Courts, a William T. Grant Foundation Distinguished Fellow and a recipient of the John M. Haynes Distinguished Mediator Award from the Association for Conflict Resolution.

Innovative Legal Approaches *from pg. 9*

Support Enforcement Administration to ensure that judges, masters and other court staff are equipped with information on available resources and assistance programs throughout the state, particularly during these stressful economic times. A recent summit held in May featured information on service providers that help parents who are unemployed or underemployed find jobs or job training to ensure their child support payments are consistent and current. We are continuing to strategize with these agencies on how to increase the payment of arrears by delinquent parents.

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

Benjamin Franklin, when leaving the Constitutional Convention in Philadelphia, was confronted by an old woman, who asked what the convention had accomplished, what had it given the citizens? He replied, "A democracy if you can keep it." The judiciary has the power of the public's trust and confidence and thus is strong and independent, but it will remain so only if it can keep that trust and confidence.



Robert M. Bell, Chief Judge, Maryland Court of Appeals, 1996-current. Judge, 6th Appellate Circuit, Baltimore City, May 16, 1991-current. Chair, Maryland Judicial Conference, 1996-current.

Greater Coordination

By Mindy Mitnick

When the Families Matter Symposium invited an interdisciplinary group to discuss strategies for enhancing professional and systemic responses to family law cases, participants were excited by the opportunity for dialogue and brainstorming.

The goal—improving how the system works for those whose lives are affected by our work—was the central focus for the two days we met. Participants discussed important topics relevant to the ways in which the system creates roadblocks to the successful resolution of family law cases.

The working group on family violence and abuse had a wide-ranging discussion about types of family violence that affect family law cases. The dialogue focused on issues related to child abuse and domestic violence, areas fraught with misunderstanding of their dynamics, and a lack of skilled resources to respond to these problems. The need for greater cooperation and coordination among systems that deal with various aspects of family violence was one initiative recommended by group members.

Group members agreed that the family court's first job is to guarantee safety for those who are abused and for children exposed to violence. We also agreed that doing so need not involve a punitive mindset or one that pathologizes perpetrators and victims of abuse. Rather, we envisioned systemic responses to the needs of each family through accurate identification of the family's issues, protective orders when needed, and referrals to appropriate services to strengthen families.

The group discussed the unique nature of family violence cases often being heard in multiple courts with little communication among the forums. Allegations of child abuse, for instance, can be heard in the court handling the divorce, in the court handling the civil child protection matter and in criminal court. Similarly, domestic abuse may be handled in the court that issues protective orders, in the family court and in the criminal court.

The group noted unique problems faced by judges. In some jurisdictions, judges rotate through family court, posing a challenge to developing any expertise in the handling of these cases. Judges need more time to assess allegations of abuse before issu-

see next page

Needed to Deal with Family Violence in Family Law Cases

ing protective orders, but they often are restricted to short hearings that make decision-making challenging.

Modeling a domestic abuse court on the drug court model was discussed as a way of providing a specialized court response that not only issues protective orders but would provide monitoring, enforcement, service referral and treatment compliance. The American Bar Association (ABA) Section of Family Law could work with the National Center on State Courts and the Conference of Chief Justices to accomplish this.

A screening of every family law case with allegations of domestic abuse was recommended. This screening would enhance accurate identification of abuse and enable referrals to community resources. The group was aware of the tendency to treat every domestic case with “anger management classes” for the perpetrator without an understanding of research findings that such programs are not successful with those engaged in coercive and controlling violence. The group sought to balance the need for offender accountability while encouraging compassion for the roots of the problem.

Another change to the systemic response to domestic abuse could be the creation of a new role: Domestic Violence Intervention Specialist. This professional would work with the courts to recommend: the type(s) of interventions needed for those who commit family violence, whether parenting time should occur, and if any restrictions are appropriate.

The group supported updated training on differentiating types of domestic abuse to ensure that systemic responses are appropriate and effective. Since custody evaluators may have a significant role in determining parenting arrangements, it is critical that they know about current research with respect to abuse, alienation and family violence. Custody evaluators need specialized training in identifying abuse and making appropriate recommendations for parenting time and needed services when children have been abused. In cases with allegations of abuse, since there may be a co-occurrence of allegations of parental alienation, current knowledge about distinguishing abuse and alienation and understanding of hybrid cases is essential. It is similarly important for attorneys and judges to recognize that these cases are complex and need to remain focused on the child’s best interests rather than on the disputes between parents.

The group strongly recommended that the ABA Section of Family Law take the lead in developing with other organizations, such as the American Psychological Association, the Association of Family and Conciliation Courts, and the National Association of Counsel for Children, an interdisciplinary curriculum for family law attorneys, mediators, evaluators and judges. The training would combat a lack of understanding of the dynamics of abuse and myths about victims not leaving the abuser or not protecting their children. Since information about the differentiation of types of domestic abuse is relatively new, group members were unanimous in their view that updated training on different types of domestic abuse is

necessary for systemic responses to be appropriate and effective.

For all professionals who work with family law cases—attorneys, judges, mediators and mental health providers—components of the training would include:

- **Differentiation of types of domestic abuse;**
- **Distinguishing child abuse and domestic violence from alienation of children from their parents;**
- **The impact of abuse—experienced and witnessed—on children;**
- **Identification of appropriate treatment services in different types of cases.**

Group members noted that a significant roadblock regarding these cases is a misperception by professionals that there are high rates of false allegations of abuse. Family violence is misunderstood due to the fact that it occurs behind closed doors. Consequently, there needs to be greater awareness of the dynamics of abuse and its impact on family members. Otherwise, in the absence of awareness about the seriousness of the problem, families may not be appropriately screened for the presence of abuse and may not receive the protection needed by victims of abuse or the treatment interventions to help heal the wounds of abuse.

Likening family violence to a public health issue, the group recommended a public awareness campaign. Some national resources already exist that could be accessed, such as through the National Council of Juvenile and Family Court Judges. Helping the public to see the reality and severity of the problem will likely increase their willingness to protect victims and treat both victims and offenders. In the age of social media, it would be possible to reach a large audience at no cost.

In order to improve services to families, professionals need to be aware of the services for evaluation and treatment available in their communities. The ABA Section of Family Law would support efforts to collate and distribute this type of information throughout the country.

At the end of the two days, the Families Matter Symposium working group on family violence believed that the recommended initiatives were feasible. Moreover, the actions would greatly enhance the responses by professionals and family courts to cases involving family violence and thereby reduce the stress that families experience in dealing with the court.



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Responding to Challenges Facing Family Courts: The Role of Court Administration

BY DIANE NUNN AND CHARLENE DEPNER

In an economic climate of shrinking resources, contemporary family courts are coping with high caseloads, crowded calendars, and parties who cannot afford representation, some of whom may also face language and cultural barriers when navigating the family court system. Cases are complex. Parties may have other court cases or be struggling with financial hardship, violence, substance abuse, or mental health issues.

The Families Matter Symposium identified key areas of concern and possible solutions for a wide spectrum of stakeholders, including court administration. This article reviews the issues and offers examples drawn from court administration in California.

Improving the administration of the family court system is a dynamic process that must address the needs of a diverse and changing population of court users. From its inception in 1926, the California Judicial Council, the body that sets policies and procedures for the judicial branch, has been mandated by the California Constitution to improve the administration of justice. The Administrative Office of the Courts (AOC), established in 1961, serves as the staff agency to California's Judicial Council, which, through its standing advisory committees and issue-focused task forces, provides statewide leadership and partners with local courts to establish and implement statewide and local improvements.

The AOC's Center for Families, Children & the Courts (ed. note: not to be confused with the University of Baltimore School of Law Center for Families, Children and the Courts, the publisher of this newsletter) also works directly with the courts, their justice partners and service providers on a strategic approach that couples statewide planning, funding, rules of court and performance measures with local pilot projects that receive education, technical assistance, assessment tools, information and technological resources.

The education of judicial officers, court staff and court experts includes an expansive body of knowledge essential to a well-functioning family court, ranging from substantive family law to court management, child development, working with self-represented litigants and identifying and responding to violence and substance abuse.

Courts also can provide public information and education through local court and judicial branch websites. Such content can be translated for parties with limited English proficiency. California courts' Online Self-Help Center offers the public over 900 pages of legal information in both English and Spanish. Court administration also can offer translated forms and online assistance for self-represented parties.

Meaningful access to justice begins with tools to assist parties in bringing a case to court and continues with support to complete cases. A statewide survey of Californians found that the single greatest obstacle to bringing a case to court is the inability to afford representation. Once in court, a high proportion of parties is unable to

complete the process to judgment. Court administrators focus on physical access to court buildings, signage in multiple languages, language access plans and interpreter services, and legal information and self-help services for the unrepresented. There also is increased awareness of the financial burden that continuances place on parties who must arrange childcare, transportation and leave work for multiple court appearances. To insure meaningful access to justice for Native Americans, state courts are now working collaboratively with tribal courts.

The challenges facing family courts also demand a rethinking of court practices and procedures. Improved screening and assessment of the safety of parties and court personnel is an important public safety goal. Court technology must identify multiple cases or cases in other jurisdictions. It should enable exchange of information with justice partners, such as child support services and child welfare. It should provide case management and performance feedback to the court systems.

In California, extensive study and training has focused on effective and efficient methods for managing a complex family law caseload. An active program in collaborative justice courts is introducing innovations in addressing family law cases involving homelessness, mental health issues and substance abuse. A special task force on Domestic Violence Practice and Procedures is implementing recommendations to improve court responses to domestic violence.

Cases involving children and families are a major part of the court docket in California and other states and often require court and court-connected services that go beyond limited traditional judicial decision-making. Family courts are one of the most common contacts the public has with our court system. Respect for family law litigants and adequate resources to support family court processes are essential to public trust and confidence in the courts.



Diane Nunn, Director of California's Center for Families, Children & the Courts, is an attorney who has worked in private practice, court and policy positions. She is the recipient of the Legal Advocacy Award from the National Association of Counsel for Children and a distinguished service award from California's Judicial Council. She has been recognized by California Court Appointed Special Advocates (CASA) programs for her efforts on behalf of CASA programs and the children they serve.



Charlene Depner, California Center for Families, Children & the Courts Assistant Director, holds a Ph.D. in social psychology and has worked in both academic and government research management. She received the Stanley Cohen Distinguished Research Award from the Association of Family and Conciliation Courts for her work on improving the utility of research for practitioners and policy audiences.

Family Law Education Project Seeks Law School Curriculum Reform

BY ANDREW SCHEPARD

Family law curricula currently offered at most law schools need an overhaul if family law education is to begin to prepare current students for the challenges of practice, participants at the Families Matter Symposium agreed. Fortunately, a number of law professors and organizations, through the Family Law Education Reform project (FLER), have begun work to revise the family law curriculum to meet the needs of 21st century legal practice.

FLER is sponsored by the Center for Children, Families and the Law of Hofstra Law School, William Mitchell Law School and the Association of Family and Conciliation Courts (AFCC), an interdisciplinary professional association of judges, lawyers, mediators, mental health professionals, social service professionals and court administrators dedicated to the resolution of family conflict.

The FLER project began with a systematic examination of current courses and teaching materials and organized several “think tank” conferences in which family law professors and stakeholders in the family law system shared their views on the family law curriculum. It surveyed judges, lawyers, mediators, mental health professionals and others about what knowledge and skills are required to effectively practice family law.

FLER issued a final report that is a call for action by law schools to improve their family law curricula. (Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Project Final Report*, 44 Fam. Ct. Rev. 524 (2006).) The FLER report documents the dramatic change in family law practice: “In the last quarter century, the process of resolving legal family disputes has, both literally and metaphorically, moved from confrontation toward collaboration and from the courtroom to the conference room.” (Andrew Schepard & Peter Salem, *Foreword to the Special Issue on the Family Law Education Reform Project*, 44 Fam. Ct. Rev. 513 (2006).)

Today’s family lawyer must be fully equipped to work with professionals from different disciplines and represent clients in multiple dispute resolution processes in an increasingly complex system. Emerging models call for problem solving, collaboration and unbundled (limited task) representation and challenge the adversarial model of lawyer representation. Many argue that family lawyers should have different ethical responsibilities than lawyers in traditional civil and criminal cases, including discussing alternative dispute resolution and an obligation to “do no harm” to their clients’ children.

The FLER report documents that the current law school family law curriculum does not begin to teach what stakeholders agree are vital skills and knowledge for future family lawyers—listening, setting realistic expectations for clients, involving clients in decision-making, and identifying clients’ interests. Among the knowledge areas overlooked in many family law courses, but central to its practice, are financial issues, the impact of separation and divorce on parents and children, ethical dimensions of family law practice and the dynamics of domestic violence, child abuse and neglect.

The conclusions and recommendations of the FLER report were endorsed by the National Council of Juvenile and Family Court Judges, the American Bar Association (ABA) Section of Dispute Resolution, the National Association of Counsel for Children, the Association for Conflict Resolution and the International Academy of Collaborative Professionals (collaborative lawyers). Many law professors, judges, lawyers, mediators and mental health professionals also approved them.

The FLER report also notes that efforts to modernize the family law curriculum are underway at a number of law schools. My own law school, Hofstra University School of Law, for example, has created a Child and Family Advocacy Fellowship Program to attract students interested in public service family law by offering them scholarships in return for practicing in a public service setting after graduation. Fellows are trained in an interdisciplinary educational environment of clinics, simulation courses, internships and research and writing, where they work with mental health and social service professionals to provide effective representation for children while they participate in ongoing education and research and improve services for children in need.

The FLER project is continuing its efforts to reform family law education beyond the report. For example:

- William Mitchell Law School hosted a follow-up conference on FLER for law school faculty, which featured a dialogue between the law professors in attendance and members of the Minnesota Chapter of the American Academy of Matrimonial Lawyers (AAML). AAML partnered with Mitchell and with Hamline University School of Law to create a course for law students consistent with FLER principles.
- The FLER project has established a website for family law professors which contains simulation exercises such as interviewing, counseling, negotiation and mediation advocacy that are donated by faculty or bar groups for use in family law education. The website contains short “issue papers” on subjects like the needs of the children of divorce that professors can use in classes.
- AAML recently developed videos specifically for the FLER project illustrating different philosophies of client interviewing and counseling.

The enthusiastic discussion of the need for family law education reform at the Families Matter Symposium was thus welcomed, as it suggests that FLER is on the right track. FLER looks forward to further developing family law education to meet the needs of 21st century family law clients.



Andrew Schepard is a professor of law and director of Hofstra University School of Law’s Center for Children, Families and the Law. He also is co-chair of the Family Law Education Reform project (FLER).

Thorough Training Is Essential for All Child Custody Evaluators

BY PHILIP M. STAHL

The need to adequately train child custody evaluators and the recognition that family law work is interdisciplinary were two key points pertaining to the work of child custody evaluators at the Families Matter Symposium.

The Symposium focused on developing strategies and services designed to improve the lives of families going through the family legal process. With participants including attorneys, judges, law professors, researchers, mediators, financial experts, court administrators and psychologists, among others, there was a diverse approach to improving the court system.

In general, child custody evaluators are included in the family court system when there are specific questions that need to be addressed to assist the court and ultimately reach a conclusion about the “best interests of the child.”

First, the Symposium participants’ breakout group discussed the issue of adequate training for child custody evaluators. They clearly agreed that all child custody evaluators must have thorough, up-to-date and relevant training in the following areas: family dynamics; the impact of divorce on children; child development; research on various parenting plans; assessment of adults and children; and the substantive issues of relocation, high conflict, child alienation, and domestic violence. In particular, there was significant concern raised that many child custody evaluators do not have adequate training in domestic violence, including the impact of domestic violence on children and families, and critical issues in the development of parenting plans when there are findings of domestic violence. It was pointed out that California psychologists are required to have ongoing continuing education in all of these areas, with a strong focus on the research in domestic violence. The California model for continuing education and understanding of domestic violence could be utilized in other jurisdictions to improve the training for those appointed to do child custody evaluations.

A second critical issue for custody evaluators was the continued recognition that family law work is interdisciplinary and requires attorneys and judges to understand relevant mental health issues. At the same time, psychologists and custody evaluators need to understand relevant statutory and case law, state and local court rules, and have perhaps a cursory understanding of rules of evidence.

Symposium participants noted that custody evaluators might not be sufficiently knowledgeable about these relevant practice areas. They learned that the Association of Family and Conciliation Courts (AFCC) and the American Psychological Association (APA), respectively, have promulgated relevant Model Standards and Guidelines for Child Custody Evaluations.

A third area of interest concerned the resources available for families and the courts. Most Symposium participants agreed that there were not sufficient resources available at the state level, includ-

ing judges, well-trained mental health professionals and/or well-trained attorneys, to support the needs of families experiencing divorce and separation. Though not available to all families of separation and divorce, research supports the benefit of mediation. Similarly, divorce education is not available to enough families. Litigation is costly, evaluations are expensive and neither the families nor the system have the resources to ensure that necessary services are available to all families.

Additionally, there may not be sufficient numbers of qualified mediators, evaluators and family law attorneys to meet the needs of families in rural and smaller communities. This may result in a two-tiered system of justice in which wealthier families in large cities receive the services they need, while others outside the metropolitan area do not. It is important to develop a system of low-cost, brief and focused evaluations that assists the court’s understanding of families in the absence of sufficient resources for more comprehensive family assessments.

The final “take away” from this Symposium is the need for more and better research that can assist families. Families do matter and children matter. It is important to ensure that custody evaluators and judges make sound decisions on behalf of children and families. Children and families are the resources of the future and, while research has helped inform our thinking, there is still insufficient understanding of the following issues:

- **Domestic violence and the impact of various types of domestic violence on children;**
- **Alienated children;**
- **Never-married parents;**
- **Balancing the needs of infants and toddlers in potentially chaotic family systems;**
- **What types of parenting plans work for low conflict, medium conflict, and high conflict families; and**
- **The value (or lack thereof) of various presumptions associated with shared physical custody, overnights with young children, relocation and other legislated issues for families of divorce.**

Such research currently is being conducted in other countries. It is important to families that judges, attorneys and child custody evaluators are informed by this cross-cultural research and that good research continues.



Philip M. Stahl, Ph.D., ABPP (Forensic), is a psychologist living in Arizona. He conducts child custody evaluations and provides consultation and expert witness testimony across the country. He is the author of *Parenting After Divorce* (Impact Publishers, 2008) and *Conducting Child Custody Evaluations: From Basic to Complex Issues* (Sage Publications, 2010).

Legal System Must Change to Help Families

BY LOUISE PHIPPS SENFT

We opened the Families Matter Symposium with the stated goal of creating a more therapeutic, holistic and unified court for families. The Symposium endorsed the position that the law's intervention should leave families better off than they had been before coming to court. We gathered to consider ideas on how best to accomplish this.

Our legal system is a pillar of civil society. Yet, it is this legal system that is failing our families at both the bar and the bench levels. If the goal of the law's intervention is to improve the family situation, then we need a sea change in the court system. Our courts, advocates and other interventionists must collaborate and work on strengthening the core family unit.

We must take an authentic look at what is necessary for such a change in the court system. We need the family law bar to look introspectively at its own practices and to develop leaders who influence the bench through their own modeling. I hope that the bar will champion this change. It will not happen everywhere, and it will not happen overnight. Nonetheless, in the famous words of anthropologist Margaret Mead, *"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed it is the only thing that ever has."*

We need leaders who understand and embrace a relational approach to family interaction. To achieve this, we need to change what we do as advocates and to reconsider why we do it. We need to redefine our beliefs about what families are capable of when their individual rights to self-determination are honored. Maryland's Chief Judge of the Court of Appeals Robert M. Bell has observed that litigation is adversarial by nature.

As lawyers, we could commit to promoting dialogue among parties by having four-way negotiations that include clients. In a program in upstate New York, the domestic violence advocates and family mediators have partnered in promoting mediation that fosters the dialogue between the parents or the partners. Each person speaks and is heard, with no mediator goal of getting the parties to agree. The outcomes have been more positive experiences because of changes in the destructive conflict experience itself, regardless of the various legal outcomes.

These changes would improve the quality of how we resolve family conflict, resulting in stronger, more long-lasting agreements that keep families from returning to the court system.

As judges and law school deans, we could overhaul mediation and negotiation courses and mandatory content of mediation training to require all mediators and law students to be trained in relational conflict theory. They could be taught how to focus on the interaction and quality of the decision making, breathing life into the ethical mediator standard of "party self-determination." They could learn to commit to a relational transformative approach rather than force parties to agree or to "resolve" their conflicts when they

are still feeling crazy, scared and mean. Settling for a mediation that is merely a settlement conference between the attorneys or, at best, a problem-solving meeting during which the mediator "problem solves" for a family in the way that the mediator deems best, only leaves families more isolated and confused, and typically they return to the court system.

We also need to strengthen families and family system dynamics. The existence of the nuclear family has been declining for years, and the idea of two loving parents does not seem to be as prevalent. Family and marital relationships, while private and intimate, also have a public and communal aspect, which includes a civic responsibility to promote social welfare. The connection between these two spheres of public and private must not be overlooked.

To strengthen family system dynamics, we should seek to understand the experience of family conflict itself. We must understand that family members in court are experiencing varying states of weakness and self-absorption. In other words, their conflicts cause them to feel distracted, uncertain or confused and to be hostile, adversarial or defensive. The legal system does these families a disservice by making assumptions about what is best for them. Additionally, many advocates lack knowledge in some key areas, such as neuroscience, attachment and bonding theory, and conflict theory—an understanding of which would enrich our professional approach to family conflict.

Finally, I would propose new court rules mandating that family law attorneys and family counselors are trained every two years in the dynamics of family conflict from a framework based on neuroscience and relational conflict theory. We should borrow from activist groups, such as Mothers Against Drunk Driving, to generate support for ideas in the courts, including "Using Violence to Get What You Want is Not Good" and "Children Need Consistent, Loving Caregivers." If federal and state government dollars were devoted to such campaigns for 20 years, I believe we would see some changes, including better public health and welfare with regard to violence and drugs, as well as families more capable of contributing to civil society.

We were lacking a call to action, and the Families Matter Symposium was an important step toward the future our family court system needs.



Louise Phipps Senft is a Baltimore attorney, mediator and trainer with over 18 years of experience. She has mediated over 3,500 matters involving divorce, separation and marital issues, business and employment disputes.



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DVD on Unified Family Courts Now Available

A compelling DVD, "Unified Family Courts: Efficient, Effective, Responsive," puts a human face on the Unified Family Court (UFC), a court model designed to address the 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.