

Chapter 5

Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach

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[W]hile the challenges of a contemporary . . . family court docket may be fierce, we can unquestionably find ways to meet them and do better. I am simply unwilling to adopt a despairing and defeatist attitude that ‘nothing works’ or—put another way—‘everything stinks, but don’t change a thing.’¹

Introduction

State court caseload statistics reveal that people increasingly are using the courts to resolve their family legal disputes.² For example, in Maryland, nearly 45 % of the total trial court filings involve family and juvenile cases, exceeding the portion devoted to either criminal or tort cases.³ Further, the majority of family law litigants are not represented by attorneys, a recent phenomenon that presents special challenges for courts.⁴

¹ Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 Yale L. & Pol’y Rev. 125, 147 (2004).

² Family law matters are defined to include divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile cases (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; and withholding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations. See, e.g., Del. Code Ann. tit. 10, §§ 921–925, 927–928 (West 2010).

³ *2008–2009 Statistical Digest*, MD Courts.Gov, <http://mdcourts.gov/publications/annualreport/reports/20082009/statisticaldigest.pdf> (last visited August 18, 2010); see also *Annual Statistical Report 2009*, Courts.Alaska.Gov, <http://www.courts.alaska.gov/reports/annualrep-fy08.pdf> (last visited August 18, 2010) (51 %); *2009 New Case Filings and Reopened Cases*, Courts.MT.Gov, http://courts.mt.gov/content/dcourt/stats/2009/case_filings.pdf (last visited September 2, 2010) (49 %).

⁴ Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. Cal. L. Rev. 469, 472–473 (1998) [hereinafter Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*].

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In addition to the increasing number of family law cases, the problems associated with family legal issues are complex. Many families now regularly face challenges related to unemployment, poverty, homelessness, substance abuse, mental illness, and domestic violence, to name a few.⁵ Dramatic changes in the structure and function of the family, including new reproductive technologies and increased life expectancy,⁶ also complicate the resolution of family law matters. Adjudication of these matters challenges the court process, which often is ill equipped to handle the volume and scope of family law cases in contemporary American society.

[T]he judicial system present in most states . . . contributes to the demise of the family unit. Under the current system, it is not uncommon to have a family involved with one judge because of an adult abuse proceeding, a second judge because of the ensuing divorce, with still another judge because of child abuse and neglect allegations, and a fourth judge if the abuse allegations led to criminal charges. The fragmented judicial system is costly to litigants, inefficient in the use of judicial resources, and can result in the issuance of diverse or even conflicting orders affecting the family. Also, “too often courthouse resolutions resolve only the legal conflicts, leaving unaddressed the underlying personal relationship and psychological disputes.”⁷

One court reform that attempts to address these issues is a concept receiving increasing consideration and about which I have written extensively is the unified family court.⁸

⁵ Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 Ind. L.J. 775, 777–780 (1997) [hereinafter Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*].

⁶ *Id.* at 777.

⁷ Paul A. Williams, *A Unified Family Court for Missouri*, 63 UMKC L. Rev. 383, 383–384 (1994) (citation omitted) (quoting Ann L. Milne, *Family Law From a Family System Perspective—The Binary Equation*, 21 Pac. L.J. 933, 934 (1990) (detailing Missouri’s legislative efforts to create a unified family court).

⁸ See Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 477 (proposing a model structure to create a unified family court based on an ecological and therapeutic approach to family law adjudication); Barbara A. Babb, *Reevaluating Where We Stand: A Comprehensive Survey of America’s Family Justice Systems*, 46 FAM. Ct. Rev. 230 (2008) [hereinafter Babb, *Reevaluating Where We Stand*] (updating the surveys conducted in Barbara A. Babb, *Where We Stand: An Analysis of America’s Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 FAM. L.Q. 31, 34 (1998) [hereinafter Babb, *Where We Stand*] (presenting a comprehensive overview of a nationwide survey determining how each state’s courts handle family law matters, illustrating the inconsistency in how America’s courts process family law cases, and suggesting that states consider implementing unified family courts); see generally Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5 (detailing changes in the structure and function of the American family in the past few decades and proposing a paradigm for family law jurisprudence that utilizes an ecological and therapeutic perspective to family law decision making). For further literature, see Developments in the Law—The Law of Family and Marriage, 116 Harv. L. Rev. 2099, 2099–2122 (2003); Richard Bolt & Jana Singer, *Juristocracy in the Trenches: Problem-Solving Judges and Therapeutic Jurisprudence in Drug Treatment Courts and Unified Family Courts*, 65 Md. L. Rev. 82 (2006) (examining the developments in the unified family court and drug treatment court systems); James W. Bozzomo & Andrew Shepard, *Efficiency, Therapeutic Justice, Mediation and Evaluation: Reflections on a*

[A unified family court is] a single court system with comprehensive jurisdiction over all cases involving children and relating to the family. One specially trained and interested judge addresses the legal and accompanying emotional and social issues challenging each family. Then under the auspices of the family court judicial action, informal court processes and social service agencies and resources are coordinated to produce a comprehensive resolution tailored to the individual family's legal, personal, emotional, and social needs. The result is a one family—one judge system that is more efficient and more compassionate for families in crisis.⁹

Although the American Bar Association, the Association of Family and Conciliation Courts, and the National Council of Juvenile and Family Court Judges all advocate for the creation of unified family courts,¹⁰ my own research over time has revealed many states have not adopted this model, nor do they have any specialized system to handle family law matters.¹¹

Reacting to similar challenges, criminal justice systems in many states have addressed issues like those facing family justice systems—burgeoning numbers compounded by complex social problems—by creating specialized problem-solving courts. As discussed by the other authors in this volume, “[p]roblem-solving courts are part of the formal criminal justice system. They seek not to divert cases out of the system but rather to reengineer the system itself.”¹² Beginning with the first drug treatment court established in Miami, Florida, in 1989, “[t]here are now more than 2,000 problem-solving courts.”¹³ While the most well-developed problem-solving courts are community courts, domestic-violence courts, and drug courts, “there are no fewer than eleven different kinds of problem-solving courts.”¹⁴ These include, for example, “mental-health courts, reentry courts, juvenile drug courts, DWI courts,

Survey of Unified Family Courts, 37 Fam. L.Q. 333 (2003) (detailing the progression of unified family courts in the 21st century); Deborah J. Chase, Pro Se Justice and Unified Family Courts, 37 Fam. L.Q. 403 (2003) (discussing how the complexity of domestic issues and the increase in pro se litigants has pushed courts toward a unified family system); Jane C. Murphy, Revitalizing the Adversary System in Family Law, 78 U. Cin. L. Rev. 891 (2010) (discussing unified family courts' ability to resolve family conflicts through therapeutic and adversarial approaches); Jane M. Spinak, Adding Value to Families: The Potential of Model Family Courts, 2002 Wis. L. Rev. 331 (2002) (reviewing New York and other states' family court systems through different perspectives).

⁹ Williams, *supra* note 7, at 384.

¹⁰ Symposium, *American Bar Association Policy on Unified Family Courts*, 32 Fam. L.Q. 1 (1998); *Resolution Regarding the Unified Model Court Concept Paper of the NCJFCJ Cross-Over Committee*, NCJFCJ.org, <http://www.ncjfcj.org/images/stories/dept/resolutions/cross-over.comm.resolution.pdf> (last visited August 18, 2010).

¹¹ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 231; Barbara A. Babb, *Where We Stand Redux: Another Look at America's Family Law Adjudicatory Systems*, 35 Fam. L.Q. 627 (2002) [hereinafter Babb, *Where We Stand Redux*]; Babb, *Where We Stand*, *supra* note 8, at 39–40; Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 483–485.

¹² Greg Berman & John Feinblatt, *Good Courts: The Case for Problem Solving Justice* 42 (2005).

¹³ *Id.* at 9.

¹⁴ *Id.* at 7.

family-treatment courts, homeless courts, and youth courts.”¹⁵ The common element to all of these specialized courts is “working to ensure not just that the punishment fits the crime . . . but that the process fits the problem. These innovative courts encourage judges and attorneys to think of themselves as problem solvers rather than as simply case processors.”¹⁶

This chapter advocates that family law cases also deserve and require this type of problem-solving justice. *Introduction* of the chapter summarizes my interdisciplinary approach to family law decision-making and to court reform in family law through the application of a therapeutic jurisprudence. In *Therapeutic Jurisprudence and Family Law Court Reform*, I continue in a similar vein by focusing on the developmental psychology research on the ecology of human development. *The Ecology of Human Development and Family Court Reform* reviews my blueprint for the creation of a model unified family court that incorporates the interdisciplinary perspective. *Blueprint for an Interdisciplinary Unified Family Court* provides brief concluding remarks about the importance of applying the general problem-solving court philosophy to my blueprint for unified family courts.

Therapeutic Jurisprudence and Family Law Court Reform

“Family law cases focus on some of the most intimate, emotional, and all-encompassing aspects of parties’ personal lives.”¹⁷ The law is intervening explicitly by determining how families and children live. Because of this unique and powerful aspect of these cases, the legal process should seek a way to address effectively the legal and nonlegal issues, as well as a method to account for all the competing influences on the parties’ lives. Therapeutic jurisprudence, a concept from mental health law that now is applied internationally and to broad areas of the law,¹⁸ suggests how courts should proceed if they intervene in people’s lives. The ecology of

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 5.

¹⁷ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 471; see also Steven H. Hobbs, *In Search of Family Value: Constructing a Framework for Jurisprudence Discourse*, 75 Marq. L. Rev. 529, 530 (1992). Hobbs describes the character of family law jurisprudence:

Each case is the real-life drama of a family working out what is valuable and important to it, while at the same time remaining within the bounds of the law. When our lives interact with the law, a discourse arises about who we are, what our hopes and dreams are for our family, how we form companionate relationships, and how we view raising children.

Id.

¹⁸ See generally Bruce J. Winick et al., *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* (2003); Dennis P. Stolle et al., *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (2000); *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (David B. Wexler & Bruce J. Winick eds., 1997); Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* 645 (David B. Wexler & Bruce J. Winick eds., 1997) [hereinafter Winick, *The Jurisprudence of Therapeutic Jurisprudence*]; David B. Wexler et al., *Essays in Therapeutic Jurisprudence* (1991); David B.

human development,¹⁹ a research paradigm from the social sciences, offers to family law attorneys and decision-makers, as well as to court reformers, an analytical tool to account for the many factors affecting parties' lives. When these constructs are applied together, they empower the justice system to provide more effective solutions to contemporary family legal issues. I address therapeutic jurisprudence in this section and address ecology of human development in the next.

Professor David Wexler, one of the co-founders with Professor Bruce Winick of the concept of therapeutic jurisprudence, defines it as follows:

Therapeutic jurisprudence is the study of the role of law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic or anti-therapeutic consequences. Such consequences may flow from substantive rules, legal procedures, or from the behavior of legal actors (lawyers or judges).

The task of therapeutic jurisprudence is to identify—and ultimately to examine empirically—relationships between legal arrangements and therapeutic outcomes. The research task is a cooperative and thoroughly interdisciplinary one.²⁰

Therapeutic jurisprudence applied in the family law context requires that the court focus on achieving outcomes that help the individuals and families involved in family law cases.²¹ The individual's own viewpoint is important in determining what constitutes a therapeutic outcome, something attorneys and decision-makers must attempt to honor.²² Nonetheless, "what is ultimately regarded as 'therapeutic'—and the law's role in promoting therapeutic aims is a socio-political decision, decided by legal-political decision-makers, with . . . important input given to consumers or recipients of the law's therapeutic aims."²³ Therapeutic jurisprudence calls for an understanding of "the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects."²⁴

A therapeutic jurisprudential approach to family law practice and decision-making and to court reform in family law aims to improve the lives of families and children

Wexler et al., *Therapeutic Jurisprudence: the law as a Therapeutic Agent* (1990); International Network on Therapeutic Jurisprudence, <http://www.law.arizona.edu/depts/upr-intj/> (last visited August 19, 2010).

¹⁹ See generally Urie Bronfenbrenner, *The Ecology of Human Development* (1979).

²⁰ David B. Wexler, *Putting Mental Health Into Mental Health Law: Therapeutic Jurisprudence*, in *Essays in Therapeutic Jurisprudence* 3, 8 (David B. Wexler & Bruce J. Winick eds., 1991) (citation omitted).

²¹ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4; Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5.

²² See Winick, *The Jurisprudence of Therapeutic Jurisprudence*, *supra* note 18, at 653.

²³ David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, in *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* 811–12 (David B. Wexler & Bruce J. Winick eds., 1997) [hereinafter Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*] (citations omitted).

²⁴ Christopher Slobogin, *Therapeutic Jurisprudence Five Dilemmas to Ponder*, 1 *Psychol. Pub. Pol'y & L.* 193, 196 (1995). But see Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, *supra* note 23, at 827 ("[R]esearch into the therapeutic or antitherapeutic consequences of various arrangements applying or administering existing law has not received very much attention. This is . . . a most promising avenue of microanalytic therapeutic jurisprudence.").

as a result of their involvement with the family justice system.²⁵ To accomplish this, attorneys and decision-makers must contemplate legal outcomes intended to produce more effective functioning on the part of families and children.²⁶ As I have written, “[i]n the field of family law, therapeutic jurisprudence should strive to protect families and children from present and future harms, to reduce emotional turmoil, to promote family harmony or preservation, and to provide individualized and efficient, effective justice.”²⁷ As Professors Wexler and Winick caution, however, “[t]herapeutic jurisprudence in no way suggests that therapeutic considerations should trump other considerations. Therapeutic considerations are but one category of important considerations, as are autonomy, integrity of the fact-finding process, community safety, and more.”²⁸

Accepting therapeutic jurisprudence as a goal of family law practice and decision-making requires insisting upon this therapeutic orientation for all professionals involved in the process, including attorneys, judges, mental health professionals, special masters, and mediators, among others.²⁹ This orientation “has the potential to facilitate problem-solving and to positively enhance the quality of the parties’ daily lives, thereby rendering a more effective outcome for individuals and families.”³⁰ In addition, “[s]ociety as a whole must begin to acknowledge that this type of intervention and support is therapeutic for families, rather than viewing the intervention as an indication that families have failed.”³¹

For example, Randall Kessler describes a few experiences he has had in a Georgia Unified Family Court in which the judges and attorneys have approached cases holistically and with the goal of closure.³² Kessler described cases where the judges and attorneys worked together to avoid long appeals process and embarrassment for the parties.³³ The “one-stop judicial shopping” provided by a unified family court results in a more efficient system where families only appear before one judge even if there are a variety of ongoing and current legal issues (e.g., domestic violence protection petition, child support proceedings, divorce,

²⁵ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 509–514; Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5, at 798–801.

²⁶ See Winick, *The Jurisprudence of Therapeutic Jurisprudence*, *supra* note 18, at 655.

²⁷ Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5, at 800.

²⁸ Winick, *The Jurisprudence of Therapeutic Jurisprudence*, *supra* note 18, at 714; David B. Wexler & Bruce J. Winick, *Patients, Professionals, and the Path of Therapeutic Jurisprudence: A Response to Petrila*, in *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* 707, 708 (David B. Wexler & Bruce J. Winick eds., 1997) (citation omitted).

²⁹ See Lynne M. Kenney & Diane Vigil, *A Lawyer’s Guide to Therapeutic Interventions in Domestic Relations Court*, 28 Ariz. St. L.J. 629, 635–38 (1996).

³⁰ Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5, at 802.

³¹ *Id.* at 805 & n.187.

³² Randall M. Kessler, *Unified Family Court: A Practitioner’s Perspective on Unified Family Courts: Case Studies*, 46 Fam. Ct. Rev. 279–281 (2008).

³³ *Id.* at 281.

etc.).³⁴ The rationale behind the “one-stop” approach rests on the idea that the myriad of legal issues a family can experience are very often interrelated and interdependent³⁵ and coordination of efforts should result in a system that has less duplication and is more effective.³⁶

The Ecology of Human Development and Family Court Reform

To be most effective and helpful to family law litigants, the family law process must allow for a comprehensive understanding of all the legal and nonlegal issues the parties face. I have proposed the application of a theoretical research paradigm from the social sciences, “the ecology of human development,”³⁷ as a valuable framework to structure this holistic approach to both the family legal process and court structure. This section outlines the relevant underpinnings of this Professor Urie Bronfenbrenner’s model, which promotes consideration of the interaction among individuals, institutions, and the social environment; assists with the identification of problems; and contributes to the development of solutions.³⁸ The ultimate aim of the ecological approach is to strengthen the connections among these interactions, institutions, and influences to improve families’ and children’s functioning.³⁹ Bronfenbrenner “sees the social environment as a grand human experiment, and thus invites our efforts to improve it, to make it better.”⁴⁰

³⁴ Andrew Schepard, *Editorial Note: Special Issues on Unified Family Courts: “The White Flame of Progress,”* 46 *Fam. Ct. Rev.* 217–222 (2008).

³⁵ *Id.* at 218.

³⁶ Claudia Wright, *Representation of Children in a Unified Family Court System in Florida*, 14 *U. Fla. J.L. & Pub. Pol’y* 179–192 (2003).

³⁷ See generally Bronfenbrenner, *supra* note 19.

³⁸ Gary B. Melton, *Child Advocacy: Psychological Issues and Interventions* 64 (1983); see also Gary B. Melton et al., *Community Mental Health Centers and the Courts: An Evaluation of Community-Based Forensic Services* (1985). This book offers a comprehensive examination of the relationship between the mental health professions and the legal system, with suggestions for strengthening that relationship.

³⁹ James Garbarino & Robert H. Abramowitz, *Sociocultural Risk and Opportunity*, in *Children and Families in the Social Environment* 35 (James Garbarino et al. eds., 2d ed. 1992). Application of an ecological perspective may present challenges:

It would be easy to cast aside the many interconnections and pretend that there is *just* the developing child, or *just* the family as a social unit, or *just* the community power structure, or *just* the professional delivering human services. It would be easy, but we believe it would not be enough. Rather, we seek to capture the whole tangled mass of relationships connecting child, family, and social environment.

James Garbarino & Mario T. Gaboury, *An Introduction*, in *Children and Families in the Social Environment* 1 (James Garbarino et al. eds., 2d ed. 1992) [hereinafter Garbarino, *An Introduction*] (emphasis in original).

⁴⁰ Garbarino, *An Introduction*, *supra* note 34, at 3.

Bronfenbrenner accounts for the competing influences on people's lives by arranging the settings within which individuals live from smallest to largest⁴¹—"as a set of nested structures, each inside the next, like a set of Russian dolls."⁴² The most immediate context within which people live is the "microsystem,"⁴³ such as the husband–wife relationship, the parent–child relationship, and sibling relationships. The next level or setting is the "mesosystem,"⁴⁴ or the relationships between microsystems, such as the interconnections between a child's school and his home setting or between a child's school and the neighborhood setting. The "exosystem"⁴⁵ is the next largest setting and encompasses those setting that have power over one's life but in which one does not participate, such as the influence of a parent's workplace on a child's life. Finally, the overarching ideological patterns of a culture or subculture, or shared assumptions and social policy, are known as the "macrosystem."⁴⁶ Bronfenbrenner believes that increasing the number and extent of individuals' and families' connections among these various systems can function as positive influences on family life.⁴⁷ He also imposes a life-course perspective with regard to the lives of families and children, recognizing that situations and their effects on individuals and families may change over time.⁴⁸

⁴¹ Bronfenbrenner, *supra* note 19, at 7, 22.

⁴² *Id.* at 3.

⁴³ *Id.* at 7, 22.

⁴⁴ *Id.* at 7–8, 25.

⁴⁵ *Id.*

⁴⁶ James Garbarino & Robert H. Abramowitz, *The Ecology of Human Development, in Children and Families in the Social Environment* 11, 27 (James Garbarino ed., 2d ed. 1992) [hereinafter Garbarino, *The Ecology of Human Development*].

⁴⁷ *American Families: Trends and Pressures, 1973: Hearings on Examination of the Influence that Governmental Policies Have on American Families Before the Subcomm. on Children and Youth of the Senate Comm. on Labor and Public Welfare, 93rd Cong. 31962, 31964–65 (1973)* [hereinafter *Hearings*] (statement of Urie Bronfenbrenner, Professor of Human Development and Family Studies and Psychology, College of Human Ecology, Cornell University).

⁴⁸ Garbarino, *An Introduction, supra* note 34, at 9–10; Garbarino, *The Ecology of Human Development, supra* note 41, at 29–30. The following illustrates the need for a life-course perspective:

Since most data are a cross-sectional snapshot of families, families are assumed to be static. A more realistic (though much more difficult) approach is to recognize and analyze the fluidity, change, and transitions as individuals live in a variety of family patterns. There are periods in the life cycle when an individual family may be one in which the father works and the mother stays home with the children. This stage is relatively short-lived when the total family life course is analyzed. There are periods, also, when women (and men) find themselves raising a family without a spouse present, but again, for many this is a transition period. None of these types or stages, however, should be viewed as the dominant or "ideal" family type. No one family type is superior to another or to be favored over others. Effective policies and services should be sensitive to the needs and stresses of certain types of families and recognize that some families are at greater risk (statistically) than others.

Applied to family law decision-making, the value of this ecological approach is “that it reveals connections that might otherwise go unnoticed and helps us look beyond the immediate and the obvious to see where the most significant influences lie.”⁴⁹ Further, “the ecological perspective on human development offers a kind of map for steering a course of study and intervention.”⁵⁰ Bronfenbrenner suggests that each level of the ecology can produce benefits or risks, and he urges strengthening these natural interactions or interconnections to enhance individual and family functioning.⁵¹ Applying the ecology of human development paradigm to families’ legal problems can assist lawyers, judges, and other professionals involved with the family justice system to identify the breadth and scope of factors affecting people’s lives and allow them to have a holistic view of families’ functioning. Court professionals can “look beyond the individual litigants . . . to holistically examine the larger social environments in which participants live, and to fashion legal remedies that strengthen a family’s supportive relationships.”⁵² This expanded knowledge permits all family justice system professionals to intervene more effectively, thereby promoting more therapeutic outcomes for families and children.

In practice, this holistic approach encourages court personnel to consider the variety of influences on the family in order to provide more effective solutions.⁵³ For example, the courts would consider the organizations and relationships the family members have with their neighborhoods, religious organizations, and schools.⁵⁴ Although the courts may not be able to change the family’s mesosystem, it would be able to consider it in deciding how to apply the law in a way that is best for the family. That means the entire court process would do a better job of accommodating the complex factors that contributed to the family being within the court system.⁵⁵ One way that unified family courts do just this is through the “one-stop” approach. Many families who are in need of court interventions are also dealing with employment and financial strains. By considering these strains and making the process more efficient, the families will have a better chance at success.

Likewise, the court structure itself must assist decision-makers to consider the various systems affecting the family. Courts must be guided to view schools, neighborhoods, places of employment, religious organizations, and other institutions within which family members participate as potential influences upon a family’s

Robert M. Maroney, *Families, Social Services, and Social Policy: The Issue of Shared Responsibility* 50 (1980).

⁴⁹ Garbarino, *The Ecology of Human Development*, *supra* note 41, at 19.

⁵⁰ *Id.* at 28.

⁵¹ Bronfenbrenner, *supra* note 19, at 214; *Hearings*, *supra* note 41, at 157 (statement of Urie Bronfenbrenner).

⁵² Babb, *An Interdisciplinary Approach to Family Law Jurisprudence*, *supra* note 5, at 803.

⁵³ Barbara A. Babb & Judith D. Moran, Substance Abuse, Families, and Unified Family Courts: The Creation of a Caring Justice System, 3 *J. Health Pol’y & L.* 1, 25–33 (1999) [hereinafter Babb & Moran, Substance Abuse, Families, and Unified Family Courts].

⁵⁴ *Id.*

⁵⁵ See Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4.

legal matters. I have created a blueprint for a particular court structure, the unified family court, with the theoretical underpinnings of therapeutic jurisprudence and the ecology of human development set within the general problem-solving template, as the mechanism to achieve this structured consideration of families' and children's lives, thereby assisting in the fashioning of more effective resolutions to families' legal problems.⁵⁶

Blueprint for an Interdisciplinary Unified Family Court

A unified family court is one that coordinates the work of independent forums and agencies, each of which has some limited role to resolve family legal matters.⁵⁷ This section describes the blueprint for a model unified family court framed by the ecology of human development and driven by therapeutic jurisprudence. This interdisciplinary framework empowers the family justice system to fashion the most appropriate outcomes for families and children. The section also describes certain aspects of the current design of America's family justice systems based upon the results of a national survey, which I have conducted in 1998,⁵⁸ 2002,⁵⁹ and most recently in 2008.⁶⁰

Separate Court Structure

It is imperative to consider family law issues within a specialized court due to the diversity of and relationships among the legal problems, as well as the intimacy of the participants and the effect of these problems on the stability of people's lives.⁶¹ As one scholar has noted, "a single court could examine the entire relationship between parent and parent, parent and child, child and child, family and in-laws, and family and the public. And, having explored the whole complex of relationships, a single court could provide consistent and continuing consideration of each aspect of the problem."⁶²

⁵⁶ *Id.*

⁵⁷ See Roscoe Pound, *The Place of the Family Court in the Judicial System*, 5 Nat'l Probation & Parole Ass'n J. 161 (1959).

⁵⁸ See Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4; Babb, *Where We Stand*, *supra* note 8.

⁵⁹ See Babb, *Where Stand Redux*, *supra* note 11.

⁶⁰ See Babb, *Reevaluating Where We Stand*, *supra* note 8. These surveys involved a written survey, telephone interviews, and e-mail exchanges with court personnel in all the states including D.C. The goal was to develop an understanding of each state's system and the way each state defined family law matters and understanding the way the cases are assigned and handled in each state.

⁶¹ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 514.

⁶² Lindsay G. Arthur, *A Family Court—Why Not?* 51 Minn. L. Rev. 226 (1966) (citation omitted) (advocating, in an early article, consolidation of family law litigation and court treatment of the entire family problem).

Courts within the last decade have begun to restructure their processing of family law cases by creating separate specialized courts or by creating divisions or departments of existing courts, known, for example, as family divisions or family departments.⁶³ In fact, only 13 states currently operate without some form of family court in existence somewhere within the state, although the rest do not necessarily have a unified family court system.⁶⁴ Given the numbers of family law cases our nation's justice systems are handling, along with the importance of family legal matters in people's lives and their effects on society, it is imperative that any family court, regardless of its structure, be established at the same level and receive the same resources and support as a trial court of general jurisdiction.⁶⁵

Another issue related to court structure is that of judicial specialization. As I have written, . . . judges assigned to specialized family courts must themselves be specialized family court jurists. The types of choices required by decision-makers to resolve family legal matters compel the need for judicial specialization. Not only must these judges fully understand the intricacies of the entire body of family law, but they also must possess an appreciation for and understanding of the social settings within which family members function, including any problems attendant to each of these settings, such as substance abuse and domestic violence.⁶⁶

Because of the complex nature of the cases, family court judges equipped to fashion the most effective or therapeutic outcomes for families and children are those educated about relevant social science literature, including child development, family dynamics, domestic violence, mental illness, substance abuse, and other issues related to family law cases.

Length of judicial assignment is another issue critical to court structure. "In order to fully comprehend the breadth of family law proceedings, as well as to understand from an ecological focus the various settings within which family law litigants live their lives, family law judges must remain within the family court system for significant periods of time."⁶⁷ In my most recent survey of America's family justice systems, I have found that in those states with some form of family court, the length of a judge's term ranges from 1 year to a life-term assignment.⁶⁸ In the majority of jurisdictions, family court judges generally serve for a term ranging between 2 and 10 years.⁶⁹ Some scholars estimate the minimum length of judicial assignment to a

⁶³ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 232 (nearly 75 % of states have some form of family court).

⁶⁴ *Id.* The thirteen states include: Alabama, Arkansas, Idaho, Iowa, Mississippi, Montana, Nebraska, Oklahoma, South Dakota, Tennessee, Utah, Virginia, and Wyoming are without a family court. *Id.* at 240 app. a.

⁶⁵ *Id.* at 231; Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 516.

⁶⁶ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 514–15.

⁶⁷ *Id.* at 515 (footnote omitted).

⁶⁸ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 234, 249 app. c.

⁶⁹ *Id.*

family court at 4 years,⁷⁰ but we do not yet have any empirical evidence that provides guidance on what would be the ideal term or even the ideal way to train these judges.

Comprehensive Subject Matter Jurisdiction

To enable a unified family court to address a family's legal and related nonlegal problems holistically, rather than in a fragmented and unrelated manner, the court should have comprehensive subject matter jurisdiction over the full range of family law issues.⁷¹

A court without this power will struggle to fully strengthen the family's interactions among the various systems within which it functions. Similarly, the court would not be at liberty to resolve related family problems, which severely interferes with the effectiveness of the court's intervention.

Unified family courts must be equipped to respond as comprehensively as possible to these related legal matters. Subject matter jurisdiction should include dissolution and related matters, such as distribution of marital property, separation, and annulment; child custody, visitation, modification, and interstate custody cases; child support establishment, modification, enforcement, and uniform interstate family support cases; determination of paternity; child abuse and neglect; termination of parental rights; domestic violence proceedings; adoption; juvenile delinquency proceedings; adult and juvenile guardianship and conservatorship; mental health matters, including civil commitment and confinement; legal-medical issues, including right to die, abortion, and living wills; emancipation; and name change.⁷²

Although experts differ about whether to include the criminal jurisdiction over intrafamilial issues as unified family court subject matter jurisdiction, such as child abuse and domestic violence,⁷³ some states are experimenting with integrated

⁷⁰ Sanford N. Katz & Jeffrey A. Kuhn, *Recommendations for a Model Family Court 4–5* (1991). *But see H. Ted Rubin & Victor Eugene Flango, Court Coordination of Family Cases 77* (1992) (estimating the minimum length of judicial assignment to a family court should be 12 months).

⁷¹ *See supra* note 2 (defining comprehensive family law subject matter jurisdiction).

⁷² Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law, supra* note 4, at 518 (footnote omitted); *see, e.g., Md. Code Ann., Md. Rule § 16–204* (West 2010).

⁷³ *See Katz & Kuhn, supra* note 60. The authors discuss the arguments for and against including criminal jurisdiction over intrafamilial matters as part of the family court:

[w]hile proponents for inclusion of this jurisdiction in family court argued that such a system promotes coordinated delivery of services to the family and discourages multiple interviewing of victims, as well as fragmented delivery, those arguing against such jurisdiction cited possible due process violations and community pressure for a more punitive stance toward offenders as rendering such jurisdiction inappropriate for the family court.

Id. at 8–9. *See also* Linda Szymanski, Theresa Homisak & E. Hunter Hurst, III, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family 8–9* (1993). The authors suggest additional arguments against including criminal jurisdiction in the family court:

domestic violence courts.⁷⁴ Integrated Domestic Violence courts hear all civil and criminal cases involving a family with domestic violence concerns.⁷⁵ The aim of these courts is to protect and assist victims and to promote defendant accountability,⁷⁶ but there are possible due process issues that the courts must address.

According to my most recent survey of America's family justice systems, of the 38 states (including District of Columbia) that have some form of family court, 24 states and the District of Columbia assign their family courts comprehensive subject matter jurisdiction.⁷⁷ Empowering unified family courts with the most inclusive subject matter jurisdiction feasible allows courts to respond as comprehensively as possible to all of a family's related legal and nonlegal matters. This promotes a more holistic assessment of a family's problems and facilitates the fashioning of more effective outcomes for the family.

Specialized Case Management and Case Processing System

In order to prevent family legal problems from remaining unresolved and escalating, it is important for these cases to receive prompt attention from the justice system. Case management and case processing, or the method by which cases proceed from initial filing through resolution, should proceed without undue delay and with active, hands-on participation from court personnel as early as possible.⁷⁸

A judge, a professional court administrator, a trained intake worker, or a team of these personnel can evaluate each case filing or intake and can determine whether the parties require immediate attention. The initial evaluation process also can result in referral of the parties to appropriate [social] services, as well as scheduling an early status conference. At

[i]nclusion of criminal jurisdiction within the family court can present a host of problems . . . First, there is a philosophical divergence between juvenile court and criminal court. Juvenile court's intervention is justified on the basis of protecting the child and is not intended as punishment but as remediation. Criminal proceedings seek to punish offenders without regard to family interests. Adult criminal proceedings require the availability of jury trial with the increased administrative burden on the restructured court system, unless the criminal jurisdiction is limited to misdemeanors.

Id. (citation omitted).

⁷⁴ Kaye, *supra* note 1, 143.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 233, 245 app. b. (Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, Wisconsin all assign their family courts comprehensive subject-matter jurisdiction).

⁷⁸ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 519–520.

this conference, the parties, their attorneys, and the judge can frame the issues in the case, discuss settlement possibilities, and consider alternatives to an adversarial trial or hearing.⁷⁹

The active case management process is ongoing throughout the life of the case and requires constant monitoring.⁸⁰ For example, in New York, the judge has an active role in leadership and the team approach with the case conferences. These case conferences allow for a more efficient approach that can better accommodate timely and appropriate interventions.⁸¹

A related aspect of case management and case processing necessitates considering who should become familiar with the history of each case, as well as how this historical and holistic knowledge can be acquired. The one judge—one case method, or the individual assignment system, of case management means that the same judge oversees a case from start to finish.⁸² This method facilitates more therapeutic and ecological decision-making because a judge develops a more comprehensive awareness of the family’s problems, allowing for the fashioning of more effective outcomes. For example, if a judge knows that a particular intervention was not helpful or effective in the past, she will have a better idea of the types of interventions that may be better suited for the family. Another type of case management is the one judge—one family approach, where the family appears before the same judge every time the parties come to court and on any number of cases.⁸³ While this approach offers the same benefits as the one judge—one case method, there is concern that the judges’ impartiality will be compromised due to “judicial overfamiliarity” with the parties.⁸⁴ In other words, the characteristics that make the one judge—one case method appealing can also be a source of criticism if the judges do not guard against becoming so familiar that they are no longer unbiased. A third method of case management, the one family—one team approach, ensures consistency in processing a family law case due to the same team of court administrators’ involvement in a family’s case every time the family utilizes the court system.⁸⁵ The advantages of this method are the same as the other two case assignment methods.

My 2008 family justice system survey reveals that of the 38 jurisdictions that have some form of family court, 12 jurisdictions apply the one judge—one family case assignment method.⁸⁶ Five states currently use the one judge—one case assignment

⁷⁹ *Id.* at 520 (footnotes omitted).

⁸⁰ *Id.* at 520–21 (footnote omitted).

⁸¹ **Spinak at 359 (see footnote 8?)

⁸² Robert F. Peckham, *A Judicial Response to the Cost of Litigation: Case Management, Two-Stage Discovery Planning and Alternative Dispute Resolution*, 37 Rutgers L. Rev. 253, 257 (1985); Babb, *Reevaluating Where We Stand*, *supra* note 8, at 253 app. d.

⁸³ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 253 app. d n.3.

⁸⁴ Ann H. Geraghty & Wallace J. Mlyniec, *Tempering Enthusiasm with Caution*, 40 Fam. Ct. Rev. 435, 439 (2002).

⁸⁵ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 231.

⁸⁶ Babb, *Reevaluating Where We Stand*, *supra* note 8, at 234, 253 app. d. *See supra* note 56 for the list of jurisdictions that do not have a family court. The 12 jurisdictions that apply the one judge—one family case assignment method include: District of Columbia, Arizona, Delaware, Georgia,

method.⁸⁷ Four states⁸⁸ assign cases through the traditional calendar method.⁸⁹ The remaining 16 states employ a variety of case assignment methods.⁹⁰

Operating a unified family court with a therapeutic and ecological approach requires a high level of administrative coordination, including providing a family court administrator and an administrative or presiding family court judge.⁹¹ “The court management system, including nonjudicial personnel, must aim to resolve disputes in a timely manner, to supply and to coordinate efficiently the necessary resources or services, and to network appropriately with other courts in the system to share information about families that allows for consistent judicial decision-making.”⁹² This type of court administration, coupled with the specialized case management and case processing systems detailed above, promotes more effective resolutions for family legal proceedings.

An Array of Services

It is essential for a unified family court to have available an array of services it can offer families in order to fashion the most helpful outcomes. These services can assist judges in the family law case management process and can aid their understanding of the entire context of a family’s legal problems, including any underlying social and psychological issues related to the family’s functioning.⁹³ “This informed decision-making enables a judge to fashion a creative resolution to the family problem . . .”⁹⁴ In addition, “[t]he accelerated and coordinated provision of social services is . . . unified under the authority of the family court, as is coordination of collateral and ancillary matters . . . for family members not directly before the court.”⁹⁵

Hawaii, Kentucky, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, and Wisconsin. *Id.*

⁸⁷ *Id.* The jurisdictions that use the one judge–one case assignment method include: Alabama, Massachusetts, New Mexico, Rhode Island, and West Virginia. *Id.*

⁸⁸ *Id.* These jurisdictions include: California, Connecticut, South Carolina, and Vermont. *Id.*

⁸⁹ The traditional calendar method is defined as the standard procedure utilized by the clerk of court to assign all civil matters to the respective judges on a daily, weekly, monthly, or other regularly scheduled basis. *Id.* at 253 app. d n. 1.

⁹⁰ *Id.* at 234. These jurisdictions include: Colorado, Florida, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New York, Pennsylvania, Texas, and Washington. *Id.*

⁹¹ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 521–22.

⁹² *Id.* at 521.

⁹³ *Id.* at 522.

⁹⁴ *Id.* at 523 (footnote omitted).

⁹⁵ Stephen Cribari, *Therapeutic Power and Judicial Authority*, *Unified Fam. Chron.*, Spring 1999, at 1.

Alternative dispute resolution procedures, such as negotiation, mediation, neutral case evaluation, and other informal processes, should be part of any family court's functioning because they all work together to distance the case from the traditional adversarial system.

The earlier the court incorporates these alternatives into family law proceedings, the more successful the court becomes at circumventing the adversary process and locating services to assist families. In contrast to . . . programs existing independent of the court system, court-connected programs are likely to gain greater acceptance by the parties; they tend to view procedures in this setting as unbiased . . .⁹⁶

The nature of the services can vary, depending upon the needs of the court clientele and community.⁹⁷ Services can be court-supplied or court-connected, where the court links the parties to existing services within the community, a more fiscally prudent process.⁹⁸ Examples of services, in addition to alternative dispute resolution efforts, include assessment and evaluation, counseling, parent education, children's programs, supervised visitation, neutral drop-off centers, substance abuse services, domestic violence victim advocacy and representation, and assistance for self-represented litigants.⁹⁹ But the number of services is not the ultimate answer; courts should be seeking empirical evidence on what types of services are most effective for particular situations and family's needs. Unified family court judges are likely to be better equipped to consider the empirical evidence because of their specialized knowledge and commitment to social science research.

The provision of appropriate services requires the unified family court to work closely with the community, creating a court–community connection. Whatever services are deemed appropriate for a given family within a particular court setting, the earlier the family members receive the services, the more likely they are to

⁹⁶ Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* note 4, at 522 (footnotes omitted).

⁹⁷ Under Md. Code Ann., Md. Rule § 16–204(a)(3) (West 2010), the following services must be available through the family division: “mediation in custody and visitation matters, custody investigations, trained personnel to respond to emergencies, mental health evaluations and evaluations for alcohol and drug abuse, information services, including procedural assistance to *pro se* litigants, information regarding lawyer referral services, parenting seminars, and any additional family support services for which funding is provided.” *Id.* The Family Division of the Circuit Court of Baltimore City offers the following programs: substance abuse services, supervised visitation program, medical services office, neutral drop-off, family mediation service, Domestic Violence Ex Parte Project, Protective Order Advocacy and Representation Project, Assisted Pro Se Litigation Project, parenting seminars, Children's Group, and the Volunteer Attorney Settlement Panel. Babb & Moran, *Substance Abuse, Families, and Unified Family Courts*, *supra* note 53.

⁹⁸ Md. Code Ann., Md. Rule § 16–204(a)(3)(C) (West 2010) (every jurisdiction must possess a Family Services Coordinator and follow specific designated tasks); A.B.A. Presidential Working Group on the Unmet Legal Needs of Children and Their Families, *America's Children at Risk: A National Agenda for Legal Action* 54 (1993).

⁹⁹ Babb & Moran, *Substance Abuse, Families, and Unified Family Courts*, *supra* note 53, at 25–32; *see also* Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law*, *supra* 4, at 523 n. 293.

benefit from them and thus to reap the therapeutic outcomes these courts should provide.¹⁰⁰

A User-Friendly Court

Given the enormous volume of family law cases,¹⁰¹ it is essential for the unified family court to remain accessible to users and be user-friendly. The unified family court also must account for the tremendous numbers of self-represented litigants.¹⁰² A unified family court should be centrally located,¹⁰³ and it should be child- and family-oriented, including maintaining appropriate waiting rooms for children and witnesses, separate interview rooms for privacy, and adequate courthouse security.¹⁰⁴ Creating a user-friendly court also means that courts are designed for the convenience of the clientele and that all court personnel are trained to treat the clientele courteously.¹⁰⁵ One relatively recent improvement involves new technologies that permit courts to install computerized kiosks that disseminate prepared legal forms¹⁰⁶ and to make form pleadings available via the internet and in courthouse centers for family law matters.¹⁰⁷

Although no one court design is adaptable to every jurisdiction, this blueprint for a unified family court, grounded in a therapeutic and an ecological perspective, most closely approaches the model court defined by the Standard Family Court Act in 1959 but never established in the necessary comprehensive sense.

To protect and safeguard family life, in general, and family units, in particular, by affording to family members all possible help in resolving their justiciable problems and conflicts

¹⁰⁰ Rubin & Flango, *supra* note 60, at 9.

¹⁰¹ Berman & Feinblatt, *supra* note 12, at 24 (The National Center for State Courts reported that the largest increases in case filing from 1984–1998 were in areas of domestic relations, which grew by 75 %, and juvenile cases, which grew by 73 %).

¹⁰² See Murphy, *supra* note 8.

¹⁰³ *Letters: Family Court must be in a Center City location*, The Philadelphia Inquirer, <http://www.philly.com/inquirer/opinion/99215824.html> (last visited August 21, 2010).

¹⁰⁴ See Katz & Kuhn, *supra* note 60; see also Laura Duncan, *Courthouse Day Care Programs Increasing*, A.B.A. J., Oct. 1995, at 22–23 (describing some features of the more than 30 child care centers within American courthouses and noting that California, Massachusetts, and New York have legislatively appropriated funding to construct these centers).

¹⁰⁵ See Stephen P. Johnson, *Just Solutions: Seeking Innovation and Change in the American Justice System* 234 (1994).

¹⁰⁶ *Id.* at 29. See also Office of the Clerk of the Circuit Court of Cook County, *The 21st Century Clerk's Office: A Blueprint for Change 5* (2001), <http://www.cookcountyclerkofcourt.org/gifs/transitionreportfinal.pdf>; Task Force on Pro Se & Indigent Litigants, *Reports and Recommendations of the Supreme Court of Ohio 18* (2006), http://www.supremecourt.ohio.gov/Publications/prose/report_april06.pdf.

¹⁰⁷ Department of Family Administration, *2006 Annual Report 31* (2006), <http://mdcourts.gov/family/pdfs/annualreports/annualreport06.pdf>.

arising from their interpersonal relationships, in a single court, with one specially qualified staff under one leadership, with a common philosophy and purpose working as a unit, with one set of family records, all in one place, under the direction of one or more specially qualified judges.¹⁰⁸

Because more effective resolution of family legal matters can benefit the entire society by strengthening individuals' and families' functioning, it is imperative that all lessons learned are applied to family justice system reform. The interdisciplinary unified family court model proposed in this chapter is enhanced by applying principles from the recently established problem-solving courts.

Conclusion

Why is it vitally important to consider unified family courts within the problem-solving or specialty court context? I believe the unified family court idea is the best way to address the myriad of issues that families bring to the legal system. Family law matters touch on every aspect of a person's life; having a court system that can more holistically address those matters is vitally important. By using the problem-solving court template and my blueprint for the unified family court we can better approach the whole of the family rather than piecemeal tactics that will continue to fall short. A unified family court that comprehensively approaches the needs of families from an interdisciplinary perspective and is able to do so in a user-friendly way will meet the current challenges of overburdened courts and families that desperately need their help.

¹⁰⁸ Committee on the Standard Family Court Act of the National Probation and Parole Association, *Standard Family Court Act—Text and Commentary*, 5 Nat'l Probation & Parole Ass'n J. 99, 106 (1959).