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Delinquency Jurisdiction in a Unified Family Court: Balancing Intervention, Prevention, and Adjudication

GLORIA DANZIGER*

I. Introduction

[O]ut of the juvenile court and experience of its possibilities there has grown awareness of the futility of dealing with the troubles of a household in detached fragments after damage has been done. We have been learning better methods than to have four separate courts in eight separate and unrelated proceedings trying unsystematically and not infrequently at cross purposes to adjust the relations and order the conduct of a family which has ceased to function as such and is bringing or threatening to bring up delinquent instead of upright citizens contributing to the productive work of the people.

Dean Roscoe Pound¹

On July 1, 1889, Jane Addams, together with the Chicago Woman's Club² and the Hull House Community, established in Chicago the first

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1. See Robert E. Shepherd, Jr., *The Juvenile Court at 100 Years: A Look Back*, 6(2) JUV. JUSTICE (Dec. 1999) (citing Roscoe Pound, *Future Challenges Judges*, 1(4) THE JUV. COURT JUDGES J. 21, 23, 28 (1950)).

2. The two groups of women reformers worked closely together and used many of the same arguments. However, although the distinction between the two groups was not always very sharp, there were differences in approach. The Club women acted as "true materialists," emphasizing their identification as women and mothers, whereas the Hull House women were more concerned to use their background in social sciences to inform their reaction to the "child problem." In many senses the Hull House women had a clearer idea of what lay behind juvenile delinquency than did the Club women, and for this reason their emphasis was more on preventing children from ever getting into trouble with the law than on alleviating conditions once children had become involved in the justice system.

children's court in the world. Their goal was to create a separate and distinct venue for children in crisis, one that would prevent their subjection to adult courts, adult prisons, and poorhouses.

The founders strove to develop a safe haven, a space to protect, to rehabilitate, and to heal children, a site of nurturance and guidance, understanding and compassion. They envisioned the Juvenile Court functioning in the best interest of children and youth, acting in any circumstance, they said, exactly as a kind and just parent would act.³

In many ways, that first children's court—and Jane Addams' vision—was premised on providing a “family” for the delinquents, paupers, immigrants, and other “neglected” or “corrupt” children of Chicago. It was a “multi-service” settlement house—a place of solidarity and support⁴—with the court offering a place where children and families in crisis would be nurtured, guided, and supported by a community with the expertise and willingness to address a family's or child's needs.⁵

In short, the first juvenile court was actually based on a therapeutic model.⁶ As some authors point out, the Pre-*Gault* court was “a kind of unified family court.”⁷ These courts generally had jurisdiction over delinquency, dependency, and neglect cases;⁸ they were based on addressing the family as a unit from an ecological approach and were designed to “protect and rehabilitate” youth in generally informal and private proceedings.⁹ The

Both the Chicago Woman's Club and the Hull House community were, however, ultimately concerned with overcoming the inadequacies of the existing system of treating problem children and making sure that the state recognized its duty towards these children. Moreover, both were anxious to ensure that all children received the proper love and nurture that they regarded as the right of every child. Their campaign to secure legislation to embody these ideas was prompted by a recognition that they needed legal sanction for informal practices and a desire that the state should take responsibility for protecting family life. See Elizabeth J. Clapp, “The Chicago Juvenile Court Movement in the 1890s,” paper presented at the Center for Urban History, University of Leicester, March 17, 1995.

3. WILLIAM AYERS, *A KIND AND JUST PARENT: THE CHILDREN OF JUVENILE COURT* 24 (1997).

4. *Id.* at 26.

5. *Id.*

6. Elizabeth F. Emens, et al., *Preventing Juvenile Delinquency: An Ecological, Developmental Approach*, in *CHILDREN, FAMILIES AND GOVERNMENT: PREPARING FOR THE TWENTY-FIRST CENTURY* 308, 311 (Edward F. Zigler, Sharon Lynn Kagan, & Nancy Hall, eds. 1996).

7. Anne H. Geraghty & Wallace J. Mlyniec, *Unified Family Courts: Tempering Enthusiasm with Caution*, 40(4) *FAM. CT. REV.* 435, 437 (2002).

8. CHRISTOPHER P. MANFREDI, *THE SUPREME COURT AND JUVENILE JUSTICE* 29 (1998), quoted in Geraghty & Mlyniec, *supra* note 7, at 448. See also Robert E. Shepherd, Jr., *supra* note 1 and accompanying text.

9. See *Are Special Courts for Juvenile Offenders a Relic of the Past, or a Blueprint for the Future?* 2, 7 (American Prosecutors Research Institute 1999).

mission of the juvenile courts was to rehabilitate delinquents and to make them productive citizens, and the process followed was more along the lines of information-gathering and problem-solving rather than centered around due process rights and attorney representation.

The juvenile court eventually diverged sharply from the system's original premise. In particular, the juvenile court system during much of the twentieth century served as a vehicle for imposing harsh and coercive sanctions against children and families and enabled what amounted to criminal trials without benefit of counsel, notice of specific charges, the right to confront and cross-examine witnesses, or the right not to incriminate oneself.¹⁰

In the 1960s and 1970s, several United States Supreme Court rulings radically changed the nature of juvenile courts.¹¹ A conservative reform movement emphasizing deterrence and punishment began in the late 1970s, continuing into the early 1980s.¹² Proponents demanded zealous prosecution of serious and violent juvenile offenders, and, accordingly, many states made it easier to transfer juveniles to adult courts, while other states stiffened penalties and imposed mandatory minimum sentencing guidelines.¹³

Throughout the 1990s, state legislators seized on this trend toward cracking down on juvenile crime. Laws were passed and increasingly used to transfer children to criminal court on the theory that community protection would be enhanced by deterring juveniles from committing serious crimes and by providing greater certainty of incarceration through

10. Sanford J. Fox, *The Early History of the Court*, in 3 THE FUTURE OF CHILDREN: THE JUVENILE COURT 29 (1996).

11. See *Kent v. United States*, 383 U.S. 541 (1966) (a minor denied process rights when the trial judge fails to hold a hearing prior to transferring him to adult court for trial); *In re Gault*, 387 U.S. 1 (1967) (holding that in hearings that could result in commitment to an institution, juveniles have the right of notice, right to counsel, right against self-incrimination, and the right to confront witnesses); *In re Winship*, 397 U.S. 358 (1970); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (the due process clause of the 14th Amendment does not require jury trials in juvenile court); *Breed v. Jones*, 421 U.S. 519 (1975) (an adjudication in juvenile court, in which a juvenile is found to have violated a criminal statute, is equivalent to a criminal trial in criminal court); *Schall v. Martin*, 467 U.S. 253 (1984) (preventive detention serves a legitimate state objective in protecting both the juvenile and society from pretrial crime and is not intended to punish the juvenile); see also Janet Gilbert, et al., *Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153 (2001), for an excellent overview of the juvenile court as well as a discussion of therapeutic justice as it related to the juvenile court.

12. Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* 83-86 (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention) available at <http://ncjrs.org/html/ojjdp/nationalreport99/toc.html>.

13. Jeffrey A. Butts & Adele Harrell, *Delinquents or Criminals?: Policy Options for Young Offenders*, CRIME POL'Y REP. 4-5 (Urban Institute 1998).

a criminal trial and sentencing.¹⁴ While laws that allowed transfer of certain juveniles to criminal court were not new,¹⁵ state legislatures have increasingly moved juvenile offenders into criminal court based on age and/or offense seriousness, without the individualized consideration of a more discretionary juvenile court.¹⁶

Even this most basic and brief look at the history of the juvenile court movement in the United States reveals the ebb and flow of guiding principles: beginning with the harsh, punitive approach exemplified by the Cook County jail (where 1,705 children were incarcerated between 1897 and 1899); progressing to the therapeutic model developed in response by Jane Addams and her colleagues at Hull House; culminating in the decades of reform expanding the formality and severity of the juvenile court, but also reducing the ability of juvenile courts to provide individualized and appropriate dispositions for young offenders.

This article will examine the demographics of the current juvenile delinquency caseloads and will argue that, despite trends toward greater punitive measures—including placement of juveniles in adult courts for certain offenses, the concept of a therapeutic “family-centered court,” which inspired Jane Addams and her colleagues, remains the most promising approach to delinquency, articulated most notably by the proponents of the unified family court concept. The article will consider and address objections and concerns raised with respect to this approach, looking at ways in which several states have incorporated juvenile delinquency into a family-centered unified family court.

II. Caseloads and Demographics: Straining Resources, Programs, and Families

Courts with juvenile jurisdiction handle some 1.8 million delinquency cases each year.¹⁷ Nearly seven in ten arrested juveniles are referred to juvenile court.¹⁸ This does not mean that the judge sees all or even most of these cases, as about half of all cases referred to juvenile court intake are handled informally.¹⁹

14. Richard E. Redding, *The Effects of Adjudicating and Sentencing Juveniles as Adults*, 1 YOUTH VIOL. & JUV. JUSTICE 128 (2003).

15. Melissa Sickmund, *Juveniles in Court*, NAT'L REP. SERIES BULL. 6 (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (June 2003).

16. *Id.* at 7.

17. *Id.* at 12.

18. *Id.* at 2.

19. *Id.* See also Howard N. Snyder, *The Juvenile Court and Delinquency Cases*, in 6(3) THE FUTURE OF CHILDREN: THE JUVENILE COURT 53-63 (1996).

Most informally processed cases are dismissed, or the juvenile voluntarily agrees to specific conditions for a specified time period. In the cases that are handled formally, intake files either a delinquency petition requesting an adjudicatory hearing or a petition requesting a waiver hearing to transfer the case to criminal court. In 1998, juvenile courts waived one percent of all formally processed delinquency cases.²⁰

However, beginning in the 1970s and continuing through the present state legislatures increasingly have moved juvenile offenders into criminal court based on age and/or offense seriousness, without the case-specific consideration offered by the discretionary juvenile court judicial waiver process. At the end of the 1999 legislative session, twenty-nine states have statutory exclusion provisions.²¹ The offenses most often excluded from juvenile court include murder, capital crimes, and other serious offenses against persons.

It is particularly illustrative to look at the demographic information relating to the types of cases handled by courts with juvenile jurisdiction in the United States.²²

- Delinquency case rates rose between 1989 and 1998 for most ages. In 1998, juvenile courts handled 60.4 delinquency cases for every 1,000 juveniles in the U.S. population. The 1998 delinquency case rate was 25% greater than the 1989 rate. For all but the youngest age groups, age-specific case rates showed similar increases, although the greatest increase was among seventeen year olds.
- Most delinquency cases involved older teens. Juveniles age fifteen and older made up 64% of the delinquency caseload in 1998. Juveniles age thirteen and fourteen years were involved in 26% of delinquency cases, while juveniles age twelve and younger accounted for 10%. In 1998, the number of juvenile court cases involving seventeen year olds was lower than the number involving sixteen year olds—due primarily to the fact that, in thirteen states, seventeen year olds were excluded from the original jurisdiction of the juvenile court and were legally adults, therefore referred to criminal court.
- The most striking age-related increase in rates was in drug cases. Drug case rates were highest for seventeen year olds of both sexes. In 1998, the caseload of juveniles age twelve years and younger had larger proportions of person and property offenses

20. *Id.* at 3.

21. *Id.* at 5.

22. *Id.* at 12-24.

and smaller proportions of drug and public-order offenses, compared with caseloads of older juveniles.

Perhaps the most interesting and noteworthy aspect of the most recent demographic data was the finding that those who began offending as young children were more likely to become violent offenders. Dr. Howard Snyder studied the juvenile court records of more than 150,000 urban juveniles who aged out of the juvenile justice system (*i.e.*, turned age eighteen) between 1980 and 1995.²³ The study found that the earlier a youth entered the juvenile justice system, the more likely he or she was to acquire an extensive juvenile court record.²⁴ The younger the juvenile was at first referral to the court, the more likely he or she was to have at least four separate referrals to juvenile court intake, at least one referral for a serious offense, and at least one referral for a violent offense by the time he or she reached age eighteen.²⁵

Furthermore, the fiscal and social costs of this youth violence are unacceptably high. Caring for an incarcerated juvenile for one year costs \$40,000.²⁶ Vandalism in schools costs more than \$200 million a year, and vandalism directed at personal property is even higher.²⁷ Delinquent behavior also carries other kinds of costs that are difficult to quantify—diminished quality of life for victims, reduced earning potential and life expectations for delinquent juveniles; and emotional stress on the families of these children and on their victims.

Changes in the juvenile delinquency caseload in recent years have strained the courts' resources and programs. Between 1989 and 1998, the volume of cases handled by juvenile courts has increased across all four general offense categories. Person offense cases have risen 88%; property cases have risen 11%; drug cases have risen 148%; and public order cases have risen 73%.²⁸

As juvenile crime has increased, the public has become frustrated, and politicians have expressed serious doubts about the future of the juvenile

23. Howard N. Snyder, *Epidemiology of Official Offending*, in CHILD DELINQUENTS: DEVELOPMENT, INTERVENTION, AND SERVICE NEEDS (Rolf Loeber & David P. Farrington eds. 2001) [hereinafter CHILD DELINQUENTS]. See also Howard N. Snyder, et al., *Prevalence and Development of Child Delinquency*, CHILD DELINQUENCY BULLETIN (March 2003).

24. Snyder et al., *supra* note 19.

25. *Id.*

26. W.S. Davison & R. Redner, *The Prevention of Juvenile Delinquency: Diversion from the Juvenile Justice System*, in FOURTEEN OUNCES OF PREVENTION: A HANDBOOK FOR PRACTITIONERS 123-137 (E.L. Cowen, R.P. Lorion, & J. Ramos-McKay eds. 1988).

27. Edward Zigler, *Early Intervention to Prevent Juvenile Delinquency*, HARVARD MENTAL HEALTH LETTER 3, 5 (Sept. 1994).

28. See Melissa Sickmund, *supra* note 15, at 13.

justice system.²⁹ Nowhere has this been more pronounced than in the trend in many states toward sending juveniles to the adult court system,³⁰ and the public firmly supports this approach.³¹ At the same time, resources for juvenile court programs are declining and juvenile court judges in many states have relatively few program options to handle delinquent youth. Probation caseloads are overwhelming,³² and the number of delinquency cases involving detention is rising.³³ The juvenile justice court is, in short, a system on the brink of disaster—if not already over the edge.

It is critical, then, to find remedies to the current state of affairs in the juvenile justice system. There are those who believe that the current juvenile court system needs to be fixed—that the court's basic role remains, and should remain, as a forum for resolving disputes, and that public monies should be allocated to address the problems that bring families and children into court in the first place.³⁴

III. Coordination

The need to address the behavior of youth with a different set of laws and remedies than those applied in the adult courts has long been recognized. When the first juvenile court was implemented in Chicago in 1902,

29. In 1997, Senator Peter Domenici stated: "In many jurisdictions, [teenagers] commit as many as 10 to 15 serious crimes before anything is done to them. It is amazing how ancient, archaic, and broken down the juvenile justice system is." CONGRESSIONAL RECORD, S5897. In the same year, Senator Ron Wyden said for the record, "It is not hard to see why State legislatures around the country are proposing bills to get rid of the juvenile justice system altogether." CONGRESSIONAL RECORD, S2341 (quoted by Jeffrey A. Butts & Adele V. Harrell, "Delinquents or Criminals? Policy Options for Young Offenders," *supra* note 13).

30. All states allow juveniles to be tried as adults in criminal court under certain circumstances. Transfers can typically be done by judicial waiver (the juvenile court judge has the authority to waive juvenile court jurisdiction and move the case to criminal court); concurrent jurisdiction (original jurisdiction is shared by both criminal and juvenile courts; the prosecutor has discretion to file such cases in either court); or statutory exclusion from juvenile court. Until the 1970s, discretionary judicial waiver was the most common transfer mechanism. Throughout the 1990s, however, legislatures increasingly enacted statutes that exclude certain cases from juvenile court. At the end of the 1999 legislative session, 29 states had statutory exclusion provisions. See Sickmund, *supra* note 15, at 5-10.

31. According to an NBC News-Wall Street Journal poll, two-thirds of Americans think juveniles under age 13 who commit murder should be tried as adults. Laurie Asseo, *Debate Rages on Juvenile Murders*, ASSOC. PRESS, April 24, 1998. In a 2001 survey, a majority (65%) thought that juveniles aged 14-17 should be treated the same as adults in the criminal justice system. SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS (Ann Pastore & Kathleen Maguire, eds. 2001) available at <http://www.albany.edu/sourcebook/>.

32. Sickmund, *supra* note 15, at 23.

33. *Id.* at 18.

34. Geraghty & Mlyniec, *supra* note 7, at 436.

its founders believed that children develop and change based on environmental influences and that the state must assume a degree of parental responsibility for children raised in an environment that negatively impacts on their development. . . . Creation of the Family Divisions provides the juvenile justice system with an opportunity to combine delinquency adjudication with a strong presence in the life of the juvenile's family.

Families in court have interconnected emotional and financial problems that appear and re-appear in different courts at different times throughout the lives of that family's members. One report has found that approximately 40% of families come before the court more than once for family-related matters and generate a disproportionate share of the court's caseload.³⁵ Another study has shown that at least 64% of abuse and neglect cases, 48% of delinquency cases, and 16% of divorcing families who had children have been to court for another family-related matter during the prior five years.³⁶

The impact of repeated court appearances—very often in different courthouses in different locations—includes substantial logistical and coordination difficulties, emotional trauma, and significant expense for both the courts and the children and families who are already in crisis. Numerous court appearances are required; judges have to become familiar with the families' backgrounds; and social service personnel from different courts duplicate services and inquiries.³⁷

While the increasing complexity and volume of cases involving families and children that confront the court are undeniable, there is far from unanimity on questions regarding how the justice system should respond. Some argue that adjudication of the original dispute bringing a family into the court is actually "a minor part of the process" in a unified family court.³⁸ Instead, they state, "Many advocates of family courts see the court as a centralized place where services are coordinated, doled out, and monitored. Judges are supposed to take service providers to task when they are ineffective, ensure that duplicate services are not given by different agencies, and watch family members to make sure that they are taking part in required treatment."³⁹

35. H. Ted Rubin & Victor Eugene Flango, *Court Coordination of Family Cases* 5 (National Center for State Courts, 1992).

36. *Id.* at 30.

37. Andrew Shepard, *Law and Children: Introduction to Unified Family Courts*, N.Y.L.J., Apr. 16, 1997, at 3 (col.1).

38. Geraghty & Mlyniec, *supra* note 7, at 442.

39. *Id.* (referring to an article—Jeffrey A. Kuhn, *A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium*, 32 *FAM.*

In certain respects, this is an accurate description. Effective processing of family law cases calls for coordination with social service agencies. Accordingly, courts are often placed in a position of monitoring and enforcing treatment and other services for juveniles that have been recommended by human services professionals, law enforcement sanctions, and mandates imposed by federal and state legislation. The role of courts as “service coordinators” however is expanding. This expansion is not because courts are assuming responsibilities once held by child welfare or social service agencies, but, rather, because the need for coordination between courts and agencies, as well as among courts themselves, increasingly is recognized.⁴⁰ While agencies continue to be responsible for providing needed services to children and families, courts—in the absence of any other organization—must assume oversight responsibility to ensure that families receive these services.

In Delaware, for example, the Department of Services to Children, Youth, and Families places social workers in the court building to coordinate with the family court. When the family of a delinquent is determined to be involved in another family court case relating to another department, workers in the two divisions are asked to present or file a unified case plan.⁴¹

But the unified family court model does not simply turn the family court into some sort of “*uber-agency*.” While this model is based on a nonadversarial approach, it does not dispense with sanctions when it comes to addressing delinquency matters, nor does it relinquish the role of the court as an impartial arbiter. The sanctioning power of the courts can be used to ensure treatment. Juvenile delinquents may be ordered by the court, for instance, to attend counseling or therapy, pursue drug treatment, perform community service, or attend residential treatment and/or training programs.⁴²

The unified family court is premised on a definition of “coordination” that is far more expansive—and responsive to the needs of families in court—than simply ensuring that case processing proceeds smoothly and efficiently. In order to resolve family problems, the unified family court considers all of the parties related to the family’s legal proceedings, as

L.Q. 67, 78-79 (1998), in which Kuhn states that the judicial function in a one-team-to-one-family model includes “calendar coordination and case monitoring.” Kuhn also states, however, that “Judges, as well, are assigned to individual teams to assist with calendar coordination and case monitoring.” In other words, it is the family court team—of which the judge is indisputably an integral member—that is responsible for calendar coordination and case monitoring.

40. Carol Flango, et al., *How Are Courts Coordinating Family Cases?* 5 (National Center for State Courts 1999).

41. *Id.* at 64

42. *Id.* at 58.

well as all of the agencies, institutions, or organizations that need to be consulted or brought into the case.⁴³

In addition, the unified family court reviews the delivery of social services to ensure that agreements between families and agencies are implemented; if they are not, the court has the authority to enforce such agreements, monitor them for compliance, and/or order agencies to deliver services. While some scholars view this role as conforming to the “neutral arbiter role” of the court,⁴⁴ this is, in fact, a significant departure from the position of the court as the objective arbiter of disputes. Instead of simply adjudicating legal disputes, the court must now oversee services, assessments, evaluations, counseling, outreach, probation, diversion, detention, and community services. This is not the *modus operandi* of a neutral and independent forum. It is a way of conducting business that renders the court inextricably linked to agencies—and the day-to-day actions of those agencies. The court is responsible to ensure that services are appropriate and productive. While the court is independent of the agencies, it acts in concert with them.

Both of these functions—imposing sanctions to ensure that treatment and/or other services are both provided and followed—are undertaken by the Denver Juvenile Justice Integrated Treatment Network (DJJITN). This model of coordination of treatment and services for juvenile offenders lends itself to adoption by family courts. DJJITN’s goal centers around providing a culturally competent, comprehensive continuum of care to meet the needs of juveniles with substance abuse or addiction problems. Its integrated management information system demonstrates how various agencies and organizations can work together to share and transfer data, while the court retains primary responsibility for coordination and oversight.⁴⁵

Juvenile justice systems perform a preliminary substance use screen to identify the degree of alcohol or other drug use.⁴⁶ Referrals of juveniles from each of those points in the juvenile justice system, and social services, are sent to the Denver Juvenile Justice Integrated TASC (Treatment Accountability for Safer Communities) program, located in the Denver Juvenile Court, which serves as the central point for referrals. Case managers who are certified alcohol and drug abuse counselors, and co-locate staff from some participating agencies, conduct the differential assessments, develop the treatment plans, link juveniles with the Network services and

43. *Id.* at 4.

44. *Id.* at 58.

45. *Id.* at 68-71.

46. For this and other information regarding DJJITN, see the Network’s Web site *available* at <http://www.djjitn.state.co.us>.

conduct ongoing monitoring and follow-up. Services are provided based on the assessment to meet the specific needs of each juvenile and family. The Network does not seek to develop new resources, but builds on existing efforts and infrastructure to build capacity and capability.

The Network has entered into Memoranda of Understanding with more than 100 systems and agencies who have agreed to use, and/or accept the results of common screening and assessment instruments. These systems and agencies have agreed to refer or accept referrals of, and provide services to Network juveniles, share information using Network protocols, and participate in the Network's integrated MIS system, cross-training, and outcome evaluation.

IV. Privacy

There is great reliance on information-sharing generally in a unified family court—between agencies; between courts; between the judge, attorney, caseworkers, social workers, CASAs, GALS, and other court staff or volunteers involved in the case. Domestic violence advocates in particular are concerned, however, that expectations of confidentiality are seriously threatened by a system in which judges have access to all prior court records and agency reports⁴⁷—“[A] unified family court which decides to permit judges access to all prior court records pertaining to present litigants must anticipate certain risks and take steps to protect against them.”⁴⁸

There is an inherent tension between expectations of privacy and the mandates of the therapeutic perspective that drives unified family courts. The question often becomes one variation or another of “Where do we draw the line?”

Juveniles, of course, have a legitimate interest in confidentiality. On the other hand, there is a strong emphasis on “family ecology”⁴⁹ in a unified family court: “Courts must view neighborhoods, religious organizations, and other associations or institutions within which family members participate as having the potential to influence the family’s legal matters.” If a juvenile has, for example, entered into a drug treatment program that

47. See Billie Lee Dunford-Jackson et al, *Unified Family Courts: How Will They Serve Victims of Domestic Violence?* 32 FAM. L. Q. 131, 140-41 (1998); Mark Hardin, *Child Protection Cases in a Unified Family Court*, 32 FAM. L.Q. 147, 161; (1998) Garaghty & Mlyniec, *supra* note 7, at 439.

48. Dunford-Jackson et al., *supra* note 23, at 140.

49. MARY ANN GLENDON, *THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE* 308 (1989), *quoted in* Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 SO. CAL. L. REV. 469, 508 (1998).

includes regular attendance at Alcoholic Anonymous meetings, does he/she have a right to confidentiality regarding treatment records and his/her attendance at the meetings? While federal laws may protect the confidentiality of treatment records,⁵⁰ should the court's interest in social institutions that "function as positive influences on family life,"⁵¹ trump the statutory and customary privacy inherent in drug treatment? Is information-sharing such an integral component of a court's effectiveness in addressing the problems of juveniles that limitations serve as impediments to real solutions?

At least one prominent juvenile court judge believes that these questions should be answered with a strong affirmative. Judge James Payne of the Marion (Indiana) Superior Court's Juvenile Division and Vice-President/Treasurer of the National Council of Juvenile and Family Courts (2002–2003) testified before the United States House Subcommittee of the Judiciary in 2001:

Again, in this age of information technology, the inability, or in some cases, unwillingness, to share information is a tremendous impediment. Federal laws and regulations at this time, in many cases, prohibit the free exchange of information. There is a need to evaluate information sharing restrictions and to overcome those, not by developing means to overcome them, but in fact by amending, rescinding them or overriding them. It is not enough to find ways to work around current federal law restricting inability to share information with schools and mental health. Laws of confidentiality for schools (FERPA), substance abuse (42 U.S.C. 290dd-2- 42 C.F.R. 2:1 *et. seq.*) and mental health rules should be evaluated and rewritten so the concept of information sharing among system people is not only permitted, but required.⁵²

While this view may be somewhat extreme, there are, in fact, statutory and court safeguards that protect the confidentiality of juvenile records—and, increasingly, it is legislatures, not courts, that are expanding the

50. Federal laws and regulations protect information about all persons receiving alcohol and drug abuse prevention and treatment services (42 U.S.C. § § 290dd-3, ee-3 ; 42 Code of Fed. Reg., Part 2). These laws and regulations prohibit disclosure of information regarding patients who have applied for or received any alcohol or drug abuse-related services, including assessment, diagnosis, counseling, group counseling, treatment, or referral for treatment, from a covered program. The restrictions on disclosure apply to any information that would identify a patient as an alcohol or drug abuser, either directly or by implication. They apply to patients who undertake treatment as a form of alternative processing, patients who are civilly or involuntarily committed, minor patients, and former patients. They apply even if the person making the inquiry already has the information, has other ways of getting it, enjoys official status, is authorized by state law, or comes armed with a subpoena or search warrant.

51. Babb *supra* note 49.

52. Testimony of The Honorable James W. Payne, Judge, Marion Superior Court, Juvenile Division, Indianapolis, Indiana, before the Subcommittee on Crime of the Committee on the Judiciary, United States House of Representatives, 107th Cong. First Session on H.R. 863 (March 8, 2001), *see* <http://www.house.gov/judiciary;and/payne.030801.htm>.

boundaries of permissible cooperation and disclosure between agencies. When recent amendments to Illinois law expanded mandated reporting requirements of juvenile delinquency to local agencies, it noted:

The General Assembly finds that a substantial and disproportionate amount of serious crime is committed by a relatively small number of juvenile offenders, otherwise known as serious habitual offenders. By this amendatory Act ... the General Assembly intends to support the efforts of the juvenile justice system comprised of law enforcement, state's attorneys, probation departments, juvenile courts, social service providers, and schools in the early identification and treatment of habitual juvenile offenders. The General Assembly further supports increased interagency efforts to gather comprehensive data and actively disseminate the data to the agencies in the juvenile justice system to produce more informed decisions by all entities in that system....A cooperative and coordinated multidisciplinary approach will increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.⁵³

This aspect of the unified family court model—greater interagency collaboration and information-sharing—is part of a larger trend in this country: the attempt to determine a juvenile's situation—including his/her past, relationships with caregivers, and school performance, among other factors—which in turn depends on access to records, files, and documents that provide significant information about that juvenile's background and personal history.

At the same time, courts need to establish and maintain a careful balance between the need for interagency collaboration and the individual's interest in confidentiality.⁵⁴ As has been pointed out in the context of domestic violence, “fundamental principles of due process and expectations of confidentiality have as certain a place in unified family courts as in any

53. Ill. Juv. Court Act; 405 ILCS 405/1-8.1 (1999). A similar statement also appears in the recent expansion of California law regarding interagency record sharing with schools:

While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

Cal. Wel. & Inst. Code. § 828.1 (1999).

54. For an example of programs and guidelines that establish such a balance, as well as a firsthand account of the importance of interagency information sharing, see Hon. Gordon A. Martin, Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 N.E. J. on CRIM. & CIV. CON. 393-410 (1995); Flango et al., *supra* note 17, at 68-70 (describing the Denver Juvenile Justice Integrated Treatment Network, which is a

other part of the judicial system.”⁵⁵ Many of the considerations raised by domestic violence advocates in discussions of confidentiality are applicable in delinquency cases as well. For instance, a judge may have access to a juvenile’s record of treatment for mental illness but no information about the validity of the provider, the credibility of the underlying claim of mental illness, or follow-up care. The greater volume of information available regarding a delinquent in a unified family court places a significant burden on the court to ensure that this information is complete, accurate, and relevant.

Moreover, the court has an additional responsibility flowing from the court’s greatly expanded access to juvenile records and information about past behavior—the fundamental right to due process.

V. The Role of the Judge and Due Process

Perhaps the most frequently cited characterization of the unified family court concept is, “one family-one judge.” The rationale behind this precept is that a judge who is acquainted with the legal problems of each family member is also acquainted with that family’s dynamics, history, and place in the community. Armed with this knowledge, the judge can make more informed, consistent, and effective decisions than a judge who hears only one specific problem affecting that family.

The therapeutic model on which the unified family court is based calls for an integrated approach to family legal issues. In the case of delinquency, this means that a judge must consider all of the parties related to that proceeding, as well as all of the institutions or organizations affecting the behavior of that child, including schools, peer groups, religious organizations, and clubs, to name a few.⁵⁶ Moreover, judges oversee services that are important adjuncts to the court’s approach to delinquency: assessment and evaluation, counseling, availability of volunteers, community outreach, mental health services, family support services, restitution, probation, diversion, and detention services.⁵⁷

comprehensive information systems plan to improve the sharing and transferring of data among the various agencies that provide treatment and services for juvenile offenders with substance abuse problems. The system, located in the juvenile court, crosses agency computer systems and databases to track the status and progress of juvenile offenders. The program screens, assesses, and evaluates juvenile offenders in order to match treatment needs with the most appropriate treatment provider).

55. *Assessing the Need for a Family Court System in Colorado: Report to the Legislature*, Dec. 23, 1995, at 5, *quoted in* Dunford-Jackson et al., *supra* note 47, at 140 (discussing the rights in the context of domestic violence proceedings in a unified family court).

56. Robert W. Page, *Family Courts: A Model for an Effective Judicial Approach to the Resolution of Family Disputes*, *ABA Summit on Unified Family Courts: Exploring Solutions for Families, Women and Children in Crisis*, 16-17 (ABA 1998).

57. See Sanford N. Katz & Jeffrey A. Kuhn, *Recommendations for a Model Family Court*

Geraghty and Mlyniec point out that the consequences of the unified family court's broad and expansive access to information about a juvenile's past may move the justice system dangerously close to a breach of due process.⁵⁸ They point out that our legal system "prevent[s] juries from knowing a person's previous social history to ensure that the jury will not be swayed by that information,"⁵⁹ and though "the law assumes that judges can separate admissible from inadmissible information, there is little to guarantee this premise."⁶⁰

This description of the role of the family court is the flip side of the emphasis on services. While a central tenet of the unified family court is indeed the provision of services to families who need them, that is not to be confused with the role of the judge. It is the judge's responsibility to use the court's authority and power to enforce agreements between parents, children, and social service agencies, monitor court-ordered services, and under certain circumstances to order agencies to deliver services—but the judge maintains impartiality throughout this process. The judge does not alone decide which treatment, when necessary, is most appropriate; but he/she can use the court's sanctioning power to order a juvenile delinquent to attend counseling or therapy, perform community service, or attend residential treatment or training programs.⁶¹ Furthermore, a judge's access to the expertise of social and mental health service providers provides him/her with the ability to construct the most effective resolutions to a family's problems in the context of available services and assistance.

Geraghty and Mlyniec's concerns do highlight a struggle between the traditional concept of the judge as a neutral arbiter of disputes on the one hand, and the therapeutic perspective that informs the judge's role in a unified family court.⁶² While there are certain cases in which there is a clear advantage to one judge or one team hearing related cases—for example, closely related custody, visitation, and child support matters⁶³—there are others where the boundaries of "relatedness" are not as clear, where judicial overfamiliarity with a family may make it nearly impossible to avoid bias.

11 (1991); Babb, *supra* note 49, at 523; AMERICAN BAR ASSOCIATION POLICY ON UNIFIED FAMILY COURTS, Reports with Recommendation to the House of Delegates, 1994 Annual Meeting, Section 10C (1994) (listing suggested appropriate services).

58. Geraghty & Mlyniec, *supra* note 7, at 439; Flango et al., *supra* note 40, at 25.

59. *Id.*

60. *Id.*

61. *Id.* at 58. See also Babb, *supra* note 49, at 522-24 (discussing the provision of services in a unified family court).

62. Babb, *supra* note 49, at 509-13.

63. Flango et al., *supra* note 40, at 23.

Responses have ranged from voluntary recusal by the judge⁶⁴ to pointing out that judges are under a general obligation to avoid bias in *all* cases⁶⁵ to an insistence that therapeutic considerations are not superior to other, more traditional, considerations—such as due process—that guide the court’s deliberations.⁶⁶ In Freehold, New Jersey, the Family Court Division separates all information from the court record about prior family cases until a youth has been adjudicated delinquent, providing that information only at disposition.⁶⁷

The bottom line, however, is that the unified family court and its emphasis on therapeutic jurisprudence *does* call for re-shaping the nature of judicial decision-making: “The goal of therapeutic jurisprudence suggests a need to restructure the law and the legal process by applying behavioral science knowledge to accomplish therapeutic outcomes without interfering with traditional notions of justice.”⁶⁸ While there are those who consider this a weakness, it is, in fact, this mandate to integrate a juvenile’s behavior, environment, history—and family—into a service-oriented, therapeutic remedy that is the unified family court’s greatest strength in addressing delinquency matters. Rather than addressing juvenile delinquency from the perspective of a “scaled-down, second-class criminal court,”⁶⁹ the unified family court approach gives the judge the authority to fashion an effective solution to that juvenile’s problems by managing and directing agencies in their delivery of services to children and families.

In short, a basic premise of the unified family court is to provide “a social services delivery system” for families in crisis. It establishes a critical link between families and the kinds of programs that keep children out of trouble. These programs include links to social services as well as the liberal use of nonadversarial methods of family dispute resolution. While these methods are used in nearly all unified family court cases, juvenile

64. *Id.* at 25. See also, Brenda K. Uekert, Ann Keith, & Ted Rubin, Integrating Criminal and Civil Matters in Family Courts: Performance Areas and Recommendations 16 (National Center for State Courts 2002).

65. Flango et al., *supra* note 40, at 23.

66. David 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, 714 (David B. Wexler & Bruce J. Winick eds., 1997).

67. Flango et al., *supra* note 40, at 25.

68. David B. Wexler, *Therapeutic Jurisprudence and the Criminal Courts*, 35 *WILLIAM & MARY LAW REV.* 279, 280 (1993) as cited in Barbara Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775, 799 (1997).

69. Barry C. Feld, *Juvenile (In)justice and the Criminal Court Alternative*, 39 *CRIME & DELINQUENCY* 403 (1993).

delinquency cases have provided the greatest number of nonadversarial techniques in diversionary programs.⁷⁰ For example, New Jersey, which has a statewide unified family court system, has established widespread juvenile conference or neighborhood dispute committees, which serve as an arms of the court in hearing and deciding matters involving juvenile offenders.” Other programs include youth juries or peer group committees, which resolve delinquency complaints out of court.

The traditional juvenile court is no longer able to provide the individualized attention envisioned by its founders and can no longer easily intervene when youths are at the earliest stages of offending, at a time when interventions can be most effective in preventing future criminality. The unified family court, on the other hand, places a high premium on early intervention.

VI. Early Intervention

The prevention of violent criminal acts and other crimes perpetrated by youths has become a pressing issue in the national agenda, especially in light of the staggering economic and social costs of these offenses.⁷¹ Recently, prevention studies and clinical trials have supported the contention that effective interventions must address the multiple causes of criminal and violent behavior⁷² and that delinquency can be prevented by early childhood interventions programs that promote children’s competence across multiple systems, including individual, family, classroom, school, and community factors.

In other words, by intervening early in a young person’s development, preschool programs and parent educational services that, for example, improve school readiness help set a pattern that prevents delinquency in later years. Children who participate receive better early school experiences, and are less likely to drop out and become delinquents.⁷³ The most

70. Robert Page, *Family Courts: An Effective Approach to the Resolution of Family Disputes*, 44 JUV. & FAM. CT. J. 1, 33-35 (1993).

71. See *The State of America's Children: A Report from the Children's Defense Fund* (March 1998).

72. See Edward Zigler, Cara Taussic & Kathryn Black, *Early Childhood Intervention: A Promising Preventative for Juvenile Delinquency*, 47 AMER. PSYCHOL. 997-1006 (1992); Dan Olweus, *Bullying Among School Children: Intervention and Prevention in AGGRESSION AND VIOLENCE THROUGHOUT THE LIFE SPAN* 100-25 (Ray Dev. Peters et al, eds.1992) (demonstrating that a large-scale secondary prevention program produced significant reductions in bullying); Charles M. Borduin et al, *Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence*, 63 J. CONSULTING & CLINICAL PSYCHOL. 4, 569-78 (examining the long-term effects of multisystemic therapy on the prevention of criminal behavior and violent offending among juvenile offenders at high risk for committing additional violent offenses).

73. Zigler, *supra* note 27, at 2.

effective early intervention programs capitalize on the family support structure: they provide services such as health care, parent support and education, and facilitate connections between the parents and community resources.⁷⁴ Based on an ecological perspective, these programs center around the family as the most important influence in a child's life, which in turn is influenced by community institutions such as the workplace, schools, and services.⁷⁵

It is imperative that intervention is made as early as possible in a child's life if a goal is to prevent recidivism. Each subsequent time a juvenile is referred to court, the odds that the court can successfully intervene decline.⁷⁶ Recognizing the importance of early intervention, The National Council of Juvenile and Family Court Judges has made a programmatic recommendation that "priority should be given to providing sanctions and services for potentially or already serious, violent, and chronic juvenile offenders as early as possible in the offender's delinquent career."⁷⁷

That recommendation is supported by the conclusions of numerous researchers and experts. For example, the U.S. Department of Justice assembled an Office of Juvenile Justice and Delinquency Prevention Study

74. *Id.*

75. Zigler describes several such programs. The Seattle Social Development Program, which began in the early 1980s, provides services that address the ecological risk factors for delinquency. Preliminary findings suggest that delinquent behavior in the fifth grade is reduced among children who participate at any time between the first and fourth grades. The Syracuse University Family Development Research Program provides supplemental child care and works to improve children's lives by changing their home environment. Most participants were families in which the mother was a young, single, high-school dropout, with a poor employment history. Service providers met with the families weekly and provided information on nutrition and child development, as well as guidance in establishing positive parent-child relationships. At ages ranging from 13 to 16, only 6% of the program's graduates had been involved in the juvenile justice system, as compared with 22% of controls from similar families. The program's average saving to the juvenile justice system was approximately \$1800 per child. See Zigler, *id.* at 3-4. See also I.M. Montgomery et al, *What Works: Promising Interventions in Juvenile Justice* (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1994); M.W. Lipsey & D. B. Wilson, *Effective Interventions with Serious Juvenile Offenders: A Synthesis of Research*, in *SERIOUS AND VIOLENT OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS* 313-345 (R. Loeber & D.P. Farrington eds. 1998).

76. See P.E. TRACY & K. KEMPF-LEONARD, *CONTINUITY AND DISCONTINUITY IN CRIMINAL CAREERS* (1996); Howard Snyder, *Serious, Violent and Chronic Juvenile Offenders: An Assessment of the Extent of and Trends in Officially-Recognized Serious Criminal Behavior in a Delinquent Population*, in *SERIOUS AND VIOLENT OFFENDERS*, *supra* note 75, at 428-444.

77. Recommendation from a National Symposium sponsored by the Council of Juvenile and Family Court Judges, *The Janiculum Project: Reviewing the Past and Looking Toward the Future of the Juvenile Court* (1998).

Group on Very Young Offenders in 1998. In a report released in 2001,⁷⁸ the Study Group concludes that “of all known interventions to reduce juvenile delinquency, preventive interventions that focus on child delinquency will probably take the largest “bite” out of crime.... “The earlier the better” is a key then in establishing interventions to prevent child delinquency...”⁷⁹ An opinion survey of practitioners conducted by the Study Group found that nearly three-quarters (71%) thought that effective methods were available to deal with child delinquents to reduce the risk of future offending.⁸⁰

While there is considerable evidence supporting the notion of early intervention as a most effective means of preventing later juvenile crime, there are equally substantial legal concerns surrounding this approach. Geraghty and Mlyniec raise two important objections: (1) therapeutic early intervention is a coercive sanction dressed up as benign considerations⁸¹ and (2) this approach holds the resolution of social problems to be of paramount importance, while resolution of the dispute that originally brings a family into court is secondary.⁸²

On the first point—that early intervention is coercion in disguise—there is little evidence that families exposed to this approach actually do view it as antithetical to their own beliefs and/or imposing coercion on their actions. In an evaluation of Maryland’s high-conflict custody program, which offers ancillary services as part of the state’s unified family court approach, respondents to a survey overwhelmingly welcomed the support services and programs available to them.⁸³ Moreover, there are numerous court programs based on a therapeutic approach—drug court programs, juvenile drug courts, community courts, to name a few—that are based on a therapeutic approach (and, in the case of drug courts, a far more coercive one) which have been welcomed by participants despite their coercive nature.⁸⁴ While there is undeniably a coercive element in the unified family

78. CHILD DELINQUENTS, *supra* note 23.

79. Rolf Loeber, David P. Farrington, & David Petechuk, *Child Delinquency: Early Intervention and Prevention*, CHILD DELINQUENCY BULL. 9 (May 2003).

80. *Id.*

81. Geraghty & Mlyniec, *supra* note 7, at 441. Authors assert that therapeutic remedies are “inherently suspect because they do not start with the world-view of those who must comply with them. Instead they take on the perspective of the social science researcher who has structured his research and collected data in the context of his own perceptions and biases.”

82. *Id.* at 442. Geraghty & Mlyniec argue that under a unified family court system, “adjudication of the original dispute seems to be a minor part of the process.”

83. Report prepared for the Maryland Legal Services Corporation, Center for Families, Children and the Courts, *Evaluation of the High Conflict Custody Program* (2003).

84. See Steven Belenko, *Research on Drug Courts: A Critical Review*, 2 NAT’L DRUG CT. INST. REV. 1, 23-4 (1999).

court—an element, by the way, that is far from absent in many current juvenile courts⁸⁵—there is scant evidence that the recipients of and participants in the services and programs available through the court’s intervention resent these “interventions.”

If there is one defining characteristic of juvenile courts in the past 100 years, it is that they have developed in unique styles. The early juvenile courts were built on a philosophy of helping young offenders rather than establishing their guilt; in later years, these courts were guided primarily by due process protections. That, in many ways, has been the undoing of the juvenile court—the emphasis on dispute resolution with its network of safeguards, due process protections, and sentencing guidelines—has deprived judges of the discretion and individualized approaches that should characterize an arena deciding cases ranging from 11-year old shoplifters to 18-year old murderers. The unified family court, far more than the majority of current juvenile courts, allows judges the flexibility to choose different responses to the vast array of offenders coming before them as “juvenile delinquents.”

VII. Conclusion

Frustrated by increasing youth crime rates and violence, the public is demanding more effective methods of dealing with juvenile delinquency, and lawmakers often translate those demands into policies that emphasize punishment and incarceration and increasing the formality of juvenile court procedures, including transfers to adult court and implementing sentencing guidelines.⁸⁶

The juvenile court was created as a mean to address juvenile crime in a way that allowed the court more flexibility and initiative than traditional criminal court. As judicial discretion and creativity is diminished by harsher policies, the justice system becomes unable to provide the individualized attention envisioned by its founders, and judges today are stymied when attempting to intervene in the lives of children who are still only at risk of

85. There are states whose statutory provisions allow the courts to punish and/or hold parents in contempt where it can be demonstrated that the parents, either by actions of omission or commission, contributed to the child’s delinquency problems. See Gilbert et al., *supra* note 11 at 1152 citing ARIZ. REV. STAT. ANN. § 8-234(c); ARK. CODE ANN. § 9-27-330(a)(10); FLA. STAT. ANN. §§ 985.231(1)(a)(5), (7), (9); N.M. STAT. ANN. § 32A-2-28(C); TENN. CODE ANN. § 37-1-174(b) Gilbert provides additional examples of statutory authority enabling juvenile court judges to use coercive sanctions, including in some cases criminal liability and potential for incarceration against parents of delinquents.

86. See Richard E. Redding, *The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications*, 1 YOUTH VIOLENCE & JUV. JUSTICE 128-55 (April 2003); Butts & Harrell, *supra* note 13, at 14.

future offending. The unified family court and its underlying notion of therapeutic jurisprudence present one—and perhaps our best—hope of allowing the justice system to aggressively and creatively handle young offenders while preserving the rights of offenders and maintaining public safety.