

# Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980

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### Introduction

The Adoption Assistance and Child Welfare Act of 1980<sup>2</sup> ("Act") significantly changed child welfare law in the United States. Of particular importance, the Act created responsibilities for juvenile court judges, making them an integral part of the operation of the law. Although the Act has been in effect for well over a decade, it is still misunderstood and often ignored.

This article examines the implementation of the Act and the reasons why it is not working as well as it might. It offers technical assistance to judges, court administrators, social service agencies, attorneys and other interested persons regarding the Act's implementation. It focuses upon the judicial oversight of abused and neglected children when they are removed from parental custody. The premises of this paper are that many social service agencies do not effectively deliver preventive and reunification services to families, that juvenile court oversight of social service delivery has been ineffective or nonexistent, and that many juvenile courts do not ensure that children in out-of-home care attain a permanent home in a timely fashion. As a result, many state child welfare systems do not serve children and families well, and most states risk losing federal funding for social services. This paper concludes with recommendations on how a strong judiciary and specialized training can improve implementation of the Act and ensure that it operates as Congress intended.

### Overview

Nowhere else in the law must judges play such an important role as in juvenile dependency cases. The Act and state laws based upon it<sup>3</sup> require the juvenile court judge to monitor the activities of the social service agency before, during and after the state has removed

a child from a parent's or guardian's custody.

This monitoring is a significant responsibility for judges. Juvenile court judges are already the gatekeepers for the nation's child welfare system. State law requires them to decide the propriety of social service agency removal of a child from parental custody. The federal statute and state implementing statutes<sup>4</sup> have designated juvenile court judges as the monitors of social service delivery to these same parents. Through child welfare court hearings, the juvenile court must determine whether the social service agency has made "reasonable efforts" to prevent foster care placement or to rehabilitate and safely reunite families of children already in placement.<sup>5</sup>

In these court proceedings, the stakes are high by both human and fiscal measures. Child abuse reports have risen dramatically in the past ten years.<sup>6</sup> The impact upon juvenile courts and the foster care system has been significant.<sup>7</sup> The number of juvenile court dependency cases has increased substantially, and more than 460,000 children are currently in out-of-home care at a cost of hundreds of millions of dollars annually.<sup>8</sup>

Judges are periodically called upon to engage in substantial oversight of agency decision making, but not with the consequences described in the Act. If a judge finds that the state social service agency has not adequately delivered services to a family from whom a child has been removed, that finding may serve as the basis for reducing federal aid to the agency.<sup>9</sup> A negative judicial decision may thus reduce financial support for the agency and make it even more difficult to provide services to families whose children may be or have been removed.

The Act's drafters placed juvenile courts in the crucial position of monitoring social service compliance with its terms. Unfortunately, a number of implementation problems have impaired the effectiveness of judicial oversight. Seven problems stand out: First, many people disagree with the law. At one extreme, some argue that preserving families is dangerous for children and that abusive and neglectful families should not be given an opportunity to change, rehabilitate, and be reunited with their children.<sup>10</sup> At the other extreme, people claim that the state is too intrusive into family life, that fewer children should be removed from parental custody, and that, once removed, children should not be adopted, but should wait until their parents are ready to have them returned.<sup>11</sup>

Second, some social service agencies have not delivered the services as promised in their state plans.<sup>12</sup> Third, some judges misunderstand or remain unaware of their duty to monitor social service delivery. Fourth, in many courts the "reasonable efforts" issue is not litigated by the parties. With no one raising the issue, courts understandably do not address it. Fifth, some judges understand their responsibility but are unwilling to exercise their power and rule on social service failures.<sup>13</sup> Sixth, some judges understand their responsibility and are willing to exercise their power, but they record their findings incorrectly. Seventh, in many jurisdictions court structure impedes implementation of the Act.<sup>14</sup> Often a state's constitution or state laws create barriers to implementation.<sup>15</sup>

The Act can and must be better implemented. The first of the following four sections examines the federal law, its purpose and what it requires of juvenile court judges. The second section reviews the Act's implementation, examines recent trial and appellate decisions, and provides information on judicial training and trial court practice. The third section suggests ways in which implementation can be improved and features techniques proven effective in several jurisdictions. The fourth section outlines some specific steps jurisdictions should take to improve compliance with the Act and thereby better serve

children and families. It describes the juvenile court judge's critical role in implementing the Act and in overseeing the entire juvenile dependency process; it also describes the juvenile court judge's relationship to the social service agency and the art of the "reasonable efforts" finding.

### I. The Act

The Adoption Assistance and Child Welfare Act of 1980<sup>16</sup> governs juvenile dependency law in the United States. Enacted in response to widespread criticisms of the country's child welfare system, this federal legislation balances the need to protect children with the policy of preserving families. After lengthy hearings, Congress concluded that abused and neglected children too often were unnecessarily removed from their parents,<sup>17</sup> that insufficient resources were devoted to preserving and reuniting families,<sup>18</sup> and that children not able to return to their parents often drifted<sup>19</sup> in foster care without a permanent home.<sup>20</sup> Congress concluded that children need permanent homes, preferably with their own parents, but, if that is not possible within a reasonable time, with another permanent family.<sup>21</sup> Permanent families provide children better care than the state and help ensure that they will grow into emotionally stable, productive adults.<sup>22</sup>

### **Congress's response, the Adoption Assistance and Child Welfare Act of 1980, was based upon three important principles:**

- (1) preventing unnecessary foster care placements;
- (2) timely and safe reunification of children in foster care with their biological parents when possible; and
- (3) expeditious adoption of children unable to return home. The Act seeks to achieve these goals, in part, by providing state social service systems with "incentives to encourage a more active and systematic monitoring of children in the foster care system."<sup>23</sup>

**The major tenets of the Act and of the state implementing legislation are as follows:**

1. To qualify for federal funding, the state must prepare a state plan describing the services it will provide to prevent children's removal from parental custody and to reunite child and parents after removal.<sup>24</sup> The plan must include a provision that the social service agency will make foster care maintenance payments in accordance with section 472 of the Act.
2. The social service agency must provide services to prevent removal of a child from parental custody and to reunite a removed child with a parent or guardian.<sup>25</sup>
3. Where a child is involuntarily removed from parental custody, the juvenile court must make a finding that continued placement of a child with the parent or guardian would be contrary to the child's welfare.<sup>26</sup>
4. The juvenile court must make "reasonable efforts" findings in each removal case, indicating whether the state, in fact, provided services to eliminate the need for removing the child from the parent.<sup>27</sup>
5. The juvenile court must also determine whether the state has made "reasonable efforts" to enable the child to be reunited with his family.<sup>28</sup>
6. The juvenile court must determine whether the agency developed a case plan to ensure the child's placement in the least restrictive, most family-like setting available in close proximity to the parent's home, consistent with the best interests and needs of the child.<sup>29</sup>
7. The juvenile court or administrative review board must review a foster child's status at least once every six months. At each review the court or administrative body must determine the continuing need for and appropriateness of placement, the extent of compliance with the case plan, and the progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care. The court or administrative body must also project a likely date by which the child may be returned home or placed for adoption or legal guardianship.<sup>30</sup>
8. The juvenile court must hold a hearing no later than 18 months after the original out-of-home placement to determine a permanent plan for the child. The court must determine whether the child should be returned to the parent, should continue in foster care, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long term basis.<sup>31</sup>
9. The juvenile court must also assure that these judicial determinations are made in a timely fashion. The involuntary removal of a child must be reviewed, usually within 48 or 72 hours. Thereafter, the status of the child must be reviewed at least every six months. The child must be returned home or have a permanent plan (adoption, guardianship or long term care) in place within 18 months of the removal.<sup>32</sup>
10. The juvenile court must approve any voluntary, non-judicial foster placement within 180 days of the original placement.<sup>33</sup>
11. The juvenile court must ensure that parents are provided procedural safeguards when their children are removed from the home or are moved into different foster homes.<sup>34</sup>

Congress intended the Act to ensure that social service agencies fulfill promises made in their state plans. The juvenile and family courts in each jurisdiction were given the task of reviewing the delivery of social services both before and after removal of a child for abuse or neglect. Congress made a deliberate decision to give the

courts substantial oversight responsibility.

*The committee feels the elimination of the requirement for judicial determinations would be directly contrary to the purposes of the legislation in that it would move in the direction of providing additional incentives for States to choose foster care placements over the more difficult task of returning children to their own homes or placing them in adoptive homes. Moreover, such a change would eliminate an important safeguard against inappropriate agency action.*<sup>35</sup>

The federal government's role under the Act is to ensure compliance by auditing court records. Where the social service agency complies with the Act and the court records compliance with the correct findings and orders, the federal government will not penalize the state by demanding that federal funding be returned. If, however, the court records do not reflect compliance with the federal law, the state will be required to return some of the federal monies that have been provided.<sup>36</sup>

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### II. Implementation of the Act

Implementation of the Act has been uneven.<sup>37</sup> The legislation is complex and is effective only when it is fully understood by each participant. First, the state social service agency must submit a plan to the federal government, a plan which is the basis for receipt of federal monies to support foster care and other services for abused and neglected children and their families.<sup>38</sup> The state plan details the social services which will be offered to families to prevent removal of their children and to promote reunifying of families when children have been removed.

Second, the social service agency must provide prevention and reunification services to these children and families.

Third, the court must determine at the hearing whether the services offered were appropriate under the circumstances. The term of art used in these hearings is "reasonable efforts." If the court determines that the services offered were adequate, it will make a "reasonable efforts" finding. If the court

determines that the services offered were inadequate, it will make a "no reasonable efforts" finding.

The possible findings are actually more complex. The court may find that no reasonable efforts were offered, but may also conclude that because of an emergency, no social services would have prevented removal of the child. In this case, the court may make such an emergency finding to satisfy the requirement of the federal Act.<sup>39</sup>

Fourth, the court's findings must be properly recorded so an auditor can understand them. If the judge or court clerk incorrectly records the judicial findings concerning these issues, the social service agency may not receive credit for satisfactory work or may get credit for improperly performed work. To make matters even more complex, the Act does not define "reasonable efforts."<sup>40</sup> The term must be interpreted by each judicial officer in each case. Some services may be "reasonable" in one jurisdiction but not in another. For example, one community may be able to provide a home for a teenage mother and her baby, while such a resource may be unavailable in another. In the latter community, the court may find that failure to offer that service is reasonable given the resources available to the social service agency.<sup>41</sup>

It is difficult to monitor the Act's implementation to determine how well juvenile and family courts follow it. One source of information comes from commentators who have studied the child welfare system. They indicate that compliance with the law is uneven and in some jurisdictions nonexistent. One commentator finds "impressive gains occasioned by court-related provisions of the Act."<sup>42</sup> He comments that periodic court review has made it more difficult for social workers to leave a child in care without supervision or efforts towards permanency. He believes the Act has helped avoid unnecessary placement of many children, has reduced the frequency of inappropriately lengthy placements, and has led to more terminations of parental rights and adoptions of children who cannot return to their parents. He also observes that courts and social services agencies

## Appendix C

are working together more closely as a result of the Act.<sup>43</sup>

However, this same commentator concludes that "fully effective implementation has not occurred in many parts of the United States."<sup>44</sup> In some jurisdictions compliance with the Act is minimal:

*In many densely populated, high poverty urban areas, the child welfare system operates very much in the same manner as it did prior to the passage of P.L. 96-272.*<sup>45</sup>

Many of these jurisdictions are frustrated by limited resources throughout the dependency system, including insufficient numbers of social workers. As a result, cases are poorly investigated, inadequate services are provided to the family to prevent removal, case plans are not written in a timely fashion, and reunification services are inadequate and untimely when children are removed. Because of insufficient resources, attorneys and guardians ad litem are overburdened with enormous caseloads, court calendars are crowded, cases are given only a few moments each in court, and the entire process is slow and cumbersome, with permanency planning hearings<sup>46</sup> occurring three, four, and five years after initial removal of a child.<sup>47</sup>

Moreover, a lack of understanding concerning the operation of the Act has severely limited its implementation. For example, many incorrectly believe that a finding of "no reasonable efforts" prevents the court from removing a child from a dangerous home.<sup>48</sup> Several states have even enacted legislation requiring a finding of reasonable efforts before removing a child.<sup>49</sup> These interpretations of the federal Act are incorrect. The only consequence the Act provides for failing to provide adequate services is loss of federal matching funds.<sup>50</sup>

Several commentators have addressed these issues, some with a measure of despair.<sup>51</sup> A federal judge hearing evidence about the child welfare system in the District of Columbia, including insufficient numbers of social workers, poor services, and inadequate automation, concluded:

*The court views the evidence in this case as nothing less than outrageous.*

*The District's dereliction of its responsibilities to the children in its custody is a travesty. Although these children have committed no wrong, they in effect have been punished as though they had. Based upon the foregoing, the court holds that defendants have deprived the children in the District's foster care of their constitutionally protected liberty interests.*<sup>52</sup>

An appellate court in Illinois, reviewing the child welfare system in Cook County (Chicago) with similar problems, stated that the dependency and juvenile court systems were "abysmal failures partly because the juvenile court has not followed the law."<sup>53</sup>

An attorney representing children in dependency actions in Pittsburgh, Pa. wrote of her inability to meet the demands of increasing caseloads:

*This afternoon I am in the midst of a paper mountain, trying to acquire information about the 120 plus children I will represent in over 55 hearings this Friday before my county's Juvenile Court. I have been a lawyer with Child Advocacy for over ten years, have seen caseloads triple and funding decrease, so that my four full-time colleagues and myself have responsibility for more than 1100 cases each.*<sup>54</sup>

Despite these problems, the juvenile court dependency process works well in some jurisdictions. Child abuse and neglect are reported and thoroughly investigated. Family preservation services<sup>55</sup> prevent unnecessary removal of children. When formal proceedings are initiated, the parties are well represented by attorneys and/or guardians ad litem who have reasonable caseloads. If a child must be removed from parental custody, reunification services are provided which give the parents a meaningful opportunity to reunite with their child. If, after 12 or 18 months, reunification is unsuccessful, a permanent plan is established and implemented in a timely fashion.

Examples include Hamilton County, Ohio;<sup>56</sup> Sonoma County, California; Jefferson County, Kentucky;<sup>57</sup> Santa Clara County, California;<sup>58</sup> and Kent County, Michigan.<sup>59</sup> In the face of rising caseloads and the mandates of the federal Act, these counties and others

like them throughout the country give a clear indication that compliance with the federal law is possible.

A second source of information about compliance with the federal Act is appellate case law, both federal and state. This law is divided between decisions which review juvenile court findings in individual cases and those which review issues covering an entire jurisdiction. Findings of reasonable efforts are reviewable by appellate courts. These appellate decisions demonstrate that in some states reasonable efforts issues are thoroughly litigated, but the fact that the issues do not appear in the appellate decisions in other states may indicate that they are not addressed in the juvenile courts.<sup>60</sup>

For example, a Pennsylvania decision found that the social service agency had not provided reasonable efforts to an unwed teenage mother and her 14-month-old infant after the mother had come to the agency for help because she had no money or place to stay. The baby was removed, and the agency told the mother "to get herself together and find a place and get some employment so she could have her daughter back." Even after she had done what was requested, the agency did not return the baby to the mother's new home without visiting it.<sup>61</sup>

The Supreme Court of Rhode Island reviewed two cases in which the trial court had ordered the Department for Children and Their Families (DCF) to provide housing assistance to homeless families to assist parents in reuniting with their children.<sup>62</sup> DCF opposed these orders, claiming that the court did not have authority to order housing in juvenile dependency matters and that such expenditures would unduly tax the agency's limited resources.

The Supreme Court affirmed the trial court findings. It focused upon the statutory language empowering DCF and concluded that housing subsidies were consistent with the purpose of reunification services:

*The rental-subsidy payments are a stopgap measure designed to enable a reunifying family with no savings and little or no income to raise the security deposit and the first few*

*months' rent needed to secure new housing. The housing assistance is not to be continued indefinitely.*<sup>63</sup>

The court concluded that the trial court acted consistently with the intent of the legislature.

*The Legislature intended for the court to provide a check on DCF's powers, to protect families from hasty and routine terminations by ensuring that adequate services have been provided prior to termination. Without the power to remedy inadequacies, this check would be illusory.*<sup>64</sup>

In a Missouri case, the social service agency removed four children from their mother's custody when it was discovered that she had left them at home unattended and unsupervised.<sup>65</sup> Apparently this had happened on more than one occasion. Moreover, the mother had on several occasions left her children with relatives, babysitters or her boyfriend and failed to return to pick them up. There was also evidence that the mother was an habitual drug user, that she agreed to participate in a three month drug-counseling session, but that she failed to participate in that session.

The juvenile court assumed jurisdiction over all the children and placed them with their father, giving the mother visitation rights. The Court of Appeals agreed that the juvenile court properly took jurisdiction of the children, but found that the agency had not provided "reasonable efforts" to prevent or eliminate the need for removing the children from their home. The court reviewed the state statute concerning the removal of children and the necessity of proof that the agency had provided reasonable efforts and that the court specifically review those efforts in its orders. The court concluded that:

*The order of disposition entered in each case lacks both the determination of whether or not the Division of Family Services made reasonable efforts to avoid the need to remove each child from the home, what reasonable efforts were, and a detail of the evidence to explain those efforts.*<sup>66</sup>

The Iowa Court of Appeals reversed the juvenile court finding of reasonable efforts after placing into a group home a 12-year-old child who had committed an aggravated assault. The appellate court found no evidence that the agency had made any attempt to "prevent or eliminate the need for removal of the child from the child's home."<sup>67</sup>

In *In re Burns*,<sup>68</sup> the Supreme Court of Delaware declared how important application of the Act is to the trial courts. The Division of Child Protective Services and Children's Bureau had sought to terminate the mother's parental rights, alleging that she was unable to plan, and had failed to plan, for her child's physical needs. The Supreme Court reversed the trial court's order terminating mother's parental rights. It noted that the social service agency had failed to give her adequate notice. The Court went on to declare the importance of trial courts following the mandates of the federal Act.

*In future cases of this type the Family Court must ensure meaningful compliance with the Child Welfare Act of 1980 . . . and the appropriate Delaware law. . . In doing so, the Family Court must interpret and apply the federal and state statutes to determine their application to a given case. Thus, where termination of parental rights is sought primarily on the ground that a parent has failed, or was unable, to plan adequately for a child's needs, and if that rather vague criterion is to survive constitutional scrutiny, the trial court is required to make appropriate findings of fact and conclusion of law as to the state's bona fide efforts to meet its own obligations. Without that, no case of this sort, and all its enormous consequences, will pass appellate muster.<sup>69</sup>*

In a number of other states, reasonable efforts findings have been reviewed by appellate courts.<sup>70</sup>

Other litigation has examined the dependency system within an entire jurisdiction. So-called impact litigation is normally brought on behalf of a class of persons, alleging that the entire class is being denied specified rights.

The class action of *Doe v. King* was brought in state court on behalf of abused and neglected children in Massachusetts, alleging that the state was not adequately protecting these children. In August of 1984 the plaintiffs reached a settlement agreement with the Massachusetts Department of Social Services (DSS) which provided for (1) workload controls and minimum staffing patterns at DSS; (2) training of social workers; (3) foster parent training; (4) health screening and a health care tracking system for children in foster care; (5) best efforts by DSS to monitor the health care of children on their caseload who were not in foster care; (6) timely case reviews and reasonable efforts to reunite families, and (7) monitoring of service providers.<sup>71</sup>

In *Martin A. v. Gross*,<sup>72</sup> several families sued New York City's child welfare agency, which allegedly had not provided preventive services to avoid having their children placed in foster care. Such services included day care, homemaker services, parent training, transportation aid, clinic services, access to emergency shelter, cash and goods, all of which the state guaranteed by statute. The trial court granted the plaintiff's motion on the ground that the City's preliminary injunction failure to provide preventive services violated state and federal law. This decision was affirmed by the appellate court.<sup>73</sup>

*LaShawn v. Dixon*,<sup>74</sup> brought on behalf of children in the District of Columbia against the District government, alleged that children and families were not receiving social services guaranteed by law. The Federal District Court reviewed the entire District of Columbia dependency system and found it to be a dismal failure. The judge's findings indicated that the juvenile court was not making any meaningful inquiry into services provided by the District's social service agency.<sup>75</sup>

In Illinois, the case of *In re Ashley K* began as an appeal of a visitation order in a dependency case, but ended as a full examination of the Cook County juvenile court dependency system.<sup>76</sup> The appellate court found the entire system to be failing. Included in its findings was the fact that thousands of children

were awaiting permanency planning hearings years after they should have been scheduled by law.<sup>77</sup> As in the District of Columbia, it was clear that the juvenile court simply failed to engage in any meaningful examination of the services provided by the social service agency to the families whose children had been removed.<sup>78</sup>

The effectiveness of impact litigation has been seriously limited by the United States Supreme Court decision in *Suter v. Artist M*,<sup>79</sup> which held that private persons may not enforce the Act's "reasonable efforts" provision either under the Act itself or under 42 U.S.C. section 1983. Thus the children and families in *Suter* who sued the social service agency for its failure to provide case-workers to children in a timely manner were without a remedy except those specified in the Act, such as the federal audits described *infra*.<sup>80</sup>

A third source of information concerning the Act's implementation is the federal government. The Act requires an examination or audit of court records to determine whether the court is properly monitoring and recording its findings regarding social service delivery. These audits are conducted by the Office of Inspector General (OIG) and the Administration for Children and Families (ACF), both divisions of the Department of Health and Human Services. The OIG and the ACF conduct audits in various states on a regular basis.<sup>81</sup> Each audit reviews a representative number of cases from the particular jurisdiction for the audit period. The percentage of failures is measured against the total amount of federal monies provided to the state. The results of the audit are then presented to the state department of social services. For any failures by the state to follow the federal law, the federal government will request reimbursement of the Title IV-E monies.<sup>82</sup>

The audits have examined a number of issues, including the following:

1. Whether the juvenile court has made reasonable efforts findings.
2. Whether the court has made the "contrary to the welfare of the child" findings.

3. Whether the court has signed the orders making the necessary findings.
4. Whether there are case plans for each child.
5. Whether the state provides that every child in foster care receives periodic hearings.<sup>83</sup>
6. Whether permanent plans have been put in place in a timely fashion.<sup>84</sup>

These audits indicate that states often are not in compliance with the federal law. Department of Health and Human Services records indicate that numerous states have been audited and some have been penalized for failing to make the required federal findings. For example, the 1987 audit of Georgia's Title IV-E foster care expenditures resulted in a penalty of \$2,586,779.<sup>85</sup> The 1984-1985 audit of Erie and Westchester counties in New York resulted in a penalty of \$1,817,346. After negotiations with the State of New York, the final penalty was set at \$1,573,013.<sup>86</sup> The federal audit of the State of Washington's Title IV-E foster care payments resulted in a penalty of \$229,547.<sup>87</sup> In a 1993 audit of California's child welfare system, the Office of Inspector General reviewed Title IV-E Foster Care Eligibility from October 1, 1988, to September 30, 1991.<sup>88</sup> The draft report revealed a lack of compliance with federal regulations in 319 out of 805 cases. The majority of errors related to lack of judicial determinations regarding "reasonable efforts" and "continuance in the home was contrary to the welfare of the child."<sup>89</sup> The state liability in the draft report exceeded \$54,000,000.<sup>90</sup> California's child welfare system has experienced similar problems in the past.<sup>91</sup> Other audits have produced similar penalties for states throughout the country.<sup>92</sup>

Audits also examine whether states have properly reviewed the status of children in placement as the Act requires.<sup>93</sup> An audit of the State of Illinois by the Administration for Children, Youth and Families for fiscal year 1984 determined that the state was ineligible to receive \$1,034,619. The audit determined that Illinois had not made timely

reviews of children in foster placement. This determination was affirmed by the Departmental Appeals Board,<sup>94</sup> but reversed in a later Departmental Appeals Board ruling.<sup>95</sup>

### III. Improving Implementation

Much room for improvement exists in the Act's implementation. Many state and local social service agencies do not provide families with the services guaranteed in their state plans. They neither provide preventive nor reunification services to families, nor do they ensure that children have permanent placements in a timely fashion.<sup>96</sup> Some juvenile courts do not review the delivery of social services or make appropriate findings regarding those services.<sup>97</sup> Many judges do not understand the Act or its purposes, requirements or consequences.

The stakes are high. Children may be unnecessarily removed from their families and may remain in substitute care for years. Families may be unnecessarily separated. Children who cannot return home may never have a permanent placement. In addition, social service agencies may lose valuable resources through the federal audit process.

All participants in the dependency process, particularly judges, need to be better trained about the Act. This is not as simple as it may sound. The federal Act has no training provisions. It was assumed that courts and social service agencies would learn and understand their responsibilities and how to fulfill them.

The legislation was passed more than 15 years ago, but it is still not well known in many jurisdictions. Training has been sporadic and has been provided primarily by the National Council of Juvenile and Family Court Judges, a judicial membership organization which offers education and technical assistance to jurisdictions which request it. Since 1980, the National Council, through its educational programs and Permanency Planning for Children Project, has provided many trainings both at its headquarters in Reno, Nevada, and throughout the country at national, state, regional and local conferences.<sup>98</sup>

Conference training has its draw-

backs. Only a portion of judges come to such conferences. Conference attendance, moreover, does not guarantee that those present will take advantage of the Act's training. Often several workshop choices are offered simultaneously. Many judges choose not to attend such training because juvenile court cases are a small part of their dockets. Particularly where judges hear the entire range of cases in the court's jurisdiction, juvenile court matters may constitute a small percentage of the court's total workload. These judges usually do not devote significant portions of their continuing education time to juvenile court issues.

Even if a judge attends the session, much must be learned. The training usually can provide only an overview of the law and suggestions on how to implement it in a particular jurisdiction. There is not enough time to develop the expertise necessary to enter appropriate court orders so that they will pass federal scrutiny. Adequate training should include a review of the Act, its impact on children and families, the correct manner for recording the required findings and the Act's mandates concerning the judge's role.

Such training should take place in each local jurisdiction. It should include the judges, courtroom clerks, social service representatives, and any other member of the court staff involved in recording court findings. The training should also include attorneys, guardians ad litem, Court Appointed Special Advocates (CASAs)<sup>99</sup> and social workers. The training can focus on the Act and its implementation in the jurisdiction. All members of the dependency system can address issues such as representation of the parties, court calendaring practices, local policies and procedures, and judicial forms. Technical assistance is available for such trainings from the National Council of Juvenile and Family Court Judges and the judges and staff they have available for training. An example of the technical assistance available are the model forms developed for use in dependency cases by Judge Richard FitzGerald of Louisville, Kentucky, and by the Northern California Bay Area Reasonable Ef-

forts Project.<sup>100</sup>

Recent federal legislation offers both state social service agencies and court systems the opportunity to improve implementation of the Act.<sup>101</sup> The Family Preservation and Support Services part of the Omnibus Budget Reconciliation Act of 1993 provides that each state will receive monies "to promote family strength and stability, enhance parental functioning and protect children."<sup>102</sup> One of the goals of this legislation is to enable states to assess and make changes in state and local social service delivery. The total amount of money authorized is approximately one billion dollars over five years.

In addition, Congress has authorized the U.S. Department of Health and Human Services to provide \$35 million in grants to state courts over a four year period.<sup>103</sup> The grant program's purpose is to help state juvenile court systems assess and improve their handling of child abuse and neglect, foster care and adoption cases. During the first year of the grant program, the state will complete an assessment describing its performance and a plan for improvement.<sup>104</sup> By taking advantage of this grant program, states can assess their juvenile court dependency systems and take steps to improve them.<sup>105</sup>

California is currently experimenting with a training model designed to address deficiencies in the federal Act's implementation. The State Department of Social Services has agreed to include funding for judicial training in its budget. Leaders from the judiciary and social services agencies will hire and train several persons to serve as local experts in implementing the Act. These persons will work under the auspices of the California Judicial Council. They will visit every judicial officer in the state who hears juvenile dependency cases to conduct an on-site training session regarding the Act. The training will include the courtroom clerk, the court officer from the social service agency, and anyone else critical to the implementation of the law. The trainers will explain the federal Act, its philosophy and main provisions, the necessity for judicial oversight of social service delivery, and the ways in which court orders must be recorded. There will be an opportunity

to offer technical assistance to the court and staff concerning all aspects of the Act's implementation. To overcome possible reluctance from judges to participate, the Judicial Council will introduce and promote this training. If necessary, other judges will accompany the trainers. A unique aspect of this training is that it will be financed principally by federal funding provided under federal regulations which permit state and local training for foster care and adoption assistance under Title IV-E.<sup>106</sup>

Such training will also be extended to attorneys and all others who appear on behalf of children, parents, and the social service agency. Attorneys who appear in these proceedings must understand the Act and address the issues on which the court must make findings pursuant to it. Court Appointed Special Advocates (CASAs) and guardians ad litem also must be trained in the law so they can assist the court by commenting on those issues in their court reports.

Correct implementation of the Act is vitally important to all participants in dependency cases. If the court fails to make or incorrectly records the required findings, the social service agency could lose valuable resources and children and families may suffer unnecessarily lengthy or needless separations. One means to provide education for all members of the legal and social service community is to have a local or statewide conference devoted to fully implementing the Act. California has developed a useful model with its annual Beyond the Bench Conference. Co-sponsored by the Juvenile Court Judges of California, the State Department of Social Services, and the County Welfare Directors, this conference brings together all major participants in the dependency process for two days each year. Participants help plan the conference agenda so that issues are examined on an interdisciplinary basis. The National Council of Juvenile and Family Court Judges has participated in each conference, bringing both technical assistance and nationally known speakers to enrich the proceedings. The result has been an improved child welfare system in which the par-

ticipants have a better working relationship with one another,<sup>107</sup> a more complete appreciation of the federal law, and an understanding of each participant's role.<sup>108</sup>

In order to implement the federal law effectively, some states may have to modify their juvenile court statutes. Their new statutory scheme should reflect the federal law's philosophy, timelines, and mandates concerning service delivery and judicial findings. Several state statutory schemes, including those in Ohio, Minnesota, Missouri, and California, offer models for consideration.<sup>109</sup>

Hopefully, adoption of some of these innovations will persuade judges and administrators to renew their determination to adhere to the Act's mandates. For many judges and court systems, however, adherence has not been the rule. One unfortunate response to the Act has been for some judges to "rubber stamp" reasonable efforts on all cases without any meaningful inquiry.<sup>110</sup> Some of these judges say that they will not make a "no reasonable efforts" finding if that finding will result in loss of revenue to their jurisdiction. They understand the Act, but refuse to exercise their power even if the social service agency has not delivered the required services. Other judges are prepared to check the box or sign the preprinted form without any inquiry.

Not only is this rubber-stamping a violation of the law, but it also makes the Act meaningless. The Act instructs juvenile court judges to make specified findings based upon evidence presented in court. By failing to take the Act seriously and exercise scrutiny over the social service delivery process, the judge abrogates judicial responsibility. The judge becomes part of the problem and becomes useless for the purposes of the law.

Moreover, these judges create an even greater problem. *Ashley* and *LaShawn* indicate what can happen when the juvenile court remains silent or fails to do its job. It can result in a lack of accountability by the social service system and wholesale government neglect of children. By sitting by silently while the social service agency fails to do the tasks mandated by the Act, the juvenile court participates in the systematic neglect of children and families.

#### IV. The Juvenile Court Judge's Role

Effective implementation of the Act requires strong leadership from the juvenile court. It is necessary to have a state statutory scheme consistent with the Act<sup>111</sup> and a social service system with sufficient resources to provide services to troubled families, but it is crucial to have leadership from the juvenile court bench. This leadership must extend to court organization, judicial resources, training, and education.

The juvenile court must be organized to give dependency cases sufficient status and resources.<sup>112</sup> These cases should be managed by judges, not lesser judicial officers.<sup>113</sup> Judges hearing these cases should be interested in the juvenile court's work and be prepared to remain in the court for at least three years.<sup>114</sup>

Judicial rotation of judges hearing juvenile dependency cases, or the movement of a case among several judges, is good neither for children and families before the court nor for the Act's implementation.<sup>115</sup> Preferably one judicial officer will hear a child welfare case from start to finish. When more than one judge hears a case, each successive judge must go back to the beginning to understand the case's procedural and factual history. Having multiple judges hear a case increases the possibility that facts will be forgotten. It reduces accountability. It can turn judicial review into an exercise of paper movement and can result in poor judicial decisions concerning placement of children.<sup>116</sup>

In courts with four or more juvenile court judges, it is preferable to divide the work into teams, one focusing upon juvenile delinquency and one on juvenile dependency. This division of labor results in better calendar management, more and better judicial oversight of cases, and greater efficiency for the attorneys, probation officers and social workers who work with the juvenile court.<sup>117</sup>

Juvenile court judges must ensure that the court has adequate judicial and other resources to fulfill its responsibilities.<sup>118</sup> The judges must be prepared to advocate for sufficient judicial officers and staff to be assigned to the juvenile

court. This challenge may involve substantial political effort by the judges, but the risks of failing to take action are significant. Children and families are not well served by understaffed juvenile courts.<sup>119</sup> Moreover, the quality of the juvenile court's work will likely become the focus of public inquiry and criticism if the deficiencies persist.<sup>120</sup>

Judges must also ensure competent representation for parents and children who appear in dependency proceedings.<sup>121</sup> It is particularly important that children have consistent independent representation throughout their dependency. In that way someone will be able to retain the child's history, including the reasons for entry into the system. In addition, judges should establish standards for attorneys and guardians ad litem which require them to participate in training on a continuing basis.<sup>122</sup> Courts and social service systems need adequate resources to function adequately, but that is not all. Each must be operated intelligently. For example, intake policies and practices, the ways services are delivered to families, the timeliness of hearings, and the ways cases are closed are all crucial to a well run juvenile dependency system.

Intake policies determine what quality of case will be petitioned and come before the juvenile court. Jurisdictions vary widely in the ways they decide whether to remove children from their parents, in their ability to deliver preventive services and thereby avoid removal, and in their willingness to provide services on a voluntary or informal basis. The same factual circumstances may result in removal and formal court intervention in one jurisdiction and no removal with in-home services in another.<sup>123</sup> States should consider developing guidelines relating to the factors justifying removal of children from their parents as well as reunification. Connecticut has written standards for the removal and return of children. To be useful, such guidelines must be accompanied by training and review.<sup>124</sup>

A useful method of improving implementation is to examine carefully specific types of cases to determine whether specialized strategies can safely prevent removal of children from their parents. One example is the drug-

exposed baby. Estimates are that approximately 740,000 women will use one or more illegal substances during their pregnancies each year.<sup>125</sup> Such exposure can have a deleterious effect upon the fetus. If detected at birth, there may be a report to child protective services, investigation, and, in some cases, removal of the baby and juvenile court intervention.

Research focusing upon court cases of drug-exposed infants has identified policy and service delivery changes which can maximize assistance to mothers.<sup>126</sup> Model protocols have been developed to provide services to these babies and their mothers and enable many of them to remain safely together.<sup>127</sup> The California Legislature enacted legislation mandating the creation of such protocols<sup>128</sup> and prohibiting the mandatory reporting to law enforcement and child protective services that a baby was born substance-exposed.<sup>129</sup> When properly implemented, such protocols can result in a dramatically lower rate of referrals to juvenile court with excellent outcomes for the babies and the mothers.<sup>130</sup> Jurisdictions with policies for automatic removal of drug-exposed babies from their mothers should examine the successes of these model procedures. Similar strategies can be developed for other categories of cases, including physically abused children, children whose parents are incarcerated,<sup>131</sup> and sexually abused children. By focusing on the special factors present in each type of case, decision makers can develop guidelines, risk assessment instruments, and services which will maximize the possibility that a child can be safely maintained with the family.

The ways by which cases are closed and thus removed from the system are often ignored as a method of controlling caseloads for the child welfare system. Judges, social workers, and attorneys must continually ask whether it is necessary for a particular case to remain within the system. If the child has a safe and protective parent, the court should fashion orders which protect the child in the parent's custody and dismiss the case.<sup>132</sup>

Often, reaching the permanent plan of guardianship or adoption permits the

court to dismiss the case, but delays in reaching the permanent plan can unnecessarily keep these cases in the system for years.<sup>132</sup> These delays are both harmful to children and costly for an already under-resourced child welfare system. The law has carefully set out timelines for permanency planning. Legal and mental health experts concur on the importance of reaching permanency. Often, however, social workers feel no necessity to work on cases in which the child is in a stable home. Other cases await with more pressing issues. Permanency planning can wait. A significant barrier to permanency is the reluctance to try to adopt children in placement.<sup>134</sup> Many believe teens, minority, and other special needs children are unadoptable.<sup>135</sup> Others are ambivalent about terminating parental rights and moving to adoption, believing that parents should be given an indefinite time to reunify with their children. Some social workers, attorneys, and judges will not take the steps necessary to complete the adoption process. In addition, many decision makers refuse to proceed with termination of parental rights unless there is a family identified for the adoption.<sup>136</sup> This reluctance stems from their belief that a child is not "adoptable" unless the adopting family has been identified and their unwillingness to place a child in legal limbo without parents. This practice actually reduces the possibility of adoption. First, most experts agree that a child's adoptability is not dependent on the identification of the adoptive family.<sup>137</sup> Second, many families will not consider a child who is still in the legal system. With so many highly publicized stories about adoptive families having to give up their child because of parental rights which had not been legally terminated, these families understandably want their child to be free from the legal system before they initiate adoptive proceedings.

It is up to judges to ensure that children reach permanency. Judges should have a complete list of all children over whom the court has jurisdiction. The list should include the status of each case and how long it has been in the system. Cases in which guardianships or termination of parental rights have

been ordered should be regularly reviewed by the judge who made the order. Social workers and attorneys who have been ordered to carry out the order should be prepared to report to the court the status of the plan. If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system.

Assuming that there is an adequately staffed and organized juvenile court with dedicated judges who have both an interest in and long-term commitment to the work of the court, still more is necessary. Judges must understand and be prepared to follow all laws pertaining to removal and placement of abused and neglected children, delivery of social services, and timeliness of hearings. Oversight of social service delivery presents unique challenges. The judge is asked to determine whether, under the circumstances of each case, the social service agency has delivered reasonable services to the family. The determination requires the judge to know some or all of the following factors:

1. What services are available in the community?
2. How quickly can the families use the services?
3. Are family preservation services available to all families which come in contact with the social service agency? To some families? To this family?
4. How often and under what conditions do children visit their parents after the court has removed them?
5. Has the social service agency taken advantage of other service providers in the community which could help families entering the child welfare system? Examples of such service providers include mental health counseling, drug and alcohol treatment, housing, domestic violence counseling, health care, recreation, day care, and parenting classes by private and public agencies.<sup>138</sup>

Ensuring that hearings take place in a timely fashion presents the juvenile court judge with a formidable task. The

legal process seems to be synonymous with delay. Reports indicate that children can take from five to ten years to reach a permanent plan which by law should be completed within 18 months.<sup>139</sup> Missing parties or attorneys, incomplete reports, insufficient notice to parties, and crowded calendars combine to make it likely that a court proceeding will not be prepared to proceed within the statutory time frame. It is up to the judge to provide leadership by impressing upon all parties the importance of hearing cases expeditiously.

*The juvenile courts also must develop and adhere to firm time standards for deciding cases. In some cases, parental rights can be terminated shortly after the initial determination. In some cases, adoption proceedings should proceed promptly. In other cases, permanency plans must be developed, and the Court should monitor D.C.F.S.'s progress with the family over a period of time. In some cases, courts will need to extend deadlines because of the facts of the particular case. But in every case, the Court must assure that progress is being made and the need for quick action . . . the "child's sense of time" . . . is respected.<sup>140</sup>*

### **The Juvenile Court Judge's Relationship to the Social Service Agency**

Both the juvenile court and the social service agency have crucial roles in the child welfare system. Social services is the designated community agency for delivering preventive and supportive services to families in crisis. The juvenile court provides the legal framework for state intervention into family life. The Act further defines the relationship between the social service agency and the juvenile court. As has been noted earlier, the juvenile court must oversee delivery of social services to a family before and after a child has been removed. Sanctions for a failure to provide adequate services include the loss of federal dollars.

In this unique relationship, both the juvenile court and the social service agency have the same goal: to produce positive outcomes for children and

families. Both strive to protect children and preserve families. Nevertheless, a tension exists between the two.<sup>141</sup> The Act calls upon the court to oversee the agency, to make orders relating to placement and care of the child, and in many circumstances to direct what the agency should do. This oversight takes place within a legal environment, one which the agency frequently finds foreign and hostile.<sup>142</sup>

The agency often must defend its actions in court. Its social workers are cross-examined by attorneys, its judgment is challenged, and the court may make orders which the agency finds unreasonable, unfounded and impractical. Most of all, the agency finds itself in an adversarial process, one which seems ill-suited to the goals of child protection and family preservation.

Juvenile court judges have also found the relationship difficult and unsatisfactory. Judges complain that juvenile dependency work is little more than social work with a legal gloss. Reviewing the delivery of social services is an untraditional, complex task that many judges have not been interested in learning. When social service agency staff reveal their displeasure with court oversight and the adversarial process, it does not make the tasks facing the judge any more attractive.<sup>143</sup>

The social service agency and the juvenile court, however, cannot do without one another. Our society will not permit the agency to remove children temporarily or permanently without some oversight. Parents and children need to have the opportunity to question state action which violates family integrity, and the court seems a logical choice for that oversight. Moreover, child protective services and social service agencies need the power and prestige of the courts when making decisions concerning the removal and return of abused and neglected children.<sup>144</sup> When there are allegations of "child snatching"<sup>145</sup> or unwisely returning children to abusive parents,<sup>146</sup> it is critical that the agency be able to point out that each of its decisions to remove or return a child has been approved by a judge.

The challenge seems to be to develop a better working relationship between social services and the courts. To that end, reference to jurisdictions which have smoothly working child welfare systems may be helpful.<sup>147</sup>

The principal attributes of a successful dependency system appear to include an adequately resourced social service system which can deliver services immediately to families in crisis, and a responsive court system prepared to ensure that a child removed from parental care reaches permanency without unnecessary delay. An examination of two model jurisdictions, Sonoma County, California, and Kent County, Michigan, reveals both of these attributes.

A suburban county with approximately 420,000 people, Sonoma has consistently led California in the number of abuse and neglect cases safely resolved without removing the child from parental care. In 1993, 101 new families were brought under juvenile court jurisdiction, averaging about eight petitions a month. These filings were the result of approximately 9,000 calls and letters to the Emergency Response division of the social service agency.<sup>148</sup> During 1993 there were 835 families in the Family Maintenance Program (in-home services), 115 children in Family Reunification and 155 children in permanency planning. Thirteen adoptions were finalized.<sup>149</sup>

As Commissioner Jeanne Buckley states:

*We continue to front-load in an effort to keep families out of the system. For many years there has been a philosophy in the Social Services Department and the Court that children should be with their biological parents if at all possible, and the Court should intervene only when necessary. We are able to provide counseling, parenting, respite, teaching homemakers, transportation, etc. to families in the Family Maintenance Program. We continue to develop services in the community to meet the needs of the families, from drug treatment to an innovative program for abusive families.<sup>150</sup>*

Because of the intensive up front services, attorneys have found it difficult to contest a petition. There were only nine contested hearings in 1993.

When a petition is filed, the parents are constantly reminded of the urgency of the proceedings. At the dispositional hearing the judge advises the parents of the date beyond which reunification services will not be extended. This date is written in the court order. At each review the judge reminds the parents that time is of the essence.

If a child is removed from parental custody, Sonoma County offers a variety of reunification services to the family. Reunification is achieved in over 50% of the cases within the statutory eighteen month period. When the court determines that reunification is not possible, it will discontinue services and set a hearing to determine a permanent plan.<sup>151</sup> The juvenile court will hold hearings to terminate parental rights or establish guardianships within four months after reunification services have ended. Most of these hearings are uncontested, and any trials are heard within 30 days of the four month date.<sup>152</sup>

Judge Arne Rosenfield, for many years the Presiding Judge of the Sonoma County Juvenile Court, says that both the social service agency and the court are dedicated to preserving families and keeping cases out of the system. He commented that he and Commissioner Buckley have been active in helping develop community-based services for families as part of the network for both family maintenance and reunification services. Once a case is petitioned, however, they know that the case is serious and they move it along expeditiously.<sup>153</sup>

Commissioner Buckley notes that the most difficult aspect of this philosophy is helping the public understand that removing children is not necessarily the best way to deal with issues of parental abuse and neglect.<sup>154</sup> Many people believe that abusive parents should be punished and not given an opportunity to change their behavior and reunite with their children. Based on her experience, Commissioner Buckley has found that with the use of timely social services most children can be safely returned to their parents.<sup>155</sup>

Kent County, Michigan, with a population of approximately 510,000, has long been recognized as having one of the best juvenile dependency systems in the United States.<sup>156</sup> Its success can be attributed to a combination of prompt, intensive social services and a well-organized court system. Effective social service delivery enables most cases to be resolved without court intervention. Over the past 10 years there has been an average of 3,000 reports of child abuse and neglect in the County, rising to 4,500 reports in 1993. In 1993, after screening, 1,700 of those reports were field-investigated, resulting in 250 juvenile court petitions on behalf of approximately 500 children. In about half of these cases the children had been removed by the social service agency. For those children who were removed, about half were reunited with their families.<sup>157</sup>

The Kent County Juvenile Court has a strong permanency planning policy. For those parents who are not successful in reuniting with their children, there is a high likelihood that their parental rights will be terminated and their children will be adopted. The juvenile court has averaged over 100 terminations of parental rights over the past five years, with 83 in 1993. Of the children freed for adoption, 85% have a successful adoption within six months. There were 130 adoptions in 1991 and 173 in 1992.<sup>158</sup>

A significant reason for the success of Kent County's dependency system has been its ability to provide excellent in-home services to large numbers of families. In 1993, 480 families received in-home assistance including intensive family preservation services.<sup>159</sup> Michigan is fortunate to have Families First, the nation's most successful family preservation program. Families First has become an integral part of social service delivery throughout the state in rural and urban settings, including Detroit. It has become a model which other states are beginning to duplicate.<sup>160</sup>

Those who work within the Kent County Juvenile Court believe that the system works well partly because of the statutory scheme enacted by the Michigan legislature<sup>161</sup> and partly because of the excellent juvenile court process de-

veloped through the leadership of Judge John Steketee. That process includes experienced, dedicated juvenile court judges, well-trained staff, and a commitment to completing the legal process within the statutory time frame.<sup>162</sup>

Kent and Sonoma counties demonstrate that when social service systems operate effectively the work of the juvenile court goes much more efficiently. When parents and attorneys realize that extensive preventive services have been provided before a petition is filed and a child removed, the task for the juvenile court becomes much more straightforward. As Judge Steketee has noted about the excellent preventive services delivered in Kent County:

*By the time a petition is filed, the family has been given a wide array of social services. Those are well documented. Filing a petition clearly becomes a last resort. The result is that in Kent County more than 50% of the petitions which are filed result in a termination of parental rights and an adoption. All parties agree that social services has offered whatever services were appropriate, but the family was not in a position to take advantage of them.*<sup>163</sup>

Other modifications to the juvenile dependency court operation can help reduce tension between the court and the social service agency and build a positive relationship among all participants. First, there should be regular meetings between the agency management and the juvenile court administration, including the presiding judge, lead staff, and chief clerk. These meetings should address administrative issues of common interest. Second, there should be periodic meetings between representatives of all participants in the juvenile dependency process. These meetings should focus upon day-to-day operational issues, complaints about how the system is running, and matters of concern to any participant. From these meetings, improvements in the dependency system may be developed, such as different calendaring, new forms, improved security, and much more.<sup>164</sup>

Third, judges should consider adopting a calendaring system which includes alternative means of resolving cases before contested hearings. No case should be set for trial without some kind of judicially supervised settlement conference in which all parties appear to identify the issues, ensure completion of discovery and other preliminary matters, and hopefully resolve the case. Judges should also consider developing mediation programs which enable conflicts to be resolved with the assistance of skilled mediators.<sup>165</sup> Court calendars should be organized so that they serve the public as well as the court. By asking all families to appear at the first call of the calendar, the court process may be efficient, but many families will have to wait until the end of the calendar to be heard. Courts should experiment with time-specific calendars in order to meet clients' needs.<sup>166</sup>

Fourth, the dependency system must have a means of evaluating its impact upon the children and families with whom it deals. Bureaucracies often focus their energies upon systems issues and forget to ask whether they are serving the clients for whom they were created. The social service agency and the court should regularly evaluate how children and families experience the dependency process. Leaders within the dependency system must be ready to examine any suggestions and make changes if they are valid.<sup>167</sup>

Fifth, judges should attempt to reduce acrimony which often develops in dependency cases, particularly between social workers and parents and between attorneys representing opposing parties. Emotions run high when children are removed from families. The dependency process does not need to have additional stress placed upon it by personality differences and unnecessary conflicts. The judge can have a great impact upon the tone of these proceedings both in and out of the court by letting all parties know that common courtesies must be observed and that bickering will not be tolerated.<sup>168</sup>

Finally, judges and agency administrators should agree to co-sponsor events which bring the professional participants in the dependency system together in non-adversarial settings.

Trainings and seminars offer two possibilities. A conference is a third.<sup>169</sup>

### **The Art of the "No Reasonable Efforts" Finding**

Judges must follow the law. This means holding hearings on whether children can be returned to parents without harm, whether the social service agency provided reasonable efforts, and what the permanent plan for children should be if reunification has not been successful after 12 or 18 months. To follow the law, a judge must be prepared to make a "no reasonable efforts" finding. This finding, however, should be used skillfully to ensure that services are provided without unnecessarily penalizing the local social service agency. There is an art to the utilization of the "no reasonable efforts" finding.

A principal purpose of the federal Act is to have the agency provide adequate services to families to prevent removal of children and to reunite children with their families after removal. The court can have great impact upon the delivery of social services by letting the agency understand what the court believes should be done in each case. The services the court finds appropriate or "reasonable" may include day care, homemakers, parent training, transportation aid, clinic services, access to emergency shelter, food, money, and more. What is "reasonable" depends upon the facts of a particular case, but the court must inform the social service agency what it expects. In this way the agency will know what to expect when the reasonable efforts issue arises in court.

When the court determines the agency has not provided sufficient services and that its actions have been unreasonable, the court can make a "no reasonable efforts" finding. An effective alternative to consider, however, is to announce that the court will make such a finding unless certain services are provided in the following day or two, and then continue the case and give the agency the opportunity to comply with the court's suggestions.

For example, a case may come before the court in which a child must be removed from a parent. The agency produces sufficient evidence that services

were provided but were inadequate to permit safe return of the child. The agency indicates that the child will be placed in foster care. The court should ask whether relative placement has been explored. If not, the parents and their attorneys should be consulted about relatives who should be immediately investigated for their ability to provide a temporary home for the child. Relative care often is less traumatic for the child, leads to more meaningful and frequent contact between parents and the child, and may even be less costly. Once the agency understands that the court will inquire about relatives in every case, the investigation regarding relatives will take place before the preliminary protective hearing. The threat of a "no reasonable efforts" finding will have changed social service practice and benefited children and families.<sup>170</sup>

Another way in which the "no reasonable efforts" finding can be utilized effectively relates to the availability of services. If the social service agency indicates that a particular service, homemaking for example, is not available, the court may wish to take evidence on whether that service should reasonably be provided in that community to families at risk of losing their children. One source of information for the court may be the state plan in which the state department of social services indicates to the federal government what services it will provide to families in exchange for the federal monies it receives. If the state plan indicates that family preservation, visitation or other critical services are available, the judge should determine what these services are and how they can be used.

Unfortunately, state plans for Title IV-E monies are difficult to locate, and, once found, are difficult to understand. The plans are written in bureaucratic language comprehensible only to those in the federal and state agencies. Even if they were available, judges and attorneys would find these plans useless for the reasonable efforts determinations which must be made in court.<sup>171</sup>

State plans must be much more than private communications between the state and federal government. They must be clearly written and must indicate what services the state promises to

provide. In addition, they should be widely disseminated so that members of the public, and particularly those in the juvenile court system, can have access to them. At a minimum, each state social service agency should send a copy of its state plan to every juvenile court judge in the state. State plans are particularly important since the United States Supreme Court ruling in *Suter v. Artist M.*,<sup>172</sup> in which the court foreclosed individual claims for violations under the Act and declared that any sanctions for such violations must be sought exclusively pursuant to its dictates. Since the Act utilizes the auditing process as its primary sanction for the supervision of state compliance with state plans, access to those plans by the court system is critical.<sup>173</sup>

If the court concludes that a particular service is reasonable, and the social service agency maintains that it cannot afford the service, the court might consider giving the agency the opportunity to approach the elected officials who control its finances. Armed with the warning that the adverse consequences of a "no reasonable efforts" finding will be forthcoming, the agency may have more persuasive powers with political leaders.<sup>174</sup> The letter attached at the conclusion of this Appendix offers an example of this strategy. Of course, the agency may have within its own resources the ability to provide the service. Many agencies have reorganized their service delivery system to provide services more quickly and intensively.<sup>175</sup>

These approaches assume that the juvenile court judge is prepared to learn how social services are delivered and what services are available in the community. They also assume the judge will take an active role on the bench, fulfill that role, and have the impact anticipated by the federal Act.<sup>176</sup>

The juvenile court judge has a role even if the situation seems hopeless, as it may in some urban jurisdictions where thousands of children languish in care without permanent plans, where social services do not exist, and where observers call the system an abysmal failure. The role is not to sit idly by, ignore the law, and become one of the silent professionals who agree not to discuss what is happening.<sup>177</sup> The juvenile

court judge's role is to follow the law, to speak out in court and demand better services for the children and families who come before the court. It is to end the conspiracy of silence and speak out in the community so that decision-makers at the highest political levels understand they have given the court a task but have failed to provide the resources necessary to complete that task.<sup>178</sup> As the San Francisco County Civil Grand Jury declared in reviewing the difficulties facing the San Francisco child welfare system:

*[I]n a democracy child welfare does not receive its proper attention unless there are political leaders willing to stake their careers on delivering real and lasting solutions to the problems of children.*<sup>179</sup>

Resources, of course, are what much of this discussion has been about. The social service agency would gladly provide services if the resources were available, but often they are not. The court "understands" this and remains quiet. But the court must not be co-opted into silence. The court must let leaders in the legislative and executive branches know that there are serious resource deficiencies which they have an obligation to address. The court can do no less.

### Conclusion

The Adoption Assistance and Child Welfare Act of 1980 redefined child welfare policy and legal practice in the United States. The Act emphasizes preventive and reunification services and permanency planning for children. It challenges social service agencies to change the ways in which they deliver services to families. It gives oversight responsibility of children in placement to juvenile court judges.

Over a decade after its passage, the federal law is not being implemented well in many jurisdictions. There are numerous reasons, including inadequate resources and the failures of social service agencies and juvenile courts to follow the law. This must change. The federal Act provides sensible policy for children who are at risk of being or who have been removed from their homes. It recognizes the overriding importance of child protection while striking a reasonable balance between

family preservation and permanency for children. Those within the child welfare system must examine how the law is implemented, participate in training on its implementation, and dedicate themselves to follow its dictates. In this way we can maximize the opportunities for our nation's most vulnerable children and their families.

There is reason for optimism concerning the implementation of the federal law. Several new federal initiatives will give states the opportunity to assess service delivery to families and utilize new federal money to create a more effective response to families in crisis. Court systems will be provided the opportunity to assess and improve court operations.

Several jurisdictions have demonstrated that the law can work well, that resources can be effectively used, and that children and families can be well served. Early provision of intensive social services, well organized court systems, and cooperation between those who serve these children and families are common to all. In jurisdictions in which the juvenile dependency system is not functioning well, the juvenile court judge has a crucial role to play. The judge can use the techniques built into the federal law, including the "reasonable effort" provision, to change social service practice. The judge can work with the social service agency to improve the system. If resources are inadequate, the judge can help persuade political leaders of the system's needs.

The juvenile court judge is in a unique position to ensure that the federal Act is properly implemented. With an adequately resourced and intelligently run court system, the judge can have a positive impact upon the delivery of services, the timeliness of service delivery, and the availability of services in the community. Once a child is under the court's protection, the judge can ensure that families are provided with due process, that they receive social services and that permanency for the child is reached in a timely fashion. The realization of these goals will greatly benefit our nation's most vulnerable children and their families.

## Appendix C

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### Notes

**1** The author is a Superior Court Judge in Santa Clara County, California. The author wishes to express thanks to Robert Praksti, Judge William Jones, Helen Donnelly, Jennifer Williams, and Patricia White for assisting in the preparation of this article.

**2** 42 U.S.C., § 670 *et seq.* (1989).

**3** As of 1990, only 24 states had enacted implementing legislation. See Alice Shotton, "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," *Cal. West. L. Rev.* 223 (1989-1990). Several other states have enacted such legislation since then. See, e.g., *An Act Relative to Proceedings Involving Children in Need of Care and Protection*, Mass. Rev. Stat. Ch. 303 of the Acts of 1993, (Supp. 1994).

**4** See, *supra* end. 3.

**5** 42 U.S.C. § 670 (a) (15) (1989).

**6** From 1985 to 1990 there was a 31% increase in reports of child abuse, reaching a total of 2.5 million reports in 1989-1990. 1990 Survey (National Committee on the Prevention of Child Abuse, Chicago) 1990. Another indication is drug use by pregnant women. Deanna S. Gomby and Patricia H. Shiono, "Estimating the Number of Substance Exposed Infants," *The Future of Children*, 1.1, Spring 1991, at 17-25. Estimates are that from 375,000 to 739,200 babies are born substance-exposed each year as a result of maternal drug use.

**7** Hardin reports a 312% increase in child abuse and neglect case filings in New York between 1984 and 1989, a 292% increase in Michigan between 1984 and 1988, and a 90% increase in Rhode Island between 1982 and 1989. Mark Hardin, *Ten Years Later: Implementation of Public Law 96-272 by the Courts*, (American Bar Association Center on Children and the Law) 1990.

**8** J. Tatara, "Child Substitute Flow Data for FY 1990 and Child Substitute Care Population Care Trends Since FY 1986 (Revised Estimates)," *VCIS Research Notes* (May 3, 1991).

**9** 42 U.S.C. § 670 (a) (15) (1989).

**10** Michele Ingrassia and John McCormick, "Why Leave Children with Bad Parents?" *Newsweek*, April 25, 1994, at 52-56. Heather McDonald, "The Ideology of 'Family Preservation,'" *The Public Interest*, No. 115, Spring 1994, at 45-60.

**11** Mary Pride, *The Child Abuse Industry*, (Crossway Books 1986); Richard Wexler, *Wounded Innocents: The Real Victims of the War Against Child Abuse*, (Prometheus Books 1990). These children without permanent homes were identified in congressional hearings leading up to the passage of P.L. 96-272 as caught in "foster care drift." See, Garrison, *infra* end. 19. That these children are not adopted and often do return home is verified by the American Public Welfare Association which states that two thirds of children who leave foster care are reunited with their parents and only 7.7% are adopted. Ingrassia and McCormick, *supra* end. 10, at 56. The delays in reaching a permanent home once in foster care are well-documented by Richard P. Kusserow. See, Kusserow, *infra* end. 12.

**12** Richard P. Kusserow, *Barriers to Freeing Children for Adoption*, (Department of Health and Human Services, Washington, D.C.) February 1991.

**13** Congress anticipated this response from the courts, but concluded that the judiciary would take the newly-created responsibility seriously. Child Welfare Act of 1980, Pub. L. No. 96-272, *Legislative History* (U.S. Congress, Washington D.C.) 1980, at 1465. The committee is aware of allegations that the judicial determination requirement can become a mere *pro forma* exercise in paper shuffling to obtain federal funding. While this could occur in some instances, the committee is unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children. *Id.*

**14** To ensure implementation of the "reasonable efforts" requirement, a state should review its statutes to determine whether legislative change or change in court rules may be helpful or necessary in assuring the court's cooperation in relation to the judicial determination requirements in section 472(a) (1). *Policy Announcement* (U.S. Department of Health and Human Services, Administration for Children, Youth and Families, Human Development Services) 1984, at 4, 5.

**15** Two commentators summarize the barriers facing judicial oversight:

*[T]he authority of judges in these matters is often limited; they do not have the power to order the agency to provide services to an individual. In some states, the courts will make a positive "reasonable efforts" determination regardless of agency efforts in order to ensure federal funding. Judges are not trained in matters over which the juvenile court has jurisdiction and, because of rotation schedules, remain in the assignment for a short period of time. Consequently, they do not acquire the experience needed to handle these sensitive cases. While judges in some localities make a good faith effort to determine whether adequate services have been offered to the family, in many localities a positive finding is merely a matter of checking a box on a preprinted form.* Susan Goodman and Joan Hurley, *Reasonable Efforts: Who Decides What's Reasonable?* (U.S. Department of Health and Human Services, Washington, D.C.) 1993, at 8.

**16** 42 U.S.C. § 670 *et seq.* (1989).

**17** Most mental health authorities agree that children need stable and continuous care to achieve normal emotional growth. Disruption in their placements or relationships can harm children and make it more difficult for them to form close emotional relationships in life. See generally, Goldstein, Solnit and Freud, *Beyond the Best Interests of the Child*, (Free Press 1973); Leon A. Rosenberg, "The Techniques of Psychological Assessment as Applied to Children in Foster Care and Their Families," *Foster Children in the Courts*, at 550-574 (Mark Hardin, ed. 1983).

**18** A major reason for the enactment of legislation dealing with these programs is the evidence that many foster care placements may be inappropriate, that this situation may exist at least in part because federal law is structured to provide stronger incentives for the use of foster care than for attempts to provide permanent placements. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, *Legislative History* (U.S.

Congress, Washington, D.C.) 1980, at 1464.

**19** "Foster care drift" describes the situation of children lost in the child welfare system who move from placement to placement without ever achieving permanency. See, Marsha Garrison, "Why Terminate Parental Rights?," 35 *Stan.L.Rev.* 423 (1983).

**20** See, Marylee Allen, et al., "A Guide to the Adoption Assistance and Child Welfare Act of 1980," *Foster Children in the Courts*, at 576-577 (Mark Hardin, ed. 1980).

**21** See, M. Allen and J. Knitzer, *Children Without Homes* (1978); V. Pike, et al., *Permanent Planning for Children in Foster Care: A Handbook for Social Workers* (1977).

**22** See, Goldstein, Solnit and Freud, *supra* end. 17; Michael Wald, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," 27 *Stan.L.Rev.* 985 (1983).

**23** *Vermont Department of Social and Rehabilitative Services v. U.S. Department of Health and Human Services*, 798 F.2d 57, United States Department 59 (2d Cir. 1986), *cert. denied*, 479 U.S. 1064 (Jan. 27, 1987); *Rehearing denied*, March 2, 1987.

The Act encourages states to prevent the unnecessary removal of children from their homes and to reunify foster children with their families, by making state eligibility for Title IV-B and Title IV-E funds contingent upon the implementation of certain services and protections for children and their families. *Supra* end. at 20 (a) (1989).

**24** 42 U.S.C. § 670 (a) (1989).

**25** 42 U.S.C. §§ 670 and 675 (5) (1989). In order to protect children from being unnecessarily removed from their homes and placed in foster care, the amendments would require that preventive services must first be made available to the child and the family. These services may include, for example, homemaker services, day care, 24-hour crisis intervention, emergency caretaker services, emergency temporary shelters and group homes for adolescents, and emergency counseling. H.R. Rep. No. 136, 96th Cong., 1st Sess. 46-47 (1979).

**26** 42 U.S.C. § 672 (a) (1) (1989).

**27** 42 U.S.C. § 671 (a) (15) (1989).

**28** *Id.*

**29** 42 U.S.C. § 675 (5) (A) (1989).

**30** 42 U.S.C. § 675 (5) (B) (1989). See also, *State of Vermont Department of Social and Rehabilitation Services v. U.S. Department of Health and Human Services*, *supra* end. 23.

**31** 42 U.S.C. § 675 (5) (C) (1989). [T]he provision for a dispositional hearing after a set period of time is, I believe, of critical importance. One of the prime weaknesses of our existing foster care system is that, once a child enters the system and remains in it for even a few months, the child is likely to become "lost" in the system. Yearly judicial reviews of the child's placement too often become perfunctory exercises with little or no focus upon the difficult question of what the child's future placement should be. Foster care, with few exceptions, should be a temporary placement; unfortunately, under our existing system, temporary foster care becomes a permanent solution for far too many children. This provision requiring a dispositional hearing after a child has been in foster care for a specific period of time should assist states in making the difficult, but critical, decisions regarding a foster child's long-term

placement. 123 *Cong.Rec.* S22684 (daily ed. August 3, 1979) (statement of Senator Cranston during Congressional hearings). Note that the dispositional hearing referred to by Senator Cranston is a hearing which takes place no later than 18 months after the child has been removed from the family. It is more commonly referred to as a permanency planning hearing. The term "disposition" usually refers to the hearing which takes place immediately after the court has taken jurisdiction over the child. See also, H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979) (remarks of Rep. Ullman).

**32** *Id.*

**33** Social Security Act §§ 472(a) (1) (e) - (g); 42 U.S.C.A. § 672 (a) (1), (e), (f), (g) (West Supp. 1994).

**34** In most jurisdictions these safeguards include the right to notice of the proceedings, the right to be represented by counsel, the right to a hearing on the issues before the court, and the right to appeal the decisions of the court. Social Security Act §§ 427 (a) (2) (B), 471 (a) (15), 471(a) (16), 472 (a) (1), 472 (e), and 475 (5). See also, 42 U.S.C. § 675 (5) (C) (1989).

The Act also requires the parents to be able to participate at all reviews. This participation has been interpreted to mean that the parents have the right to notice, to receive information on which the agency is basing its proposed plan, and to have representation. Allen, et al., *supra* end. 20, at 597.

**35** Child Welfare Act of 1980, P.L. 96-272, *Legislative History* (U.S. Congress, Washington D.C.) 1980, at 1465.

A review by a body external to the agency increases the likelihood of careful case planning and requires the agency to account for the child's well-being. Allen, et al., *supra* end. 20, at 583.

**36** The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in the case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a state plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the state that further payments will not be made to the state under this part, or that such payments will be made to the state but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the state, or shall reduce such payments by the amount specified in his notification to the state. 42 U.S.C. § 671(b) (1989).

**37** Sec, Hardin, *supra* end. 7.

**38** 42 U.S.C. §§ 670 and 671 (1989).

**39** A copy of model forms that can be utilized in such a case and in juvenile court dependency matters can be obtained from Mary Mentaberry, Director, Permanency Planning Project, National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507.

**40** Some states have defined "reasonable efforts." For example, the Minnesota Juvenile Code provides:

"Reasonable efforts" means the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child from the child's family; or

upon removal, services to eliminate the need for removal and reunite the family. Services may include those listed under section 256F.07, subdivision 3, and other appropriate services available in the community. The social service agency has the burden of demonstrating that it has made reasonable efforts. Minn. Stat. § 260.012(b) (West Supp. 1992). See also, N.Y. Soc. Ser. § 384-b (8) (f) (McKinney Supp. 1992) (defining "diligent efforts"). See also, *In the Interest of A.L.W.*, 773 S.W.2d 129 (Mo. Ct. App. 1989) (cites the definition of reasonable efforts in Mo. Rev. Stat. § 211.183 [West 1984 and Supp. 1994] therein).

**41** A definition of reasonable efforts would not necessarily be helpful to the implementation of the federal law. Minn.Stat. § 260.012(b) (West Supp. 1992). As the Minnesota definition indicates, any attempt to define reasonable efforts must be general, leaving great discretion for the judge to compare the efforts undertaken to the available resources or the resources which should have been available. *Id.*

**42** See, Hardin, *supra* end. 7, at 3.

**43** *Id.*

**44** *Id.*, at 53.

**45** It is unlikely, in situations described above, that a meaningful "reasonable efforts" determination can be made. The overloading of the system without necessary resources (e.g., services, agency and court personnel, automated systems) hinders any sort of meaningful reform and allows for little more than crisis management. Goodman and Hurley, *supra* end. 15, at 10.

**46** See, *supra* end. 31 (definition of permanency planning hearing).

**47** Kusserow, *supra* end. 12; Debra Ratterman, "Termination Barriers: Speeding Adoption in New York State Through Reducing Delays in Termination of Parental Rights Cases," Final Report, American Bar Association Center on Children and the Law (1991); Hardin, *supra* end. 7, at 55-56.

**48** Shotton, *supra* end. 3, at 227.

**49** *Id.*

**50** Policy Announcement, ACYF-PA-84-1 (U.S. Department of Health and Human Services, Washington D.C.) Jan. 13, 1984, at 4.

**51** Charlotte B. McCullough, "The Child Welfare Response," *The Future of Children*, 1.1, Spring 1991, at 61-62; Leroy H. Pelton, *For Reasons of Poverty*, at 76 (Praeger 1989).

**52** *LaShawn A. v. Dixon S.P.*, 762 F.Supp. 959 (D.D.C. 1991), *aff'd LaShawn v. Kelly*, 990 F.2d 1319 (D.C. Circ. 1993).

**53** *In re Ashley K.*, 571 N E 2d 905 (Ill.App. Ct. 1991).

**54** Georgene Siroky, *Youth Law News*, July-August, 1993, at 20. The situation for attorneys in Cook County is no better:

... [O]verworked public defenders have only a few minutes to interview juvenile clients prior to important hearings. *Final Report of the Illinois Supreme Court Special Commission on the Administration of Justice, Part II: Juvenile Justice* (Springfield, Ill.) 1993, at 4, 9.

**55** Family preservation services is a term generally referring to services provided to families at risk of dissolution. Typically, these services are delivered for a short term and are designed to meet the specific needs of the family. Family preservation services are often delivered in home by workers who have one or two families and are able, therefore, to work intensively with each par-

ticular family. Some of the common elements in programs delivering family preservation services are as follows, *Keeping Families Together: the Case for Family Preservation*, at 8-9 (Edna McConnell Clark Foundation 1985):

- They accept only families on the verge of having a child placed.

- They are crisis-oriented and see each family as soon as possible after the referral is made.

- Their staff responds to families round the clock, maintaining flexible hours seven days a week.

- Their intake and assessment process carefully ensures that no child is left in danger.

- They deal with each family as a unit, rather than focusing upon parents or children as problematic individuals.

- Workers see families in their own homes, making frequent visits convenient to each family's schedule.

- Their approach combines teaching family members skills, helping the family obtain necessary resources and services, and counseling based on an understanding of how each family functions as a system.

- They deliver services based on need rather than on categories that would ordinarily be assigned to each case.

- Each worker carries a small caseload at any given time. Sometimes staff members work in teams of two to a family, providing each other with support and easing the demands of their irregular schedules.

- They limit the length of their involvement with each family to a short period, typically between two and five months.

- They provide their staff with ongoing in-service training and often require of new staff members a degree in social work or deep knowledge of the community.

- They follow up on families to assess their progress and evaluate the program's success. *Id.* For one of the best explanations of the value of family preservation, see, Douglas Nelson, *Recognizing and Realizing the Potential of "Family Preservation"* (The Center for the Study of Social Policy, Washington D.C.) 1988. And see, *A Round Table Discussion of Fifteen State-Based Child Advocates on Family Preservation Services* (Citizens for Missouri's Children, St. Louis) 1991.

**56** Mark Hardin, "Judicial Implementation of Permanency Planning Reform: One Court that Works," *American Bar Association Center on Children and the Law*, 1992; *Dependency Department Five Year Review, 1986-1990* (Hamilton County Juvenile Court, Cincinnati) 1991.

**57** Andrew Gottesman, "Two Cities Can Teach Chicago Juvenile Court Lessons," *Chi. Trib.*, December 22, 1993, at 1, 15, 16.

**58** H. Ted Rubin and Richard J. Gable, *Depen-*

gency Proceedings in California Juvenile Courts (National Center for State Courts, San Francisco) 1990.

**59** See, *Steps for Preserving Families, Guidelines for Practice*, (Kent County Juvenile Court Reasonable Efforts Project Staff, Grand Rapids, Michigan) 1989 (a description of the law, policies and procedures developed by the Kent County Juvenile Court). See also, Ron Apol, *Kent County Reasonable Efforts Model Court Project, Final Report*, (Kent County, Michigan) 1990.

**60** Shotton, *supra* end. 3.

**61** *In Interest of S.A.D.*, 555 A.2d 123 (Pa.Super.Ct. 1989).

**62** *In re Nicole G., et al.*, 577 A.2d 248 (R.I. 1990).

**63** *Id.*, at 250.

**64** *Id.*, at 252. A similar result was reached in the case of *Norman v. Johnson*, 739 F.Supp. 1182 (N.D.Ill., 1990), in which the court found that the state of Illinois wrongfully placed children in foster care because, in part, their parents were unable to provide adequate housing. For the availability of federal housing assistance, refer to the Family Unification Act, 42 U.S.C.A. § 1437(f) (West 1978 and Supp. 1993).

**65** *In the Interest of A.L.W.*, 773 S.W.2d 129 (Mo.Ct.App.1989).

**66** *Id.*, at 133 (the case was *rev'd* and *remanded* to the juvenile court to take further action consistent with the directions of the appellate court).

**67** *In Interest of M.D.S.*, 488 N.W.2d 715 (Iowa App. 1992).

**68** *In re Burns*, Del. Supr., 519 A.2d 638 (1986).

**69** *Id.*

**70** *In the Matter of Star A.*, 435 N.E.2d 1080 (N.Y., 1982); *In the Matter of Sheila G.*, 462 N.E.2d 1139 (N.Y. 1984); *In re Kathaleen*, 460 A.2d 12 (R.I. 1983); *In the Interest of C.K.M.H.*, 829 S.W.2d 674 (Mo. Ct. App. 1992); *Williams v. Department of Health and Rehabilitative Services*, 568 So.2d 995 (Fla. Ct. App. 5th Dist. 1990); *In re Jamie M.*, 472 N.E.2d 311 (N.Y. 1984). California's appellate courts have examined reasonable efforts issues in a large number of cases. E.g., *Michael S.*, 188 Cal.App.3d 1448, 234 Cal.Rptr. 84 (1987); *Micah S.*, 198 Cal.App.3d 557, 243 Cal.Rptr. 756 (1988); *Victoria M.*, 207 Cal.App.3d 1317, 255 Cal.Rptr. 498 (1989); *Kristin W.*, 222 Cal.App.3d 234, 271 Cal.Rptr. 629 (1990); *Mario C.*, 226 Cal.App.3d 599, 276 Cal.Rptr. 548 (1991); *Riva M.*, 235 Cal.App.3d 403, 286 Cal.Rptr. 592 (1991); *Walter P.*, 228 Cal.App.3d 113, 278 Cal.Rptr. 602 (1991); *Christina L.*, 3 Cal.App.4th 404, 4 Cal.Rptr.2d 680 (1992); *Dino E.*, 6 Cal.App.4th 1768, 8 Cal.Rptr.2d 416 (1992); *Joanna Y.*, 8 Cal.App.4th 433, 10 Cal.Rptr.2d 422 (1992); *John V.*, 5 Cal.App.4th 1201, 7 Cal.Rptr.2d 629 (1992); *Misako R.*, 2 Cal.App.4th 538, 3 Cal.Rptr.2d 217 (1992); *Brittany S.*, 17 Cal.App.4th 1399, 22 Cal.Rptr.2d 50 (1993); *Regina V.*, 22 Cal.App.4th 711, 27 Cal.Rptr.2d 515 (1994). And see, Shotton, *supra* end. 3.

**71** Case number 37561 (Mass. Super. Ct., filed Sept. 24, 1979); 80-51 (Mass. App. Ct.); SJC-2115 (Mass. Sup. Jud. Ct.).

**72** 138 Misc.2d 212 (N.Y.Sup.Ct. 1987), *aff'd* 153 A.D.2d 812 (N.Y.App.Div. 1989).

**73** The case was consolidated for disposition with *Consentino v. Perales*, 551 N.E.2d 603 (N.Y. 1990).

**74** *LaShawn A. v. Dixon K.*, *supra* end. 52.

**75** *Id.*

**76** *In re Ashley K.*, *supra* end. 53.

**77** *Id.*

**78** See, *Foster Care Reform Litigation Docket* (National Center for Youth Law, San Francisco) 1993 (a summary of foster care reform litigation).

**79** *Suter v. Artist M.*, 112 S.Ct. 1360, 118 L.Ed. 2d 1 (U.S. 1992).

**80** Bernardine Dohrn, "The Plaintiff Children: The Meaning of *Suter v. Artist M.*," *Civil Rights Litigation and Attorney Fees Annual Handbook*, Volume 8 National Lawyers Guild, Saltzman and Wolvovitz, Clark, Boardman, Callaghan, Deerfield, Illinois, (1993).

**81** The objectives of our audit were to evaluate the state's administration of the program in ensuring that Federal funds claimed for Federal financial participation (FFP) for foster care maintenance payments were made on behalf of children who met eligibility requirements stipulated by Federal laws and regulations. *Draft Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988, through September 30, 1991* (Department of Health and Human Services, San Francisco) 1993, at 1.

**82** 42 U.S.C. § 675 (5) (B) (1989).

**83** *State of Vermont Department of Social Services v. U.S. Department of Health and Human Services*, *supra* end. 23.

**84** Documents reflecting the issues addressed by federal auditors for Title IV-E foster care eligibility can be obtained from the author. For a more detailed outline of how the audits are conducted, see, *Financial Review Guide for On-Site Reviews of the Title IV-E Foster Care Program* (U.S. Department of Health and Human Services, Office of Human Development Services) May, 1985. See also, Richard Kusserow, *Semiannual Report to the Congress, October 1, 1988 - March 31, 1989* (Department of Health and Human Services, Office of Inspector General) 1989, at 81; Richard Kusserow, *Semiannual Report to the Congress, April 1, 1990 - September 30, 1990* (Department of Health and Human Services, Office of Inspector General) 1990, at 84; Richard Kusserow, *Semiannual Report to the Congress, October 1, 1991 - March 31, 1992* (Department of Health and Human Services, Office of Inspector General) 1992, at 78.

**85** Letter from Wade F. Horn, Commissioner, Administration for Children Youth and Families, to James G. Ledbetter, Commissioner, Department of Human Resources, Georgia, (October, 1988) (a copy of this letter is available from the ACYF or from the author).

**86** Letter from Wade F. Horn, Commissioner, Administration for Children, Youth and Families, to Cesar A. Perales, Commissioner, New York State Department of Social Services (July, 1990) (a copy of this letter is available from the ACYF or from the author).

**87** Letter from Wade F. Horn, Commissioner, Administration for Children, Youth and Families, to Paul Trause, Secretary, Department of Social and Health Services, State of Washington (October 22, 1992) (a copy of this letter is available from the ACYF or from the author).

**88** *Draft Audit*, *supra* end. 81 (the outcome of the audit is still unknown).

**89** However, the significance of the number and

the types of deficiencies, and related dollars, noted in the audit shows a need for strengthening controls over the program. In particular, the high incidence of noncompliance with the judicial requirements mandated by Federal legislation requires corrective action. Without effective implementation of this requirement, controls over the inappropriate removal of children from their homes are weakened. *Draft Audit, supra* end. 81, at ii.

**90** *Draft Audit, supra* end. 81.

**91** However, the problems that we found in our case reviews extended throughout the 3-year period covered by the audit, and appeared to be ongoing. Our previous statewide audit of California's Foster Care program by the OIG Office of Audit Services contained the same type of problems identified in this audit. The report covered Fiscal Years 1985 and 1986, and resulted in questioned costs of \$9,969,292 (report number A-09-87-00077, issued July 22, 1988). Of that amount, \$8,453,563 was upheld by ACF, and the state paid this amount to the Federal government. *Draft Audit, supra* end. 81, at 16.

**92** This conclusion is based upon the author's conversations with members of the Administration for Children Youth and Families, as well as conversations with juvenile court judges around the country who report that their states have lost Title IV-E monies through the audit process.

**93** 42 U.S.C. § 627 (1989).

**94** Illinois Departmental Appeals Board, Dept. of Health & Human Services, Docket No. 87-154; Decision No. 1037 (April 13, 1989).

**95** Illinois Departmental Appeals Board, Dept. of Health and Human Services, Docket No. 91-111; Decision No. 1335 (June 1, 1992).

**96** Hardin, *supra* end. 7; Kusserow, *supra* end. 12; Ratterman, *supra* end. 47.

**97** Hardin, *supra* end. 7; Shotton, *supra* end. 3.

**98** The Permanency Planning for Children Project of the National Council of Juvenile and Family Court Judges and the Edna McConnell Clark Foundation have published numerous educational materials for judges, including booklets, benchguides, protocols, and articles. Three booklets have been particularly helpful for judges: *Keeping Families Together: The Case for Family Preservation, supra* end. 55; *Making Reasonable Efforts: Steps for Keeping Families Together, supra* end. 55; *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, (National Council of Juvenile and Family Court Judges, Reno) 1992. See, Katharine English, *A View from the Bench: The Judge's Role in Promoting Effective Planning for Families and Children* (National Council of Juvenile and Family Court Judges, Reno) 1991 (another important training article).

**99** Court Appointed Special Advocates (CASAs) are trained volunteers who are appointed by the court to speak on behalf of children in court. There are more than 500 CASA programs throughout the United States with more than 50,000 advocates. For further information contact National CASA Association, 100 W. Harrison St., North Tower, Suite 500, Seattle, Washington 98119-4123.

**100** See, *supra* end. 39 (copies of these forms can be obtained).

**101** Title IV-B of the Social Security Act, Subpart

2, Family Preservation and Support Services; Omnibus Budget Reconciliation Act of 1993 (P.L.203-66); 45 C.F.R., Part 92.

**102** Letter from Olivia A. Golden, Commissioner, Administration for Children, Youth and Families, Department of Health and Human Services, Washington, D.C. to Interested Persons (February 15, 1994).

**103** P.L. 103-66, §§ 13711(d) (2) and 13712.

**104** The assessment is to address how juvenile courts are: (a) fulfilling Title IV B and IV-E requirements in foster care cases; (b) making decisions whether to place children into foster care; (c) deciding whether to terminate parental rights; and (d) authorizing appropriate permanent placement, without undue delay, for children who cannot safely return home. *Id.*

**105** All states are encouraged to take advantage of these grants. Technical assistance for court systems is being offered by the National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507, attention: Mary Mentaberry.

**106** CFR Chapter XIII, §§ 1356.65(b) and (c) (October 1, 1989, ed.).

**107** "A good working relationship between the court and the child welfare agency is essential in meeting the needs of children and families." Goodman and Hurley, *supra* end. 15, at 10.

**108** The conference of the juvenile dependency system that we attended has been held annually in California for the past 5 years. This conference brings together federal, state, county and judicial personnel for a continuing dialogue on child welfare issues. The ACF supports this concept and is recommending similar annual regional conferences throughout the nation. *Draft Audit, supra* end. 81, at 23. (For further information about the Beyond the Bench Conference, contact the author at the Superior Court, 191 N. First Street, San Jose, California 95113.)

**109** Cal.Welf. & Inst. Code § 300 *et seq.* (West Supp. 1994); Minn. Stat. §§ 260.01(b), 260.155, 260.172 and 260.191 (Supp. 1994); Mo. Ann. Stat. § 211.183 (Vernon Supp. 1994); Ohio Rev. Code Ann. § 2151.419 (Anderson, 1994).

**110** In many jurisdictions the trial judge must merely check a box on a preprinted court form to indicate that reasonable efforts were provided in the case. Shotton, *supra* end. 3. In some other jurisdictions the court order forms simply include a preprinted statement that reasonable efforts were made, thus making the finding possible without the judge's even checking a box. *Id.*, at 227. In some states, courts and agencies have taken a cynical approach, seeking to assure receipt of federal funding without the court taking a meaningful look at reasonable efforts. In such states, words indicating the agency has made reasonable efforts are preprinted into court order forms used when removal of a child is authorized, and laws are structured so a judge cannot authorize a foster placement without a positive finding of reasonable efforts. Hardin, *supra* end. 7, at 54.

**111** As of 1990, only about 24 states had passed legislation addressing the juvenile court's reasonable efforts determination. Shotton, *supra* end. 3, at 234. See also, *State of Vermont D.S.S. v. U.S. Dept. of HHS, supra* end. 30, at 62. Recognizing the lengthy delays caused by the transfer to a dif-

ferent court for termination of parental rights proceedings, several states have enacted legislation permitting juvenile courts to hear termination proceedings. Cal. Welf. & Inst. Code § 300 *et seq.*, (West 1994). The procedures in this law have been upheld by the California Supreme Court in *Cynthia D. v. Superior Court of San Diego County*, 851 P.2d 1307 (1993). Such a statutory scheme has significantly reduced unnecessary delays in the legal process without denying parents their due process rights. *Id.* Legislation in Minnesota, Missouri, and Ohio also offers improved procedures to implement Public Law 96-272. See, *supra* end. 109.

**112** Edwards, Judge Leonard, "The Juvenile Court and the Role of the Juvenile Court Judge," *Juvenile and Family Court Journal*, Vol. 43, No. 2, 1992, at 26.

**113** Recommendation for the use of masters, referees, or commissioners as a practical and efficient way to increase judicial resources. *Resource Guidelines - Improving Child Abuse and Neglect Court Process*, (National Council of Juvenile and Family Court Judges, Reno) 1995. However, the use of lesser judicial officers presents significant problems.

... [M]any (including judges, attorneys and the public) conclude that the work of the juvenile court is of lesser importance than the work performed by judges. If attorneys disagree with a ruling of one of these officers, the law provides that a judge review the findings. More importantly, these judicial officers lack political power in the community. If there are problems in developing resources, in ordering agencies to comply with orders, in getting things to happen outside of the courtroom, these judicial officers have less power to accomplish the task. The power of the juvenile court is necessarily diminished by having lesser judicial officers perform the work of the juvenile court. *Id.*, at 34.

**114** *Id.*, at 34-35.

**115** *Id.*, at 35-36. See, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family* (National Center for Juvenile Justice, Pittsburgh) 1993, at 21-25 (a discussion on the complex issues surrounding rotation).

**116** A tragic example of the problems caused by multiple judges making decisions concerning the same child was reported by a committee convened to investigate the death of Joseph Wallace. The committee reported that five judges in Cook and Kane counties made rulings concerning Joseph, but that they were not provided with critical information about previous court hearings. A court system which ensures that a child appears before the same judicial officer will substantially avoid this problem. See, Joel J. Bellows, et al., *The Report of the Independent Committee to Inquire into the Practices, Processes and Proceedings in the Juvenile Court as They Relate to the Joseph Wallace Case*, Chicago (1993) (a copy of this report is available from the author). The Joseph Wallace case was also reported in Ingrassia and McCormick, *supra* end. 10.

**117** Most of the metropolitan courts in California have adopted this structure, including Orange County, San Diego County, Los Angeles County, Sacramento County, San Francisco County, and Santa Clara County. The Denver Juvenile Court

recently similarly modified its juvenile court structure.

Judge William Jones of Mecklenberg County, North Carolina (Charlotte), suggests that juvenile dependency and delinquency cases should be divided among the juvenile court judges hearing cases. He points out that dependency cases are more stressful and that dividing the calendars will protect judges against burnout. Letter and notes from Judge William Jones to Judge Leonard Edwards (March 14, 1994) (a copy of the letter is available from the author).

**118** Edwards, *supra* end. 112, at 35. Family court judges and attorneys representing children must be educated and empowered to make appropriate decisions for families and children and to help them get the services they need. They, as well as child welfare caseworkers, must be relieved of the staggering caseloads that make reflective decision-making impossible. *America's Children At Risk: A National Agenda for Legal Action* (American Bar Association, Chicago) 1993, at 47.

**119** Edwards, *supra* end. 112, at 41.

**120** For example, Robert B. Gunnison, "S.F. Foster Care Called Worst in California," *S.F. Chron.*, March 3, 1994, at 1. No juvenile court has had more publicity, most of it negative, than the Cook County Juvenile Court. Much of that court's difficulties relate to long-standing underfunding of the juvenile court judiciary. Andrew Gottesman, "Juvenile Court Can Rarely Spare the Time to Care," *Chi. Trib.*, December 21, 1993, at 1; Jan Crawford, "Juvenile Court Judged a Disaster," *Chi. Trib.*, December 23, 1993, at 1; "State Court System Needs More Change," Editorial, *Chi. Sun-Times*, December 23, 1993; "44 Vacancies in Courts Should Be Filled Now: Commentary," *Chi. Sun-Times*, January 14, 1994; see also, Bellows, et al., *supra* end. 116.

**121** (c) The presiding judge of the juvenile court should:

(1) Encourage attorneys who practice in juvenile court, including all court-appointed and contract attorneys, to continue their practice in juvenile court for substantial periods of time. A substantial period of time is at least two years and preferably from three to five years.

(2) Confer with the county public defender, county district attorney, county counsel and other public law office leaders and encourage them to raise the status of attorneys working in the juvenile courts as follows: hire attorneys who are interested in serving in the juvenile court for a substantial part of their career; permit and encourage attorneys, based on interest and ability, to remain in juvenile court assignments for significant periods of time; work to ensure that attorneys who have chosen to serve in the juvenile court have the same promotional and salary opportunities as attorneys practicing in other assignments within a law office.

(3) Establish minimum standards of practice to which all court-appointed public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings, and advocacy for their respective clients.

(4) In conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases. Rule 24 (c): *Standards of Judicial Administration Recommended by the Judicial Council*, (West 1994).

And see, Leonard Edwards, "A Comprehensive Approach to the Representation of Children: The Child Advocacy Coordinating Council," *27 Family Law Quarterly* 3 (Fall 1993) at 417-431.

**122** Rule 24(d), *supra* end. 122; NCJFCJ, et al., *Making Reasonable Efforts* (Edna McConnell Clark Foundation, New York, N.Y.) 1987, at 62.

In a Task Force Report focusing upon judges and professionals working in the juvenile and family courts, the recommendations included mandatory training on family and juvenile court issues for all judges within one year of taking the bench and specified the topics to be covered in that training. The Task Force recommended similar training for attorneys, mental health providers, and social work professionals. Senate Task Force on Family Relations Court, Final Report, Senate Office of Research, Sacramento, CA (1990) at 32-36.

**123** State statistics in California reveal wide variations in social service practices in different jurisdictions. In some counties the numbers of children who remain in their homes with services is five to ten times greater than other counties. Sonoma and San Mateo counties stand out as examples of jurisdictions which are able to maintain children safely in their homes with services. *Statewide Report on Children's Services Caseload*, November, 1992 California Dept. of Social Serv., Sacramento, California) November 1992.

Similar differences exist in Illinois where the numbers of abuse and neglect petitions per 1,000 juveniles reveal that Champaign, Madison, and Cook counties have three to four times as many petitions as Will and Lake counties. Probation Division, Administrative Office of Illinois Courts, *1992 Annual Illinois Juvenile Petition, Adjudication, and Prosecution Report* (Probation Division, Administrative Office of Illinois Courts, Illinois) 1992, cited in *Final Report of the Illinois Supreme Court Special Commission on the Administration of Justice, Part 11: Juvenile Justice*, (Illinois Supreme Court Special Commission, Springfield, Illinois) 1993, at 17.

**124** Ruth Lork, et al., "When Home Is No Haven: Child Placement Issues (1992)," reprinted in *DCYS Bulletin #30*, Man. Vol. 2 (a copy of the guidelines is also contained in Appendix D of *America's Children At Risk*), *supra* end. 119.

**125** The authors note that cigarette and alcohol exposure occurs among 38% and 73% of all pregnancies, respectively. Gomby and Shiono, *supra* end. 6.

**126** Inger J. Sagatun-Edwards, Coleen Saylor, and Bethany Shifflett, *Drug Exposed Infants in the Social Welfare System and Juvenile Court*, forthcoming in *Child Abuse and Neglect*. A copy is available from the author.

**127** National Council of Juvenile and Family Court Judges, Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related De-

pendency Cases, (Permanency Planning Project, Reno, Nevada) 1992.

**128** Model Needs Assessment Protocol, SB 2669 (Health and Welf. Agency, Sacramento, California) 1991.

**129** For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and the child pursuant to Section 10901 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies. Cal. Penal, Code § 11165.13, (West Supp. 1994).

**130** Commissioner Jeanne Buckley noted in a judicial seminar that cases involving the drug-exposed baby do not have a significant impact upon the Sonoma County Juvenile Court because those cases do not come before the court. She said that there were so many services available to the baby and mother in her county that most cases are safely resolved without any formal legal intervention.

**131** Barbara Bloom and David Steinhart, *Why Punish the Children: A Reappraisal of the Children of Incarcerated Mothers in America*, (NCCD, San Francisco) 1993.

**132** This technique has been refined in California with the enactment of several statutes which outline how such dismissals can take place. See, Cal. Welf. & Inst. Code §§ 304 and 362.4, Juvenile Court Forms JV-200 & JV-250; Leonard Edwards, "The Relationship of Family and Juvenile Courts in Child Abuse Cases," *27 Santa Clara L. Rev.* 2 (Spring 1987), at 201-278.

**133** Kusserow, *supra* end. 12.

**134** See, generally, Kusserow, *supra* end. 12.

**135** Judith K. McKenzie, "Adoption of Children with Special Needs," *The Future of Children, Adoption*, (Center for the Future of Children, David and Lucile Packard Foundation) Vol. 3, No. 1, Spring 1993, at 63-64.

**136** This conclusion is based upon the author's conversations with juvenile court judges throughout the United States.

**137** McKenzie, *supra* end. 135, at 64-66; James A. Rosenthal, "Outcomes of Adoption of Children with Special Needs," *The Future of Children, Adoption*, *supra* end. 135, at 77-88.

**138** See, generally, *Keeping Families Together: The Case for Family Preservation*, *supra* end. 97, at 47-53; Edwards, *supra* end. 112, at 28.

**139** Kusserow, *supra* end. 12.

**140** Final Report of the Illinois Supreme Court, *supra* end. 54, at 9.

**141** There's a lot of tension between CPS and the court. CPS workers are somewhat enraged with the court. They have trouble accepting that the court can't act on "I want" or "I feel." Workers sometimes wind up resentful of the court because it imposes deadlines, requires reports, orders appearances, and they feel overwhelmed. . .

[Caseworkers] have a history of poor relationships with the court. When it goes to court ev-

everyone reads the caseworker's report and says "Where's the proof?" When things are dropped in the petition, the workers say "Doesn't anyone read our reports?" Caseworkers aren't thinking about evidence and legal limits. *Alternatives to Adjudication in Child Abuse and Neglect Cases*, (The Center for Policy Research, Denver) 1992, at 20.

**142** Nathan Glazer has criticism for judicial administration of social services. "Should Judges Administer Social Services," by Nathan Glazer, *The Public Interest*, No. 50, Winter 1978, at 64-80.

**143** Some judges think they know more about each case than the social worker who has handled it. And some agencies routinely frustrate judges by giving out too little information on the cases at hand. *Keeping Families Together*, *supra* end. 97, at 34.

**144** Child protective service workers are open targets for public criticism. Society is quick to blame them if a child is reinjured or killed. But society is also quick to blame them for the number of children "snatched" from their parents and placed in the "limbo" of foster care. Key Drew, "The Role Conflict of the Child Protective Service Worker: Investigator Helper," *Child Abuse and Neglect*, Vol. 4, 1980, at 250.

It seems that child protection agencies cannot win. In the first case, an allegation is dealt with in a routine fashion, and a child dies. On the second occasion, a suspicion leads to a prompt and decisive action [which later proves unnecessary]. Either way the social services department finds itself pilloried for bureaucratic delay or for overzealous intrusion into family life. Robert Dingwall, John Eekelaar, and Topsy Murray, *The Protection of Children*, (Basil Blackwell Ltd., Oxford, England) 1983, at 1-2.

**145** Pride, *supra* end. 11; Wexler, *supra* end. 11.

**146** Ingrassia and McCormick, *supra* end. 10.

**147** Refer to the jurisdictions cited at *supra* end. 56-59 and the accompanying text.

**148** The emergency response unit is comparable to child protective services in other states.

**149** Jurisdictions can measure the success of their preventive services by comparing the numbers of families receiving in-home services to those in which the child was removed and the family is receiving reunification services. In Sonoma County there are far more families in the Family Maintenance Program than in all other programs combined.

**150** Letter from Jeanne M. Buckley, Superior Court Commissioner, to Judge Leonard P. Edwards, Santa Clara County Superior Court (March 15, 1994) (a copy is available from the author).

**151** These hearings are described in Cal. Welf. & Inst. Code §§ 366.216 & 366.22 (West Supp. 1994).

**152** These hearings are held pursuant to Cal. Welf. & Inst. Code § 366.26 (West Supp. 1994). The California Supreme Court has held this statutory scheme constitutional in the case of *Cynthia D. v. Superior Court*, 815 P.2d 1307 (1994). Buckley, *supra* end. 143.

**153** Letter from Judge Arnold D. Rosenfield, Sonoma County Superior Court, to Judge Leonard P. Edwards, Santa Clara County Superior Court (April 26, 1994) (a copy is available from the author).

**154** *Supra* end. 150.

**155** *Id.*

**156** Kent County has been selected as a model by the American Bar Association as it attempts to identify the best juvenile dependency systems in order to provide technical assistance to other jurisdictions. Arn Shackelford, "Juvenile Court System Studied as Model," *Grand Rapids Press*, Michigan, April 20, 1994. The Kent County Juvenile Court was recognized as a model in the book, Howard Jones, *Children in Trouble: A National Scandal*, D. McCay Co., N.Y., 1969. Judge John Steketee has been honored numerous times for his leadership as Presiding Judge of the Kent County Juvenile Court.

**157** These statistics were provided by Ron Apol, Supervisor, Permanency Planning Department, Kent County Juvenile Court, Grand Rapids, Michigan.

**158** *Id.*

**159** See, *supra* end. 55 (for a definition of family preservation services).

**160** Gerald H. Miller, "Families First Keeps Children Safe at Home," *Detroit Free Press*, Sunday, May 1, 1993, at 3F. For further information about Families First, contact Susan Kelley, Director, Families First, 235 S. Grand Avenue, #415, Lansing, Michigan 48909. (313) 434-8277.

**161** One of the unique aspects of the Michigan statutory scheme is that each case of a child removed from home is reviewed every 91 days instead of six months as mandated by the federal Act. [MCL 712A.19(3); MCR 5.973(8) (2)]. The juvenile court also makes permanency planning decisions at 12 rather than at 18 months. [MCR 5.973 (D) (2)]. These changes were based upon experience in Michigan that frequent reviews were helpful for the reunification process and that the six months after the 12 month hearing was not helpful in reuniting families. See also, Donald N. Duquette, *Michigan Child Welfare Law* (Michigan Department of Social Services, Ann Arbor) 1990.

**162** See, *supra* end. 59.

**163** Phone calls between Judge John Steketee and Judge Leonard Edwards (February to April 1994).

**164** See also, "Relationship Between Court and Social Services Agencies," *Judicial Review of Children in Placement Deskbook*, (NCJFCJ, Reno, Nevada) 1984, at 39.

**165** Recommendation 7.10. In addition to continuing to mandate mediation in child custody cases, the courts should expand mediation's use to all appropriate family and juvenile matters, including dependency, minor delinquency matters, and financial issues. *Children and Families, Justice in the Balance: 2020, Commission on the Future of the California Courts*, ch. 7 (California Judicial Council, San Francisco) 1994, at 127.

Mediation represents a significant improvement over the pretrial approaches utilized in most juvenile courts. *Alternatives to Adjudication in Child Abuse and Neglect Cases*, *supra* end. 141, Executive Summary.

Pursuant to Statutes of 1992, ch. 360, SB 1420 (1992), California has a five-county pilot project offering mediation in juvenile dependency cases. Thus far the results seem to be very positive for

all parties involved. An evaluation of the project will be conducted in the summer of 1994 (for further information, contact the author).

**166** Judge Donna Hitchens, the Presiding Judge of the San Francisco Juvenile Court has developed such a calendaring system. For further information, contact her at the Juvenile Court, 375 Woodside Avenue, San Francisco, CA 94127.

**167** Richard O'Neil, Director of the Santa Clara County Social Service Agency, hired a consulting firm to evaluate the county's child welfare system from the perspective of the clients, including children, parents, and foster parents. This evaluation will be of great assistance in developing policies which are sensitive to client's needs. For further information, contact the Social Service Agency, 1725 Technology Drive, San Jose, CA 95110.

**168** The Santa Clara County Bar Association has adopted a Code of Professional Conduct describing the behavior expected of attorneys in and out of the courtroom. This Code has been approved by both the Superior and Municipal courts in the county and is posted in many courtrooms (a copy is available from the author).

**169** See, *supra* end. 107.

**170** Judge William Jones of Mecklenberg County, North Carolina (Charlotte) offers another judicial strategy. He makes a finding of "no reasonable efforts" for a specified period of time, orders the agency not to seek state or federal reimbursement dollars for the foster placement, and orders the agency to provide written proof that it has not sought such payment. This technique emphasizes to the agency the direct relationship between the failure to provide reasonable efforts and the loss of federal monies supporting foster children. Letter and notes from Judge William Jones to Judge Leonard Edwards (March 14, 1994) (a copy is available from the author). Judge Leslie C. Nichols of the Santa Clara County Superior Court has utilized a different strategy. A drug addicted mother voluntarily turned her young child over to the Department of Family and Children's Services (DFCS) and dependency proceedings were initiated. It was clear to the DFCS worker and Judge Nichols that outpatient treatment would not be sufficient to rehabilitate the mother and that residential treatment would be necessary. He ordered a 30-day review hearing to hasten the DFCS's effort to find such a placement. When the agency reported that no free program was available, Judge Nichols ordered the agency to pay for residential treatment. If they failed to do so, he told them he would find that they had not provided reasonable efforts to the mother. Shortly thereafter the DFCS reported they had been able to place the mother. They said that they had moved her to the top of a waiting list. Judge Nichols reported that his hard-line approach works on a case-by-case basis but has its limitations when larger, system shortages are the issue. This strategy was recounted in Judge Peggy Hora, et al., "The Legal Community's Response to Drug Use During Pregnancy in the Criminal Sentencing and Dependency Contexts: A Survey of Judges, Prosecuting Attorneys, and Defense Attorneys in Ten California Counties," *Southern California Review of Law and Women's Studies*, Vol. 2, No. 2, Spring 1993, at 527-575, 557.

**171** Judge Richard FitzGerald of Louisville, Ken-

tucky, refers to state plans as works of fantasy belonging in the fiction section of local book stores. So few state plans have been presented in court proceedings nationwide that his statement cannot be verified.

**172** Suter, *supra* end. 79.

**173** *Id.* at 1369, n. 12. See also, 42 U.S.C. § 672(a) (1989).

**174** *That's the one beauty of this damned system. If he's really serious about it, a judge can say, "This is the service I want, and county, you provide it." This then gives the county the leverage to go to the Board of Supervisors and say, "This is mandated; it's on the books, you have to fund it." Either way, the judges are going to do that, or someone's going to bring a class action suit.*

This was a statement by Elsa ten Broeck, then a social services administrator in San Mateo County, California, as quoted by Claudia Morain in "Making Foster Care Work," *California Lawyer*, January 1984, at 27.

**175** Joan Barthel, *For Children's Sake: The Promise of Family Preservation*, (Edna McConnell Clark Foundation, New York) 1992, at 67-77.

**176** The role of the juvenile court judge combines judicial, administrative, collaborative, and advocacy components. Edwards, *supra* end. 112, at 25. See also, Rule 24, *supra* end. 122.

**177** Edwards, *supra* end. 112, at 41.

**178** *Id.*, at 40-41.

**179** "Foster Care in San Francisco," 1993-1994 Civil Grand Jury, City and County of San Francisco, 1994, at 5.

Superior Court  
State of California

Santa Clara County Superior Court Building  
191 North First Street  
San Jose, California 95113  
(406) 299-3949

Chambers of  
Leonard P. Edwards, Judge

December 6, 1989

Richard O'Neil, Director  
Department of Family  
and Children's Services  
55 West Younger  
San Jose, California 95110

Dear Dick:

I am writing to explain why the Juvenile Court Judicial Officers have made several "no reasonable efforts" findings in the past few months and what I believe the findings mean to the Department and the County. I believe these issues are novel and deserving of some detailed explanation.

As you know, pursuant to both state and federal law, the Court is required to make reasonable efforts findings at almost every stage of a dependency action. Reasonable efforts refers to those actions which the Department would reasonably be expected to take to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the Department would reasonably make to reunite foster children with their biological parents.

Two issues have recently resulted in findings of no reasonable efforts. The first is the failure of the Department to provide a placement for teenage mothers and their babies. The second is the failure of the Department to provide intensive in-home services to enable drug abusing mothers and their drug exposed babies to be placed together in the community.

In each of these types of cases, the Social Workers who appear in my court are working hard to prevent the removal of children and to provide services to facilitate reunification. They are, however, unable to provide the services on the scale to which I refer. Instead, they report to me in court that they have looked everywhere, that these services do not exist and that, as a result, the baby must be removed from the mother's care.

## Appendix C

Richard O'Neil  
December 6, 1989  
Page Two

These are cases in which everyone in the courtroom agreed that the baby and mother should be together and, but for the lack of resources, they would be placed with one another. Moreover, everyone agreed that the provision of these services was reasonable under the circumstances. Indeed, these services have been widely discussed in Santa Clara County as being a necessary part of the effective support of children and families in the County. They are available in many counties both in and out of California.

The finding of "no reasonable efforts" in these cases is important for several reasons. First, it is an indication that certain specified services were all that were necessary to retain a child with a parent. Second, it means that, given the circumstances of the County, the services are not extraordinary or unreasonable. Third, it may mean the Department will be unable to complete permanency planning for the child. Without a finding of "reasonable efforts," the termination of parental rights may not be legally possible. See Welfare and Institutions Code Section 366.22. Finally, the finding means that the Department cannot be reimbursed for the costs of a child's out-of-home care. See 42 U.S.C. Sections 671(a) (15) and 672 (a) (1).

Pursuant to my duties as Juvenile Court Judge, I am advising you of the consequences of a no reasonable efforts finding and hoping that by working with the Board of Supervisors you will be able to take steps to ensure that such services are available to the children and families in Santa Clara County. Of course, I will do whatever I can to assist you in your efforts.

Thank you for your consideration and attention to this important problem. I look forward to hearing from you about its resolution.

Sincerely yours,

LEONARD EDWARDS  
Presiding Judge, Juvenile Court

LE: hd

cc: Board of Supervisors  
County Executive  
Presiding Judge, Superior Court  
Superior Court Juvenile Court Committee  
County Counsel  
District Attorney  
Public Defender  
Chief Probation Officer  
Federal Compliance Officer