

REPORT ON THE WORKSHOP ON THE ROLE OF LAW SCHOOLS IN THE ERA OF THE UNIFIED FAMILY COURT

OCTOBER 11, 2002

A day long workshop on the role of law schools in the development of the Unified Family Court was held at the University of Florida Levin College of Law on October 11, 2002. Participants included a diverse group of judges, as well as law school faculty from the University of Florida, Florida State University, University of Miami, Nova Southeastern University, St. Thomas University, Barry University and the Florida Coastal School of Law.

Overview of the Workshop:

- Welcome by Chief Justice Anstead, Justice Barbara Pariente and Dean Jon Mills
- "The Unified Family Court Model and What Academics Can Do to Help Judges Make It Work": Presented by a panel including Justice Pariente, Judge Sandy Karlan, Judge Frank Quesada, Judge Hugh Starnes, and Judge Lynn Tepper. The panel was followed by a discussion led by Professor Barbara Bennett Woodhouse and Professor Claudia Wright of the Levin College of Law
- "A Child's View of the Unified Family Court": Presented by Honorable Sandy Karlan
 - The panel and discussion focused on concrete suggestions for changes in legal education to support the unified family court
 - Judge Karlan emphasized the importance of presenting the model and principles of the unified family court early in law students' education, teaching students that cases represent failures instead of successes, and emphasizing the importance of therapeutic jurisprudence
- "Issues of Ethics and Professionalism in the Unified Family Court": Presented by Terri Anderson and Blan Teagle of the Center for Professionalism of the Florida Bar
- A final open dialogue session returned to the question of what law schools can do to foster the unified family court

The message of this workshop is that in order for the unified family court to succeed, those who teach family law must convey to students the realities and needs of families in the system, and the core orientation of this model. The unified family court represents a comprehensive, needs-oriented, problem-solving, interdisciplinary model of resolving the issues and problems of families when they come into the courts. The judges powerfully presented to the law faculty at the workshop the critical role of the academy in making family law better serve families. The bottom line is that the concept of a unified family court requires and feeds curricular reform. This is an interactive process. The unified family court concept must be supported by family law practitioners trained in its principles; and legal education in the family law area must be responsive to the realities of family law practice that have generated the concept of the unified family court. Judges at all levels are instrumental in changing the orientation of practitioners and

law students, and are valued partners in legal education, particularly at this point of reorientation from an adversarial model to a problem-solving model. Indeed, it would not be going too far to suggest that the interplay between the academy, practitioners, and the judiciary in family law suggested by this panel might serve as a model for other areas of legal education as well.

A. Broad Themes

There were several broad themes regarding what the law schools can do:

1. The unified family court structure is an effort to provide better and more comprehensive services to families; and legal education must be significantly reoriented for students to be trained to serve their clients well within this structure, while still learning traditional adversarial skills for the less common situations where those skills are appropriate.
2. Within the unified family court, the importance of a comprehensive, problem-solving, cooperative model as opposed to an adversarial, narrowly issues-focused, professional model for legal education cannot be overemphasized.
3. Multidisciplinary approaches are critical to better serve families, and therefore students must have an understanding of other disciplines and their roles in helping families.
4. Proactive approaches should be considered to address families' needs before families enter the family courts, as well as support structures for families once they are within the unified family court.
5. Students need to understand and serve the many families that are in the system pro se or with very limited economic resources.
6. The concept of the unified family court requires understanding the importance of dealing with the whole family. As the system is presently structured, decisions are driven primarily by the rights and wishes of parents. The system needs to include all family members; all stakeholders must be involved; and the system needs to look to the entire family from the family's perspective. This is a perspective that it is critical for students to learn, as opposed to the individualistic emphasis of traditional legal education that focuses on a single client.

B. Specific Suggestions and Observations

In addition to these broad themes, many specific suggestions for legal education were made in the course of the workshop, as well as observations about the implications of the shift to the unified family court:

1. The current family law system is very rigid. In contrast, the unified family court is based on a comprehensive, multidisciplinary approach; a team approach to families and a

judicial approach that brings all the family's needs under one judge or team. To make this transition possible, educators must shift their focus:

- a. Most critically, develop students with an open mind, who are interdisciplinary, team-oriented, especially knowledgeable in psychology, with excellent listening skills, who think comprehensively, with an ability to deal with expert witnesses from other disciplines, and thus blend clinical and conventional academic pedagogies.
 - b. Particularly in upper level courses, but also in introductory family law courses, emphasize team teaching and cross-disciplinary teaching. Some suggestions including co-teaching with a judge, and teaching law students along with counseling students. The students could benefit from a diagnostic model that emphasizes comprehensive planning and knowledge of diverse resources.
2. The primary portals for families into the courts are delinquency and dependency, where the child/family is in crisis. Thus, entry is closely connected to shelters and detention facilities. In this crisis model, the most relevant jurisprudential model is therapeutic jurisprudence.
 3. Problem-solving skills are essential, with an emphasis on non-adversarial methods such as mediation and negotiation. The development of listening skills is also critical.
 4. The perspective must be long term rather than short term, and students need to think from the family's perspective and more holistically. Proactive problem solving is the key, preventing a case that has not yet happened but is apparently at the crisis point (domestic violence and child abuse are examples of this). The failure to deal with family problems means the child comes into the system later as an adult offender.
 5. The jurisprudential approach in family law is a restorative justice approach. You must consider both the perspectives of society as a whole, as well as those directly dealing with the issues.
 6. Consider and teach about the implications of the number of clients who are unrepresented for the practice of family law and the judiciary.
 7. Make the courts family-friendly for low and middle income people; make services available for low cost.
 8. Many people do not want to go to lawyers; consider why that is so and how we might better serve clients, or why alternatives other than lawyers might serve clients better.

For example, one judge suggested creating a family wellness center: a counseling center, a guardian ad litem office; a family financial center (debt relief, organize financing, pension planning); a family mediation center; a mentoring/tutoring service; a nursery; a playground; a computer center; a sports field; and a family medical center. Referrals would be from the wellness center to the courts, rather than from courts to the other professionals. In this model,

there is no court as part of the concept of what families need or for family support; courts are at the margin, as a last resort.

9. Focus *preventively*, on families' problems *before* divorce.
10. Focus on relationships and developing case plans for restoring relationships.
11. Train students to think cooperatively and consider the continuing family.
12. The model suggested here may seem to be at odds with the ethical guidelines regarding zealous advocacy, so those ethical issues need to be addressed and explored.
13. A lack of financial resources prevents some courts from properly implementing the unified family court. This concern may require legislative action, but another alternative is grants, or creating a clearinghouse of best practices.
14. Some examples of approaches at the participating law schools that were discussed:
 - ▶ University of Miami: a new course, *New Directions in Lawyering*, focuses on differences in skills taught for counselors and lawyers, and developing preventive approaches and proactive interviewing.
 - ▶ Barry/University of Orlando: a team-taught course with a law professor, a psychologist, and a judge, "*Making Divorce Work*," encompasses team approaches and multidisciplinary approaches. The faculty noted, however, that students have been skeptical about the course.
 - ▶ Florida Coastal: Family law is a required course.
 - ▶ University of Florida: a new program for a Certificate in Family Law was developed, emphasizing multi-disciplinary learning and creating a coordinated course of study, linking the traditional classroom with clinics and externships.
15. Courtroom observation is very valuable for students, especially coming early in their family law experience.
16. Judicial involvement in the education process is especially important for reorienting professional norms and achieving the goals of the unified family court. This can include both local judges geographically close to particular law schools, as well as including participation by judges who may come from a greater distance.
17. Law schools should develop specific action plans to modify their family programs so they are consistent with and support the unified family court.
18. The unified family court includes case coordination to ensure that one family and all of

their family-related legal disputes are heard by one judge, thus eliminating the possibility of inconsistent orders by different judges.

C. Classroom Techniques

At the closing session, the participants discussed what specific techniques might be effectively used to achieve the goals of the unified family court:

1. Ask students, "How could this litigation be avoided?" Ask them to "rewind," think about the real people, identify people, and consider proactive problem solving.
2. Organize a problem-solving competition to reinforce this model, instead of the moot court competition, which reinforces the adversarial model.
3. Bring in real kids, or actors playing kids/families, to make the situations real and encourage problem-solving approaches. Engage in problem-solving simulations or role plays.
4. Show them what therapeutic justice is; give them a model of this resolution versus traditional litigation model.
5. Include mediation in the family law course as well as a separate course in the curriculum; expressly take on and challenge the value or definition of zealous advocacy.
6. Teach listening skills by asking students to restate what other students have said.
7. Consider changing the required curriculum.
8. Bring in a representative from another discipline, see how they interview as compared to lawyers/law students; incorporate multidisciplinary approaches in other ways.
9. Make dependency cases important.
10. Teach basic child development, preferably in a multidisciplinary setting.
11. Include children's right to a lawyer in the basic family law course.
12. Teach about mandated reporters.
13. Encourage doing pro bono work and ask law firms to support such work.
14. Train and inform faculty.
15. Focus on the facts of cases and the social and cultural context to make students realize that real people are behind these disputes.

16. Encourage exposure to real courts. Have either judges or attorneys come to the classroom or have students go to court.
17. Discuss creative options in cases such as visitation plans that meet individual family/child needs and not cookie cutter approaches. Discuss the need to change visitation schedules to meet childhood development needs.

D. Professionalism and the Profession

The final aspect of the workshop was the presentation by Terri Anderson and Blan Teagle of the Center for Professionalism of the Florida Bar. A summary of that presentation and information on the profession is included in this report as an appendix. Teagle provided a context for common ethical issues, and also presented data on the profession that shows that the adversarial model is not one that supports professional satisfaction. Both the presentation of ethical guidelines and providing information on professional role models and satisfaction are subject areas that are critical to students.

E. Contacts

As a result of the conference, Professor Gerry Glynn of the Barry University School of Law offered to establish a listserv of Florida family law faculty:

Florida_Family_law_Faculty@listserv.barry.edu; gglynn@mail.barry.edu

APPENDICES

1. Hypothetical case: Unified Family Court, drawn from Michael A. Town, "The Unified Family Court: Preventive, Therapeutic and Restorative Justice for America's Families"
2. In re Report of the Family Court Steering Committee, May 3, 2001, 794 So.2d 518 (2003).
3. Handouts from Blan Teagle, Director, Center for Professionalism, The Florida Bar
"Issues of Ethics and Professionalism in the Unified Family Court"
"Some Social Science Research on Lawyer Unhappiness"
4. University of Florida Family Law Certificate Curriculum
5. Workshop Agenda, List of Presenters, List of Participants