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PROMOTING THE BEST INTERESTS OF CHILDREN: PROPOSALS TO ESTABLISH A FAMILY COURT IN THE DISTRICT OF COLUMBIA SUPERIOR COURT

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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PROMOTING THE BEST INTERESTS OF CHILDREN: PROPOSALS TO ESTABLISH A FAMILY COURT IN THE DISTRICT OF COLUMBIA SUPERIOR COURT

THURSDAY, OCTOBER 25, 2001

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING,
AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:27 a.m., in room SC–6, United States Capitol, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Akaka, and Carper.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. I am going to go ahead and start, and thank you for joining us under these extraordinary circumstances.

I am pleased to welcome you to today's hearing before the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia. Our hearing is going to focus on promoting the best interests of children and proposals to establish a family court in the District of Columbia Superior Court.

There is legislation pending before this Subcommittee to restructure the D.C. Superior Court Family Division into a family court. Proponents of the measure, a House-passed bill, H.R. 2657, and a similar Senate bill, S. 1382, seek to address longstanding concerns about how child abuse and neglect cases are handled within the unique presidentially-appointed, federally-funded local judicial system and a social services system that only recently was returned to the control of the Mayor after an extensive and often controversial period under Federal court receivership.

I commend the bills' sponsors for their commitment to the District's children. During the 106th Congress, I served as the ranking Democrat on both the authorizing and appropriating committees for the District of Columbia. In that capacity, far too many grim and gripping statistics crossed my desk.

The annual Kids Count reports, produced by the Annie E. Casey Foundation in recent years, chronicle a tale of woe. Time and again, we find that children in the District of Columbia are faring worse than kids in virtually every city in the United States or any State in the Union. As beautiful as the District of Columbia may

be and as inspiring as our monuments may be, there are endemic problems in this city relating to children which are horrible.

The percentage of low-birth-weight babies in the District of Columbia ranks worst in the Nation, worse than any other State. The infant death rate in D.C. was the worst in the Nation, twice the national average. The child death rate, the rate of teen death by accident and homicide, the teen birth rate, the percent of teens not attending school and not working, the percent of children living with parents who do not have full-time, year-around employment, are in last place in the District of Columbia. The percent of children in poverty and the percent of families headed by a single parent are the worst in the country.

Too frequently, these are the very children and parents who find themselves clutching the strands of the safety net that forms the child protection components of the social services system and the D.C. Superior Court.

While Congress has an important responsibility when it comes to the District of Columbia and the local courts under the Home Rule Act, we need to make certain that we take prudent, measured steps to respond to these needs.

Chief Judge King, joined by several of his associates, is here today. I want to commend the judge for the administrative reforms he has spearheaded and instituted already to address the challenges posed by dependent neglected and abused children who rely upon your leadership and reasoned decisions.

Children removed from their biological parents because of abuse and neglect enter a child welfare system that is broken and needs to be fixed. Nationally, the number of children in foster care has nearly doubled in 15 years. At the same time, the number of potential foster families has declined.

According to a September 2000 Brookings Institution Children's Roundtable paper, caseloads are large nationwide because of a short supply of trained child welfare workers, who are given insufficient resources to work with children whose needs are increasingly complex.

In the District of Columbia, an estimated 4,500 child abuse and neglect cases are presently spread among the Superior Court's 59 trial judges. Concerns have been raised that many children remain in foster care longer than Federal law dictating permanent placement requires.

The tragic story of Brianna Blackmond, the 2-year-old child who was beaten to death in January 2000, 2 weeks after being returned to her troubled home, prompted an outcry about the state of the District's delivery of child and family services. And, of course, this morning's *Washington Post* has another tragic story about a child who did not have a visit from a social worker for some 7 months and was malnourished and died as a result.

An eye-opening *Washington Post* investigative series early last month revealed more distressing statistics: 229 children in the District died between 1993 and 2000, even though their family situation had been brought to the attention of the city's child protective services.

Sadly, innocent lives snuffed out like Brianna's occur everywhere. These are urban tragedies and rural tragedies, and not just

in the District of Columbia. In my home State of Illinois, the horrific hanging death of 3-year-old Joseph Wallace in 1993, after the system repeatedly returned him to his violent and mentally ill mother, was the catalyst that spurred revolutionary reform in Cook County's troubled child protection and legal system. No child's life should have to be sacrificed because the system established to protect them has failed.

I have scheduled today's hearing to examine the components of the reform bills. These include, among other elements, placing all cases involving one family before one judge, assigning a cadre of magistrates to assist the judicial function, mandating minimum terms of service for judges on the family court, and transferring all child abuse and neglect cases now dispersed across the court back under a family court helm. The hearing will be an opportunity to hear from the witnesses and to understand their perspectives.

I understand some of the details in the reform bills evoke legitimate disagreement among those tasked with implementing change. I also believe that everyone in this room is here for one purpose, and that is to find the best way to protect more children in the District of Columbia. I am hopeful that we will be able to reach some conclusions about that after hearing the testimony before us.

I am happy to introduce and to welcome the comments of my colleagues who are here. Is it OK for Delegate Norton to go first?

Ms. NORTON. I would be pleased to have the Senator go first.

Senator DEWINE. No. Go right ahead.

Senator DURBIN. Excuse me. We are glad to have Senator Akaka here.

Would you like to make an opening statement?

Senator AKAKA. Mine will be brief.

Senator DURBIN. OK.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want to thank you for calling this hearing today. It is good to be here with our colleagues and our other distinguished witnesses who will share their views on establishing a family court within the D.C. Superior Court.

The tragic death of young Brianna Blackmond, which prompted these legislative proposals, raised many concerns about the ability of the District's court system to handle the numerous child abuse and neglect matters that come before it everyday.

However, the court is only one part of the equation. We must also improve the Child and Family Services Agency. CFSA was recently removed from Federal receivership, but the prognosis is poor. The systemic problems facing the agency are still present and without fundamental reform, the changes we discuss today will have little impact.

How we protect neglected and abused children is a matter of concern to all jurisdictions. Hawaii, with one of the oldest unified family courts in the country, is looking into ways to streamline its court system. Proposals in my State are raising questions about the impact such changes may have on Hawaii's children.

So you see, despite this morning's focus on the District of Columbia, the issues that we discuss today are relevant to all jurisdic-

tions. My colleagues in both the Senate and the House are to be commended for their efforts to ensure that all children are safe and secure.

I am also pleased that Judge King, the Chief Judge of the D.C. Superior Court, will have an opportunity to present the court's concerns. I understand the court's interest in having greater flexibility for its judges and magistrates, and revising the length of service, as proposed by the bills, is under discussion.

I regret that I am unable, Mr. Chairman, to stay much longer at this morning's hearing. However, I want our distinguished witnesses to know of my interest and my desire to work with Chairman Durbin and Senator Thompson, the Ranking Member of the Governmental Affairs Committee, on these proposals. I commend all of you on your commitment to improving Washington's court system so we may better protect the District's children.

Mr. Chairman, I ask unanimous consent that I be allowed to submit written questions for the record.

Senator DURBIN. Without objection.

Senator AKAKA. Thank you.

Senator DURBIN. Thank you very much.

I want to thank my colleagues for being here and if there are any time problems—I know Senator Landrieu has one, so if it is OK for her to go first, then we will go through the others.

TESTIMONY OF HON. MARY L. LANDRIEU,[1] A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator LANDRIEU. Thank you, Mr. Chairman, and I do have a formal statement for the record that I will submit in just a few minutes.

Let me first thank you for calling this hearing and taking time, which is not easily found today, and a room to hold it. But, Mr. Chairman, you have managed to do both, to hold a hearing on this important bill, because it is something that my colleagues and I have worked on together very closely over the last several months, and maybe even longer, and in a bipartisan way.

Let me thank you for your interest in children and your lifelong work, Mr. Chairman, as a person who has advocated for children, particularly children with special needs, not only in your own State but nationally. I thank again all of my colleagues, and the Superior Court for their excellent work in helping us negotiate some of the more difficult aspects of this bill, because it is not simple. If it were, we would have done it many years ago; every State in the Nation and city in the Nation would have done it.

It is not rocket science, but it is complicated. There are many different agencies that have to be brought together to get to the end we want, which is protecting children, their lives, their well-being, and their right to a bright and successful future.

I have enjoyed working with my Senate colleague, Senator DeWine, whom I always introduce, Mr. Chairman, as an expert on this subject, since he has eight children himself. That qualifies him, I think, above all of us.

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[1] The prepared statement of Senator Landrieu appears in the Appendix on page 45.

This bill is based, as you know, on a compelling need, and that compelling need is that there have been 200 children that have died since 1987 in the District of Columbia, under the care of the District Government that we help to fund, and we all have to take responsibility, to some degree, for that failure.

But if you think about it, it is not just the 200 children that died; it is the hundreds of children who have been injured, in some places irreparably injured, physically, emotionally and mentally, and families that have been destroyed, with little hope of getting them back together and off on the right foot, because the system that we have created is simply not good enough. This bill is not going to be a magic solution, but it is a step toward laying a foundation for reforms that are essential, and so I am proud to work on it.

The second point I want to make, is the answer what some critics of this effort have said, is this effort is not the first. As far as I know—and I think Representative DeLay and Delegate Norton, Senator DeWine, and I have tried to research as much as we can about what other jurisdictions are doing around the Nation, we are not trying to force the District to do something that other jurisdictions, Mr. Chairman, are not doing.

This bill, as you know, is based on a lot of research about what is happening in other regions and in other jurisdictions. And while there is no magic or no set way that the court should operate, there are some principles that have been established, the principles about one family/one judge, one family/one caseworker, and judges wanting to do this kind of work, being excited about doing this kind of work, not being forced to do this kind of work because the system forces them.

We want people who think it is a great privilege and honor to serve as judges and social workers for children who are born into the most difficult of circumstances and to help them get what should be promised to every human being, a decent chance at life. Too many of these children in the District, and in my State of Louisiana, may I say, do not have that chance. So that is what this bill represents, our best efforts to fulfill that promise.

The final point is we have worked in a bipartisan, bicameral way. I think this is a great spirit and example given what we are all experiencing. It is this bipartisan way that we are going to work through not only the challenges that face our Nation, but moving an important bill for the District.

Again, I just thank you and don't want to take any more time, but I am chairing a subcommittee hearing at 10 o'clock on emerging threats for Armed Services, and so I thank you for the courtesy, Mr. Chairman.

This is my statement I would like to submit for the record.

Senator DURBIN. Without objection, it will be entered in the record.

Senator Landrieu, thank you, not only for being here but for your commitment to children and families. In the time that you have served in the Senate, I think you have become a national voice on issues like adoption, and I think it tells all of us in this room where your heart is on this issue. Thank you so much.

Senator DeWine, would you like to go ahead?

Senator DEWINE. I will yield to my colleagues.
Senator DURBIN. All right, fine.
Delegate Norton, would you like to make a statement?

TESTIMONY OF HON. ELEANOR HOLMES NORTON,[1] A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you very much, Mr. Chairman. Let me thank you for your long-time interest in the District of Columbia and all you have done for the District of Columbia, always respecting home rule and our voting rights, but not hesitating to tell it like it is. It still is a work in progress.

I particularly appreciate this hearing at this moment. Mr. DeLay and I have been working in the House for months and our Senate partners have been working, as well. Indeed, we struggled to get this bill to the House floor before it was finished in order to take advantage of an appropriation that will make the reforms in this bill, will actualize the reforms in this bill. And I have to give the credit for that where it is due because Mr. DeLay not only has worked with me very collegially on this bill, but is totally responsible for the funds in this bill on the House side.

Mr. Chairman, the Family Division of the Superior Court for years was criticized by the bar and the Council for Court Excellence for not incorporating the best practices. This process did not begin in earnest until a child died, Brianna Blackmond, and that got the attention not only of the court, finally, but it got the attention of the Congress as well.

I regret that it is the Congress that has had to move on this matter, but the fact is that only the Congress can make adjustments in courts because that matter has not been committed to the District of Columbia Council and Mayor, who are, in fact, the experts on these matters. Indeed, I have a bill that would turn the courts over to the District of Columbia, just as most matters having to do with the District of Columbia are now in their hands.

My testimony is going to be very brief. What our bill does is simply to incorporate the best practices from around the country and inset them into our own family court and Family Division. Mr. DeLay did his own investigation and I did mine. We got to the table together and lined them up and on virtually every matter got agreement.

To give you an example, our court had no ongoing training. They got on the court and judges did the best they could, even though we are in a big city and they need somehow that kind of ongoing training. They had alternative dispute resolution everywhere but the Family Division. They had alternative dispute resolution to do corporate cases, but where you would most expect alternative dispute resolution is in family cases and there was hardly any effort in that regard. We are making that a part of what the court must do. Essential to us has been the notion of one family/one judge. A family comes in and they shouldn't have to go from one judge to the other, and there are a number of other best practice reforms.

[1] Prepared statement of Ms. Norton appears in the Appendix on page 48.

Finally, let me say that I believe that Judge King's testimony has a serious omission in it. It leaves the impression that there are outstanding matters that have not been resolved in the bill.

I carried this bill to the floor in the House because the D.C. appropriation was going through and there were a few details that had not been worked out between the Senate and the House, such as the language concerning the Domestic Violence Unit, and such as keeping the court from being overwhelmed with a whole flurry of the cases now being transferred from 59 judges to just a few judges.

We agreed that in order to take advantage of the appropriation, we would go forward, and particularly since we had been receiving such good cooperation from the Senate that these and other details could be worked out. So I do want to assure you that I think that there are virtually no matters here that your staff and my staff have not been amicably discussing and that Mr. DeLay has not been discussing.

I see no differences in this bill among all of the major actors, and I wish that Judge King's testimony, as a member of the bar, had, in fact, had the kind of candor that would have said these matters are pending and we have been assured by the Congresswoman on the floor of the House that they will be taken care of.

This Member wants to let you know that I think anybody that submits testimony before Congress ought to be fully candid about the situation and should not leave the impression that there are outstanding issues that have not been resolved and have not been committed to be resolved.

Finally, let me say there is a concern about funds. Mr. DeLay was able to get, we thought, about $40 million in the House. In the Senate, there might have been as much as $50 million. Apparently, somebody from the Senate, a staffer, called the court and asked the court what could the court do if they got only $23 million. The court did not confer with me, with Mr. DeLay, or with anybody else, but simply sent forward a scenario of how they might handle $23 million.

Now, the court will be back to me next year, I am sure, saying this is not enough money. All I can say to you is that money has now been divided up. It has undercut what Mr. DeLay has done, what the Senators had done, and there probably is not enough money in this bill for this reason, despite the best efforts of all of the principals concerned. Judge King, again, without consulting with all of us, has to take responsibility for that.

I will say this finally to the Subcommittee, that we put a marker in the D.C. appropriation for $5 million because by allowing this money to go out of the bill, there is not even enough money to allow the computers in the District to talk to the computers in the court. So, minimally, we need $5 million more in order for the bill to work, or else D.C. is on one computer system, the court is on another, and all the work we have done will not matter.

Again, I think any outstanding issues here, Mr. Chairman, are easily dealt with. I very much appreciate your taking the time to deal with a District of Columbia matter which I wish could be committed to the Council in the first place, but which I thank you and

your staff for working on so hard with the staff of Mr. DeLay and with my staff in the House.

Senator DURBIN. Thank you very much, Delegate Norton.

Congressman DeLay, welcome to the Senate side.

TESTIMONY OF HON. TOM DeLAY,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DELAY. Thank you, Mr. Chairman. I appreciate you holding this hearing, I really do, especially today after what has happened yesterday, losing another child in the child welfare system yesterday in the District of Columbia. It once again reminds us of how important it is to get this legislation out and start the work of putting together a child welfare system in the city that will keep children from being killed out there.

I can't say enough about how I appreciate your work, Senator DeWine's work, Senator Landrieu's work, and working with Congresswoman Norton. It has been really uplifting and we appreciate all that has been put together.

I concur with everything Congresswoman Norton has said. I would like it if you would allow me to put some testimony in the record.

Senator DURBIN. Without objection.

Mr. DELAY. One is from CRS on separation of powers issues on the D.C. family court.[2] Another is testimony in the House by Judge Scott McCown, of Texas, about burn-out.[3]

I also frankly would like, for full disclosure, to put in the editorial that just so happened to show up in the *Washington Post* today.[4] I find this really reflects a display of the arrogance in the Superior Court and shows what we have had to deal with.

This editorial is written straight from Judge King's testimony. No one on the editorial board called Ms. Norton or me to talk about these issues, undermining the effort that we have been doing, working so hard in a very bipartisan, bicameral way of doing something for the children and what is in the best interest of the children, not the Superior Court.

That is what we have been dealing with now for months, trying to come to some sort of agreement here, and I think it is really unfortunate that some would put the fate of children behind their own interests.

Mr. DELAY. It is clear to me, Mr. Chairman, that the Subcommittee is especially interested in three provisions of both the House and Senate bills: (1) one judge/one child; (2) a 5-year term; and, (3) consolidation of all current cases within the family court system.

Each provision is critical and indispensable to effective reform and let me explain why, but before I do let me tell you what some D.C. child advocates told me just last week when I brought them in. They wanted to come and see me and we talked about this

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[1] The prepared statement of Mr. DeLay appears in the Appendix on page 51.

[2] The information from CRS appears in the Appendix on page 106.

[3] Prepared statement of State District Judge Scott McCown of Texas submitted by Mr. DeLay appears in the Appendix on page 111.

[4] The article from the *Washington Post* appears in the Appendix on page 127.

issue. The people I met with work on the front lines, helping the District's abused and neglected children.

They said children are burned, slashed, battered, terrorized and raped everyday in Washington, DC. They told me that they have wasted valuable time in courtrooms waiting for hearings that are ultimately canceled because a drug-addicted mother once again failed to show up. They described crying children who begged not to be returned "to my mother, who hates me and beats me."

The child advocates pleaded with me to stand up for the reforms of the House bill. Without those reforms, they said the suffering simply will not stop. The rationale underlying these provisions is the main argument for the bill itself, to get someone to pay attention to the fear and suffering that young children endure in this District.

As I listened to those advocates and read the series of articles in the *Washington Post,* it struck me that the terror and panic and feelings of helplessness that many Americans impacted by the September 11 terrorist attacks felt are similar to what abused children suffer.

The war on terrorism may take years, but Congress can ease the suffering of abused D.C. children now by passing the District of Columbia Family Court Act to focus judicial attention on these children and their families. Both the House and the Senate bills are designed to make children's safety, well-being and permanency the paramount concerns of the family court.

Legal experts and organizations like the ABA support one judge/one child, but judges here in the Superior Court resist it. I find that amazing. The one judge/one child family concept requires that all the hearings for a particular child and family be before the same judge, and this reform will end the practice of shuttling a child from courtroom to courtroom, hearing to hearing, and judge to judge. This current practice scatters a child's paperwork all over the courthouse and forces judges and social workers to make decisions with only half the child's story.

The deadly mistakes that killed Brianna Blackmond, Nicki Colma Spriggs, Devonta Young, and many other District children happened because the system only knew half their stories. We must put together all the pieces of a child's life before we determine whether it is safe for a child to go home, remain in a particular foster home or facility, or be placed for adoption. A child is safer when a judge understands the whole story of his or her life. Multiple judges increase the chances of error and vital information not being considered.

The mandate that new judges sit on family court for a minimum of 5 years is designed and was established to ensure that only committed judges would volunteer for the family court. The 5-year requirement for new judges and the 3-year mandate for current judges overseeing abused and neglected children of the District is a test. The terms will ensure judges volunteering for family court service are dedicated to the children and families on their dockets.

The statement that there is burn-out is an insult to family court judges all over this Nation. Five-year terms will sort judges who are committed and those who are just marking time. The 5-year commitment will weed out all those lawyers who want to be a Su-

perior Court Judge and calculate that sitting on family court for 3 years is the price that they must pay for an appointment to the bench.

Reform of the court system won't happen without committed judges to children. The Superior Court's resistance to this provision shows me in no uncertain terms that the provision is indeed a true test of commitment. The fact that so many judges currently on the bench are unwilling to make this commitment speaks volumes about the willingness of the current bench to accept real reforms in the Superior Court.

The current family system doesn't comply with either the Federal or District Adoption and Safe Families Act and those time lines that require that permanency hearings be held within 12 months. I just believe that dispersing 4,500 cases over 59 judges increases the likelihood that deadlines will be missed as judges try to work abused children onto other dockets. Judges outside the Family Division don't have current knowledge about the availability and quality of placement, or service options or new laws and new regulations impacting the children before them.

House testimony convinced us that children's interests simply are not served when judges take cases with them. This practice only creates discontinuity and a lack of consistency for the child, for the families, for social workers, and for the attorneys from the Office of Corporation Counsel as well.

Mr. Chairman, I just believe that the best thing we could do for abused children right now in the District is to return all the cases to a family court, made up of committed judges who are all volunteers wanting to serve on those family courts. Only their specialized knowledge of relevant Federal and District laws will result in better decisions for abused children.

So, Senators, it is time to move the D.C. Family Court Act. We appreciate all the hard work that you are doing on this. We hope you will move it quickly. The children are waiting. We must not disappoint them. Thank you.

Senator DURBIN. Thank you, Congressman DeLay.

I am going to recognize Senator DeWine, but before I do, I don't know what your time situation is, but if it is possible for you to wait a few moments, I would like to ask specific questions raised by the *Washington Post* editorial, as well as one or two others on my mind, of the sponsors of the bill.

Mr. DELAY. Sure.

Senator DURBIN. Senator DeWine.

TESTIMONY OF HON. MIKE DeWINE,[1] A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Mr. Chairman, let me just thank you for holding this hearing on this very, very important issue. It is a bipartisan bill we are talking about, and certainly a bipartisan issue.

I want to thank Delegate Eleanor Holmes Norton. She has just gone out of her way to work on this bill, and spent hours and hours and hours on the bill. I deeply appreciate it, and the children of the District do, as well. Congressman DeLay has been the driving

[1] The prepared statement of Senator DeWine appears in the Appendix on page 56.

intellectual force behind this. Senator Landrieu has been steady all the way through this, and so it truly is a bipartisan effort.

We have done a great deal of listening. We have had a number of meetings with the judges. We have taken a lot of their concerns, I believe, into consideration. But quite candidly, Mr. Chairman, the time for listening is over. We need, as a Congress, to act, and we need to act as a Congress for these children.

We have a crisis, and you have very ably pointed that out in your reference to the original *Washington Post* article and the *Washington Post* article this morning. The tragedies go on and on and on. Despite all the good intentions of all the good people who are trying to help children in the District of Columbia, the sad truth is that our Nation's Capital has a child welfare system that is an absolute mess. We have some responsibility, I believe, to act to try to change that.

Under our current system, judges don't get the training and they don't get the technical support nor the experience that they need to properly handle these cases. As you have pointed out, the recent *Washington Post* series on the District's lost children made this all too clear. These stories outline multiple mistakes that the District Government has made by placing children in unsafe homes or institutions.

Since 1993, over 180 children have died in the D.C. foster care system, and at least 40 of those deaths are the direct result of the government worker's failure to take preventative actions or by placing children in unsafe homes or institutions.

I believe that our family court bill is a step in the right direction and that it will help ensure that children who come into contact with the District's child welfare system are placed in a safe and stable environment. At the heart of the bill is the one judge/one family concept which is designed to create judicial continuity so that families aren't shuffled from one judge to another.

There is something to be said in both legislative bodies and in the judiciary for institutional memory, and there is no time where institutional memory is more important than memory having to do with a family. To shift children and to shift families around is to lose that institutional memory, and I think more mistakes are made when that happens. The simple fact is that the judge who knows the entire history of the family can better protect the interests of the children and the parents involved.

Second, our bill ensures that the judges in the family court get specialized training in family law and have terms long enough to allow them to get the experience they need to properly deal with these cases. I will talk about that issue in a moment.

Third, our bill helps make sure that the courts in the District comply with the permanency time lines outlined in our 1997 Federal law which I think all of us, from the Chairman to our colleagues, were very much involved in writing and getting passed. This was the Adoption and Safe Families Act (ASFA).

The reality, Mr. Chairman, is that family and juvenile courts across the country have implemented this law. Yet, the District of Columbia, our Nation's Capital, still only has a plan to implement it. The time for compliance with the regulations has long since past. The District needs to act, and act now.

Let me address, if I could, Mr. Chairman, one of the concerns that has been raised by the judges, and I will guarantee you that this is an issue that we have discussed with the judges on numerous occasions.

I believe, as my colleagues believe, that it is essential for the judges to have interest and experience in the practice of this type of law. That is one of the reasons why jurisdictions across this country—there are thousands and thousands of local jurisdictions that have family courts.

The judges make the case that they have a hard time finding anyone to take this position. I simply refuse to believe that. I refuse to believe that in the District of Columbia, of all the lawyers and all the well-trained people, there aren't a few good people who care deeply about children and who want to make this a career, or at least a significant part of their career, or at least commit to 5 years to do this.

To say that this can't be done says that the District of Columbia is different than every other jurisdiction or thousands of jurisdictions across this country. In my home county, Greene County, a small county, we have a judge who is elected. His primary responsibility is to do this type of case. We don't seem to have any trouble finding people in a county of 130,000 who want that job. I don't think we have found that is a problem across the country. To say that we can only get people who can serve for 2 years and maybe 3 years just flies in the face, I think, of logic and it flies in the face of experience.

Mr. Chairman, we need judges committed to children, and I refuse to believe that we can't find lawyers in the District of Columbia willing to sit on the family court for more than a year or two. The family court should not be a stepping stone to anything but a quality life for children. It is not a stepping stone to the Federal bench. It is not a stepping stone to a nice job in the U.S. Attorney's office. This is about children and their lives, and what can be more important than that?

Mr. Chairman, I do have a written statement and I will submit that for the record, if I could.

Senator DURBIN. Without objection, it will be made part of the record.

I thank the three of you for remaining for some questions to help me understand better what you are seeking to achieve here.

Assuming for a second that we all agree on the concept of one judge/one family/one child, your proposal to move the current caseload to new magistrates will take it away from some judges who have had these cases for a period of time who are familiar with the families and children, will it not?

Ms. NORTON. If I could answer that, the proposal is not to take all of the family—the family court has divorce cases, it has juvenile cases.

Senator DURBIN. Child support.

Ms. NORTON. Child support cases, and it is nonsense for this Subcommittee to have before it testimony that would imply that we would move all of those at one time and take a court that already handles cases for abused and neglected children, who are our concern, too slowly and overwhelm it with cases of every kind. The

court did not even have a good fix on the number of cases in the entire Family Division.

Senator DURBIN. Specifically, let me ask you this: If there are 4,600 estimated abuse and neglect cases pending before the D.C. court, would your bill require that some of the abuse and neglect cases currently assigned to other judges be removed to a new magistrate or judge?

Ms. NORTON. We anticipate a timetable of at least 18 months, and we are still working with the Senate on a timetable for how these cases will move out. That is one of the unresolved parts of the bill because we have not had an opportunity to work this out with people in the Senate.

You certainly have my assurance, and nothing Mr. DeLay has ever said to me would imply that we are so foolish or stupid as to simply say take the cases that you have now and plop them from the inefficiency that you have now into an even smaller bank of judges who would make them even more inefficient.

Senator DURBIN. So you would agree that there would be some transition here, at least of the 4,600 cases that are involved?

Mr. DELAY. There has to be. Actually, even in the bill itself, Mr. Chairman, it has a transition in terms of 3 years, 5 years. We are asking those judges that are currently sitting on family court matters to serve 3 years. I think you know that the current system is so broken down because it is the wrong system.

In order to advance in the Superior Court system, you are designated to serve in family court cases for 9 months. That is the penalty that you have to pay to do anything else on the court. That is a horrible system that is doomed to failure.

What we are saying is those that are there now transition through. We are asking them to serve 3 years so there is some consistency and continuity, but any new judges that come in would serve 5 years. Of course, there is going to be a transition.

Senator DEWINE. Mr. Chairman.

Senator DURBIN. Go ahead, Senator.

Senator DEWINE. I think you bring up a very good point, and that is I think it is clear what we want to do in regard to where we want to be 5 years or 10 years from now. The devil is in the details, particularly in the transition. We provide for 18 months, the way the bill is written now, for a systematic transition, but I think most of us are open to work with you to work out whatever transition works, along with the judges.

If I could make a comment about the magistrates, I had a lot of questions about the issue of magistrates because one of my models is a county in Ohio, Cincinnati's county, Hamilton County, Ohio. They have a system that is somewhat unique where they have one or two judges and they have a large number of magistrates in the whole family court area.

I believe after looking at this that the key, Mr. Chairman, is not the ratio of magistrates to judges. I think the key is that the magistrates and the judges all within the division specialize in family court issues. A magistrate, quite bluntly—I hope I don't offend the judges—can be just as well-trained and have just as much experience, and sometimes more, than the presiding judge. The key is

that we have an independent, impartial, well-trained, experienced person who is looking at this child. I think that is the key.

Senator DURBIN. I mentioned in my opening statement that in 1993 there was an innocent little boy named Joseph Wallace, a 3-year-old who was killed by hanging after being repeatedly returned to a mentally ill parent in Chicago which sparked a reform movement there.

Just for the record, I want you to hear these statistics. Chicago is roughly five times the size of D.C.'s population. At that time, in 1994, they had 41,000 pending cases of abuse and neglect, and there were 16,500 new cases every year. So it was a huge caseload they were dealing with.

They went into a reform mode after that and said we have got to change this system, and it took them 6 years to make the ultimate transformation to what I am about to report today. They are now down to 16,000 cases pending of abuse and neglect, after significant reform. Foster care has been reduced from 7 years to less than 4 years. So they have really made a combined effort not only in the courts, but also with assistance to the court, which is my next question.

We are going to hear testimony later on from Judge King about the number of cases per social worker in the District of Columbia, which I understand from his testimony is about 100 cases per social worker. The recommended number is one-fourth that, some 25.

What does your bill do to provide the obvious need for support services for the courts and for the families?

Ms. NORTON. The child services agency is not before this body. The District of Columbia itself has just gotten jurisdiction over the child services agency, which had been under the jurisdiction of the Federal courts. It was when the agency was under the jurisdiction of the Federal courts that Brianna Blackmond died. That made the court look closely at the receivership, and it decided that the Mayor of the District of Columbia was doing a better job with agency than the receivership had been doing with the agency.

They have had the agency since only June, and the Council, in response to the movement of the agency from the court back to the Council, has appropriated significantly more money for the agency, including social workers.

To be candid, the great problem with social workers is the turnover in social workers. This is a profession that is not drawing people any longer. They come and they see this very difficult caseload and they leave. So the District of Columbia, you are absolutely right, Mr. Chairman, has a huge problem here, but a problem that is not the court's problem, but the problem of the agency itself, under the jurisdiction now of the District of Columbia

Senator DEWINE. Mr. Chairman, again, you point out very correctly there are two sides to this problem, fixing one doesn't solve the whole problem unless you fix the other problem.

Now, we have a division, I think, of responsibility. We have, according to the 1997 bill, a lot more responsibility in the area of courts. What we try to do with this bill is to begin to fix the court system. Senator Landrieu and I, through the appropriations process and the District of Columbia bill which we hope to get on the floor shortly, as you know, have added an additional $35 million

basically, as my colleagues point out, to implement the reforms contained in this bill. So I think the Congress is moving on the court side.

The District has taken over, as my colleague has pointed out, the other side, and I think frankly that in the future, as a matter of public policy, we may have to help on the other side even more than we are doing today.

Senator DURBIN. If I could just ask one question, and then, of course, Congressman DeLay.

So with the D.C. appropriations bill that you and Senator Landrieu are working on, what do you believe will be the caseload that these caseworkers will be shouldering?

Senator DEWINE. Our bill and this bill are not directed at that side of it as much as we are at trying to get the courts fixed.

Mr. DELAY. Mr. Chairman, my wife and I have been involved in this for a very long time, many years, and have been foster parents. We are in the process of building a community to give kids like these a safe, permanent home. We have traveled all over the country looking at different models of how things are done in this regard.

I truly think that some in this fight, in trying to shift the blame or trying to avoid being blamed, are always pointing the finger at somebody else here in the District. The leadership that the Mayor and Ms. Norton have shown inside the District is astounding on this issue.

The District needs to fix its own system. We have jurisdiction over the court; we fix the court. But I have been working with Ms. Norton and the Mayor and others, the whole community of child welfare, to fix the system. It was terribly broken, it was terribly designed. It was designed not with kids in mind, but turf in mind.

Let me give you one quick example. They split up abused and neglected; the police got the abused and the child welfare system got the neglected. Most of these kids are both; if you are abused, you are neglected. No system splits them apart, and nobody was talking to each other. This is an example of not falling through the little cracks as these kids were being thrown in the crevices that were so big in the system.

The CASA program here is not what it should be. The child advocates program here is not what it should be. This community is not supporting the child welfare system with donations and volunteers like it should be. So we are all trying to work together to redesign all of this system.

The Mayor has sent his people over the country to look at models of what needs to be done, but in my mind it all starts with the court. I am not a lawyer, but I do know where it starts. The responsibility of the court taking a child away from a family takes on a huge responsibility. It doesn't just stop at the bench. Most family court judges don't just rule and that is the end of that case. They look into the cases, they follow the cases. They are really tough on the social workers. They are involved in the community, and that is what we are trying to change.

Senator DURBIN. Congressman DeLay, I think most of us have made reference to this morning's newspaper story, but this story

relates to at least some nonfeasance, let's say, by the social worker who didn't visit the family for 7 months.

Mr. DELAY. Right.

Senator DURBIN. So if we are talking about the interests of the children and focusing on judges, the point I am raising is should we not also be focusing on caseloads for social workers.

Mr. DELAY. Certainly.

Senator DURBIN. So if this is going to be truly oriented toward the child's best interest, we have to do both. Doing one without the other still leaves a very serious problem in the system, and even the best efforts of the best judge or magistrate could really result in this dereliction of duty. That is why I am raising this to say that if this is a true reform, then you cannot ignore those two elements, at least those two, if not more.

Senator DEWINE. Mr. Chairman, could I just make a comment?

Senator DURBIN. Sure, go ahead.

Senator DEWINE. Ultimately, though, you have to get back to the issue of who is responsible. There are two issues with the point that you just made, it seems to me, with caseworkers. One is they probably have to have more resources, more money. The second is it is a question of who ultimately is responsible with the District taking this back over.

That is why I said a minute ago this bill does not deal with that side of it. Our appropriation of $35 million really doesn't deal with that side of it. It is one side of the problem that we have to fix. We have the ultimate responsibility to fix this side.

I also believe that as a matter of public policy in the future, we are probably going to have to look at trying to fix the other side of that. To allow this to continue in our Nation's Capital is wrong; it is a crime. We should not allow it to happen. But based on the 1997 law, we have the responsibility, or a lot of the responsibility on this side and we are not in any position to point fingers and say that the case work isn't being done, when the side that we have some responsibility for as far as the judges is in such a mess. That is all we are trying to do with this bill.

Senator DURBIN. Let me ask you about this burn-out question. I want to put something on the record here. Congresswoman Norton has made this point earlier about social workers that because of the volume of work that they have and the nature of the work, there is a high turnover.

It has been my experience as a practicing attorney many, many years ago that there were people who were really committed to this type of practice at all levels, from judges on down to advocates and attorneys who really worked it hard, and some of them were just extraordinary people.

I think that this is a very difficult part of legal practice because it emotionally can tear you to pieces on a day-to-day basis when you see the terrible things that are happening among people, and certainly to children. And I guess the question I ask you on this burn-out question is can we really find this supply, this inventory of attorneys coming out of law school or those who have been in practice for a while who are prepared to make a dedication to this a major part of their lives, 5 years. In Cook County, the reform has resulted in terms of service of 2 years in the family court.

Now, I am just asking you that in an open-ended way and I am not sure any of us can really answer it. We would hope, for goodness sake, that there is an abundance of people who would want to step in and do this. But I will tell you I found my family practice as a lawyer to be the toughest practice I had, not in terms of hours but in terms of bringing home my problems and worrying about them at night and wondering if I was doing the right thing for the families involved here.

I can understand that every attorney may not want to become a judge in this practice, nor should they be, while others can make a lifetime commitment to it and do a marvelous job. So tell me about the 5-year commitment and your thoughts on the burn-out question.

Ms. NORTON. Mr. Chairman, I would like to speak to that because I think this is the only point of real difference between my two colleagues—you have heard them both talk about 5 years here—and me. The rest of this is what we have really all agreed upon, and even this I think we can come to some understanding on.

We came to the conclusion that our court should remain an integrated court, a court part of a larger court, and we came to that conclusion based on the evidence. We had a juvenile court here, we had a family court here. It was a disaster. In fact, the court was upgraded and made a part of our integrated court, and the court itself improved vastly when it became an integrated part of the court. It improved in its prestige, it improved in the way it was received by the bar.

The court doesn't have a lot of credibility before the Subcommittee, and so when the court said it wanted 3 years, the Subcommittee was skeptical. They were skeptical because the court had to be dragged kicking and screaming by the bar and by the Council for Court Excellence to the point where it would make these reforms itself. Had the court moved ahead in the way the bar and the Council for Court Excellence had said years ago, we wouldn't have even needed to do this. So I came to this with absolutely no sense of whether it should be 3 years, 4 years, 5 years, or 10 years.

Mr. DeLay is not a lawyer, but he feels strongly that if anything is there for children, it ought to be there for children, and if you are a judge, by golly, you ought to be there for children for as long as it takes. Well, I am a member of the bar and have some familiarity, though not a lot, with family law. Recognizing that this was part of an integrated court, I then sent my staff to find out the state of the art.

I was satisfied that if we had 3 years—understand, I didn't come with the court's imprimatur here because I have skepticism about the court, too. But the court now has 1 year, so it seemed to me that if you now have triple that, you are getting a genuine commitment and you are getting people who are saying, I feel deeply about children; I may not want to spend the rest of my life dealing with the hardest problems in the District of Columbia, which are parents and children caught in the deepest social problems, but I think I owe an obligation to spend 3 years of my life.

So I believe that that was an appropriate compromise. Our bill has another kind of compromise in it because Mr. DeLay and I, when we reached this disagreement, cut the baby in half and we came to a compromise. But I want you to know this was a disagreement we had, but it is a disagreement based on our sense of what would be best for the court. It is not a disagreement that is rooted in any principle that any of us could say must be. I respect the difference we have here.

The one difference I would have with my good friend and partner, Tom DeLay, is I don't think it is an insult for a judge to say this is very difficult. This is what I would envision: I would envision that a judge would, in fact, want to do this. We do have volunteers in this, but they would say, if I could have a year in the Superior Court, to give some greater variety in my life I would come back and do this because I think the most important thing to do in the District of Columbia is to deal with these children.

So I would like that judge to be able at the end of 3 years to say, OK, I am going to do something else, but I will be back because this is where my commitment in life is. So I accept that because there are so many integrated courts around the country that have 3 years or less that that was good. I was willing to reach a compromise, which is neither 3 nor 5 years, as you will see in our bill, if that is all we can get. This is the honest-to-God truth of how we got to where we are.

Mr. DELAY. Mr. Chairman, I have got to tell you, children in this District remain an average 4 years in foster care. They don't have the luxury of burn-out, and I don't think it is tough to ask a judge to serve the length of time that the kids are in foster care.

For someone to claim that they don't want a system that makes a judge serve 5 years because of burn-out is an attitude that doesn't care about the kids. They care about their own careers and their own judges. I refer to Judge McCown's testimony on this very subject, and he has 13 years as a family court judge in Austin, Texas.

Burn-out happens for many reasons, but it usually happens with "I didn't want to do this in the first place and now I wish I was out of it." Whether it is a judge or the social workers or the volunteers that hear these cases everyday and deal with these poor kids everyday, do you know what keeps them going? It is success. That is what keeps them going.

Senator DURBIN. Congressman DeLay, let me ask you this: Isn't it also possible that burn-out is not a reflection of not caring about the kids, but in some cases caring too much about them? Getting emotionally committed and feeling the pain of what is happening in your courtroom has got to take an emotional and physical toll.

I once asked a young woman who worked in a hospice, I said this must be a very sad job. No, she said, it is not, it is a very hopeful and happy job. People know what is coming and they are making plans. She said, I had a sad job. And I said what was that? She said, I was on a hotline for child abuse and neglect. She said, I couldn't take it, after a while I just couldn't take it. Now, here was a loving, caring social worker who went into a hospice, but it just tore her to pieces every single day to pick up that phone line and to hear those cases, one after another.

So I am not going to argue that there aren't some who would look at this as an assignment with no future, but there are some who would look at this as an assignment where they just frankly cannot handle the burden that comes to them every single day. I hope we can allow for both possibilities as we discuss this reform.

I don't speak to it because I didn't practice in this area but just a little bit, but it struck me that there were people that had no business being there in the first place and others who were really carrying a heavy burden from this.

Senator DEWINE. Mr. Chairman, you make some very valid points, and I think everyone brings to this their own experience. In my home State of Ohio, we elect judges for 6 years and so there are many, many judges who run, make the decision to run for a position in family court or domestic relations, whatever it is called locally, and they know they are going to be there 6 years. So I don't think it is extraordinary to think that we are going to find people to serve this period of time.

I think the other message we are trying to send is that we don't want this looked at as a stepping stone to anything else. There are some things that are unique about this court and where it sits, and this court has been looked at sometimes as a stepping stone to something else. You go and do your job here and you are going to be in the U.S. Attorney's office or you will be appointed to the Federal bench or something else.

I think the message we are trying to send is there is nothing more important than our kids and we want people who want to do this. Yes, maybe after they serve their term, they will do something else, but we want them for the term to be focused on children.

There is, I think, a learning curve. I don't know where that is, and I think in every job it is probably different and maybe for every individual it is different. Just as teachers tell us that it takes about 5 years before the teacher really hits his or her stride—and I think we can relate to that in the U.S. Senate or the House of Representatives.

Senator DURBIN. There is a different learning curve, incidentally, in the Senate and the House. [Laughter.]

Senator DEWINE. Well, I am sure it is different. It gets higher or lower; I don't know which.

I think that 5 years is not an unreasonable period of time. Is it the magic time? I mean, 6 years, 7 years, 4 years—who knows? I don't think any of us knows for sure. I just think 5 years is a reasonable period of time.

Mr. DELAY. Mr. Chairman, I wanted to finish my statement with reading from Judge McCown. I think he puts it very well in his testimony. "The cause of judicial burn-out is not the number or difficulty of the cases. The cause of judicial burn-out is failure at one's work, a feeling of hopelessness about the task. A committed judge with training and experience who sits in a specialized family court doing good work draws deep satisfaction from helping children and families. While such a judge may eventually tire and seek a new assignment, the judge is not likely to do so in a mere 5 years."

My point is that if you spend any time in this child welfare community at all, you will find people who deal with failure after fail-

ure after failure, but they get that one kid that is a success and that makes all the failures worthwhile.

I mean, these are kids that have terrible issues that they have to deal with. I don't know what it is in the District of Columbia, but 93 percent of the violent criminals in Texas prisons were abused and neglected children. But there are a lot of successes out there that you could point to of wonderful foster kids that dealt with their problems and moved on to be productive citizens.

Senator DURBIN. I will ask one last question and then I will go to my colleague, Senator Carper, who I am glad has joined us here.

The other element that was raised in this *Washington Post* article and has been raised by others was the bill's elimination of the court's Domestic Violence Unit. Can you tell me why you eliminated it?

Ms. NORTON. It is a non-issue. It wasn't eliminated. It is a question of language. Domestic violence is one of the great all-time bipartisan issues in the House of Representatives and the Senate. There was a good-faith effort on the part of the staff to put language in that preserved the Unit, while making sure that the cases all came into the one family/one judge. It is a technical question of language. It is not even worth your time.

Senator DURBIN. So you want the Domestic Violence Unit?

Ms. NORTON. Mr. DeLay and I are fully committed, and always have been. It has never been an issue.

Mr. DELAY. It never was.

Senator DURBIN. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Mr. Chairman, whenever I see Representative Norton and Representative DeLay sitting together at a table and favoring the same cause, I pause. [Laughter.]

Senator CARPER. This is a day to remember.

Mike DeWine and I came here together in 1982, so we are colleagues of long-standing. Thank you for coming.

As a former governor whose job included appointing judges to all the State courts in Delaware for the last 8 years, I wouldn't like the idea of the Federal Government coming in and telling us how to run our court system—and we don't have elected judges; we have judges appointed by the governor for 12-years terms, including for the family court. But my State would not have taken well to the notion of the Federal Government coming in and attempting to micromanage State courts.

I have actually heard from some folks in the legal community in my State who have encouraged me to oppose this legislation. I have not talked with the Chairman about the legislation.

But let me ask Representative Norton this: Would you like to be called "Representative" or "Congresswoman" or "Delegate?"

Ms. NORTON. I think that technically I could be called "Delegate" and "Congresswoman," so obviously I would choose "Congresswoman." [Laughter.]

Senator CARPER. Congresswoman Norton, just talk to us a little bit about the notion of the Federal Government coming in and micromanaging to this extent the nature and constitution of your court.

Ms. NORTON. It is an interesting you raise this, Senator. I opened my testimony by trying to make sure everybody understood they weren't having an out-of-body experience, because the Senate is, of course, accustomed to our appropriations, and explained that while the Council and the Mayor are by far the most competent people to do anything about children and family and courts in the District of Columbia, when the Home Rule Act was passed in 1973, for reasons that escaped me courts were left under the jurisdiction of the Congress and not put under the jurisdiction of the D.C. Government. Almost everything else was.

Interestingly, the Council has just had a hearing in which it is asking that the courts be returned to the District of Columbia. Mr. DeLay, I must say, has respected home rule fully, but he and I had to act, and you have had to act because the District of Columbia is not empowered to act on its own courts.

Mr. DELAY. The court is totally paid for by the Federal Government and is under the jurisdiction of Congress.

Ms. NORTON. Interestingly, the Council said it was willing to pay for its own courts, even though you don't have a lot to say about courts except to appoint the judges.

We are for an appointive system the way you had in Delaware, so the Council wouldn't even have a lot to do with it. The Mayor would do the appointments. But they said, we know if we get them, we are going to have to pay for them, and they thought they had the money to pay for them.

Senator CARPER. Just so it is clear, currently the way the system works is the President nominates and the Senate confirms judicial appointments to the Superior Court?

Ms. NORTON. Yes.

Senator CARPER. And there are about five divisions in the Superior Court, is that correct?

Ms. NORTON. Yes.

Senator CARPER. Just help me understand the legislation. How would that change under this legislation?

Ms. NORTON. The matter you have just raised is not touched by this legislation. I will be introducing a bill in the next term that would transfer the courts to the District of Columbia and then we wouldn't be bothered with this matter at all.

Mr. DELAY. I want to make sure you understand what we are doing with this legislation, creating a different pool of judges dedicated to a family court in a different way than previously organized in the court. So we have brought reforms to the table that the child welfare community, as well as those of us who work in this area, understand are needed by the Superior Court. And I have to say that the Superior Court judges have resisted it every step of the way.

Ms. NORTON. I ought to say for the record that I asked the Council to look at the bill, the Mayor to look at the bill. The Council passed a resolution endorsing the bill. Now, some of those things like the Domestic Violence Unit still have some technical problems in language, but they have endorsed this bill. So this bill has the home rule imprimatur of the District of Columbia.

Senator CARPER. When you hear people speak against the legislation, just share with us what you think may be the most valid criticisms of the legislation.

Mr. DELAY. I didn't go to law school. I wasn't trained to do that.

Ms. NORTON. I think you will hear in Judge King's testimony some criticisms of the legislation. My point of difference with him is he knows or should have known that virtually everything in his testimony is now in negotiation with the Senate, because on the floor of the House I indicated that and my staff has indicated that to him.

Some have said he doesn't want any legislation at all. Others have said that the basic difference is that the judges want—"we now only have 1 year to serve, we would rather have 3 years," which is what I initially have supported, and certainly not 5 years, which is what Mr. DeLay supported. And now we have a kind of hybrid in there to reflect this difference.

But beyond that, it would be hard to find a criticism of one family/one judge. More money for this court, money that the Senate and the House were willing to give beyond what is now in the bill, but the court came forward with the scenario that they got most of the rest of the money redistributed in other ways.

So I am going to leave my staff here to hear what criticisms there are of the bill, especially since the bill has been endorsed by the Mayor and the City Council, although they did endorse three judges and not the amalgam we now have in the bill.

Mr. DELAY. I can't answer your question because I think their criticisms are all bogus. It blows me away, the kind of criticisms they are making to protect their own little turf, and that has been the biggest problem we have had.

What this bill represents is best practices, from the ABA, from all the organizations. This is what people do all around the country. This is what this reform is. We came together with 5 years as a compromise, but I started with a new family court. I wanted a new family court, separate from the practices of this Superior Court, designed like those best practices around the country and how they do it well.

Because of criticism from the judges, we have worked our way down all the way to the 3- and 5-year solution. That is a compromised compromise. I have served with both of you in the House and you know how difficult it is for me to compromise. [Laughter.]

Senator DEWINE. If I could just make one comment, you weren't here when I made it before, but I do want to repeat it, and that is despite what may appear to be differences and what are differences, this bill is a product of a lot of compromise at this point.

This is not a bill that was thrown together by the three of us. Each one of us has spent a lot of time talking with the judges, and this is a bill that probably, if each one of us was drafting it—it is very different than if I sat down and drafted the bill. It is a good bill. It fundamentally improves an area where we have responsibility. Whether or not Congress loses that responsibility in a year or 2 years, we have it now and I think we need to act on that responsibility.

Senator CARPER. Can I make a closing comment?

Senator DURBIN. Sure.

Senator CARPER. Our State of Delaware has about 750,000 residents. How many people live in the District these days?

Ms. NORTON. Almost 600,000.

Senator CARPER. We are just a little bit bigger. During my time as governor, one of the toughest things that I dealt with was when we would lose a child from child abuse, killed in many cases by a member of the family, a parent. It didn't happen often, maybe once a year, but if it happened at all, it was too often. It was a painful experience.

When it did happen. We would look at our courts to see if the problem lied with our family court, and they came under a fair amount of criticism. If we look at our Division of Child Protective Services, the folks who worked there were oftentimes criticized by one group or the other or by the media for not doing enough.

I concluded that the courts are clearly part of the solution. Clearly, the Division of Child Productive Services is part of the solution. But the real solution is working with the parents and the families and the folks who are raising the kids, to reduce the incidence of teenage pregnancy, to make sure that the folks who are having kids are prepared to bring those children into the world and to raise them. So while the issues you raise here are important, I would go back and say that we as a body need to keep that in mind.

The last thing I would say is I and Dick Durbin, Mike DeWine, and Tom DeLay used to work out in the House gym sometimes together. And we probably don't look like it today, but I remember Tom DeLay used to wear a T-shirt to work out in the gym that said "Don't Mess With Texas." And the idea of the two of you sitting here—I almost thought that Congresswoman Norton might wear a T-shirt that said "Don't Mess With the District." [Laughter.]

Senator CARPER. We want to do the right thing.

Ms. NORTON. Thank you. I would like to make one point that may not be altogether clear about this bill. I am glad that Tom DeLay raised where he started. Tom DeLay started with the notion of a family court and you have a 15-year term. I started from essentially the situation we have now where you integrated.

I think that what you have done here today is to try to bring out the differences so that we can see what is yet to be done on this bill. But I think what has to be stressed here is how the Senate and House have worked in a bipartisan and bicameral way on a bill coming initially from very different parts of the family law spectrum on that.

I think I should also be clear that we called in the court for countless meetings. Mr. DeLay, a leader of the House, taking his own time to sit down and hear in great detail about what the court wanted, tried to incorporate as much of what the court wanted as was possible.

And when all is said and done, while there are differences here and there, there really are very few differences left in this bill. The term is the one issue that has divided Democrat and Republican. Other than that, it is pretty hard to tell, based on the fact that we are from different parties, the difference between us on this bill.

I think what has most pleased me about this process is that although Tom is the toughest guy to negotiate with in the House, the

fact is that we were able to get to great agreement. Mr. DeWine was Chair when we started this process, and I must say that I think in a real sense, particularly affecting the District of Columbia and particularly given the differences between Mr. DeLay and me in the beginning, the way Mr. DeWine in the Senate conducted himself and then Ms. Landrieu, this has been a real model of how people who begin with very different points of view can come together so that there are almost no differences among them.

Senator DURBIN. I would like to ask one last question and then make a comment, and the question is this: If we stick with the principle of one judge/one family/one child and we know that there is a finite limit to how long these judges will serve in this capacity out of a 15-year term, is it your understanding or does the bill provide for the case to stay with the judge once the judge leaves this Family Division?

Ms. NORTON. That is a good question. I am trying to find what the words are. We have a limited exception.

Mr. DELAY. That is a detail I am not sure of. All the cases stay with the Family Division. There is a limited exception.

Ms. NORTON. Yes, there is a limited exception so that we don't get the same situation we have now where 59 judges really have all these cases.

Senator DEWINE. If a judge can finish it in 6 months, he keeps it.

Ms. NORTON. That is it.

Mr. DELAY. Olivia Golden will answer in her testimony.

Senator DURBIN. Let me say this: First, I am on the D.C. Appropriations Subcommittee and I want to say to Senator DeWine, Senator Carper, and any staffers from Senator Landrieu, let's look at the social worker part of this. I don't believe we are doing our duty if we don't address the social worker part.

Senator DEWINE. I agree.

Senator DURBIN. So, let's do that. And, second, let me tell you I don't know how much we can get done in the remaining time we will be here. Congressman DeLay probably knows better than most in this room how long that time may be, and he may be uncertain. I am.

I want to try to do this right. I just think there is entirely too much at stake here for us to do it in a haphazard way, but there is entirely too much at stake here for us to do nothing. We have to find what our level of responsibility is here and devote the time to get it done as well as we possibly can in the remaining time that is given to us.

If it has to be held over to do it right, I am going to ask that that happen. But to move it from the Subcommittee to the full Committee to the floor and then to conference and to the President's desk is a tall order in a short period of time.

Ms. NORTON. It is, although I would ask you to try.

Senator DURBIN. Well, I am certainly going to try.

Ms. NORTON. We have been working on this for a year. We have got the money in the bill and the differences are curly-cue differences.

Senator DURBIN. This was referred to us September 20 or so, so the fact that this hearing is taking place in this room at this time is an indication of our commitment.

Ms. NORTON. It is.

Senator DEWINE. We appreciate it.

Senator DURBIN. And the commitment will continue.

Thank you to this panel. We appreciate you being here.

Ms. NORTON. Thank you.

Mr. DELAY. Thank you.

Senator DURBIN. The next panel includes the Hon. Rufus G. King, Chief Judge of the Superior Court of the District of Columbia; Dr. Olivia Golden, Director of D.C.'s Children and Family Services Agency; Deborah Luxenberg, Chair of the Children in the Courts Subcommittee of the Council for Court Excellence; and Margaret J. McKinney, Chair of the Family Law Section of the D.C. Bar.

If I could ask you all to please take your seats, I hope that what just transpired will continue because it is rare on Capitol Hill. It was an actual dialogue. Usually, we are given all of 1, 3, or 5 minutes to try to think of inspiring questions that might attract the attention of the press. Instead, I think we had a conversation, which at this point in time may be more beneficial than reading a statement or strict time limits.

I would like to invite each of you to give an opening statement. Your complete statements are part of the record. You have heard the drift of our conversation. If you could address the issues raised and those that you think should have been raised and weren't in your few minutes of opening testimony, then Senator Carper and I will follow through with questions.

Judge King, would you like to start?

TESTIMONY OF RUFUS KING, III,[1] CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA; ACCOMPANIED BY LEE SATTERFIELD, JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Judge KING. Good morning, Chairman Durbin, Senator Carper. I will proceed on the assumption that the full statement is inserted the record.

Senator DURBIN. It will be.

Judge KING. I will try to chop this up pretty much so that we can get to the conversation. I very much appreciate the way you are doing that.

Let me begin by expressing gratitude that I am sure is shared by all Americans, as you and your staff are pressing ahead with business with courage and dignity, despite the threats to your personal safety. In these unprecedented times, your efforts make me proud to be able to share in the spirit of America.

I want to skip some other parts to go right to the two things, I want to outline in very brief form what we see are difficulties with the bill, and I also want to point to some things that the court is doing to undertake reform, since there has been some suggestion

[1] The prepared statement of Judge King appears in the Appendix on page 59.

that the court doesn't want reform and has resisted any efforts to change it.

Let me emphasize that we have worked very hard and very closely with staff. We have tried very hard to make our views known, to understand their views, to compromise, to work out differences where we had differences, and to clarify where we were in essential agreement.

My understanding was the point of today's hearing was to comment on the bills, as written, not as might be undergoing some negotiating process where things would be fixed that we didn't know about. So my testimony goes to what we have in black and white, and as judges, of course, that is what we must be concerned with because at the end of the day that is what we are going to be governed by.

Let me detail a couple of things. As I came in as Chief Judge, I, along with all of the candidates for that position, had agreed that family court was the primary issue that needed attention in the Superior Court.

And, Senator Carper, you correctly point out the court has five divisions—criminal, civil, probate, tax, and family.

When I came in, I appointed a new judge to take over the Family Division, as is the Chief's responsibility. We formed special task forces to look at the issues, to consult with members of the bar, the social service establishment, the agencies, the private, non-government organizations, to try to come up with recommendations as to what should be done and what should be undertaken.

In addition, realizing the urgency of the issues, I took a number of steps that were possible within existing resources and staff and funding. I assigned an additional judge to expedite abuse and neglect cases, rearranged the calendar so that we could address those cases and relieve an overcrowding problem that was occurring there.

I directed remodeling of existing space so that we could have a more family-friendly waiting area for the children and families appearing in court. I committed the court to a close working relationship with the Child and Family Services Agency, the CFSA, including biweekly meetings with Dr. Olivia Golden, its new Director, and the presiding judge of the Family Division.

And I have made clear to her from the beginning that whatever we may disagree on substantively on a particular provision, that effort will continue. The court will remain open to those discussions and dialogues. When we had a recent unfortunate incident where a social worker had not complied with a court order and a sanction was imposed, I went over with the presiding judge and with Judge Lee Satterfield, who is the new, incumbent presiding judge—and forgive me; I do want to introduce him. Judge Satterfield has agreed to respond to any questions.

We went over to talk to the social workers to see what the issues were and to see if we could better understand the pressures they were under and try to work with them and explain what we needed to do in order to avoid that kind of unfortunate incident.

In consultation with CFSA on the need of social workers for more time in the field, I ordered limits on when neglect and review hearings could be scheduled, and that will start in January 2002. I di-

rected the court's information technology director to proceed with the Family Division as the first phase of an integrated justice information system as rapidly as possible after congressional approval and after funding is available.

I secured technical assistance from the National Council of Juvenile and Family Court Judges' Model Court Project for improving case management techniques, training and strategic planning in our Family Division.

Let me interrupt there to say that I think it was said that the court has no training. We have, from the time that I came on the court, beginning with 2 weeks of nothing but training for every incoming judge, with an emphasis on the area where that judge is going to come in—so if it is a criminal judge, much of that 2 weeks is spent in criminal matters. If it is a family court judge, much of that training addresses the family assignment that that judge will undertake, along with some general training about service as a judge.

We have had extensive training on the ASFA since its passage in 1997. We have had consistent training both at our annual preparation for assignment training in December and at our 2-day conference in May every year. In addition, I have both encouraged and approved judges to travel all over the country to conferences, to seminars, to meetings of the National Council of Juvenile and Family Court Judges. Judge Satterfield was in California recently. Judge Josey-Herring, the deputy presiding judge, was in Cincinnati recently.

So we make every effort to see that our judges are fully informed and have the opportunity to refresh their learning and to learn new things and to make contacts throughout the United States. At my direction, Superior Court judges and Family Division staff are continuing additional training in this field at this time.

The court initiated a pilot child mediation project which actually, again, contrary to, I think, a statement that was made—we have had some mediation in child cases on a very limited experimental basis for 2 or 3 years now. It has not been lately, although we have had mediation for divorce and other Family Division cases. But the reason we didn't do it in abuse and neglect cases is because the thinking for the most part was that with the imbalance of power and the terror that could prevail in a family situation, it was unwise to put people into a negotiation situation in those cases. That thinking has changed. Safeguards have been worked out. People are beginning to work with that, and we are very much in that trend and working with it and intend to pursue it.

I have asked judges to volunteer for terms of 3 years in the Family Division beginning January 2002, regardless of the outcome of any legislative changes that may be enacted by then. I extended the related case rule within the Family Division to implement the principle of one family/one judge as much as possible, pending additional staff and resources.

Again, let me just pause a moment. I think there is a suggestion that these cases are kicked around from pillar to post. When a child comes in, they basically have two judges. There is a trial judge who makes the decision, did abuse occur. If there is a stipulation that that abuse occurred, then that case gets sent to one of

the 59 judges, who is that child's judge and that family's judge for as long as that child may be in the system—one judge.

In fact, that is only slightly different from what Judge McCown does in Texas. He is a civil court judge who has abuse and neglect cases which he keeps from beginning to end. We do essentially the same thing, except that because of our volume we cannot keep them all in the family court. We just don't have enough judges to do that with our given resources.

The resources and the bills here may change that, and that will be fine. That could work better. We don't advocate spreading them among 59 judges, but it is an adjustment to our resources. And the number of cases that are coming in—I won't spend a long time on it, but the number of cases went up from 400 coming in a year back in the late 1980's to now around 1,600 coming in every year. So we have to find some way of placing those cases before judges who have the time and the ability to service them.

Senator DURBIN. We have a subtle little mechanism of lights that is in the other committee room and——

Judge KING. You are telling me I am too long.

Senator DURBIN [continuing]. I am going to serve as the yellow light, so please wrap up, if there are any other thoughts you would like to share as you close.

Judge KING. We are not about opposing reform, but we are very much against doing it wrong. This is critically important. These children are too important.

I won't dignify the comments that seemed to appear to cast aspersion on the dedication of the men and women who have chosen service on the Superior Court, and in the Family Division in particular. That doesn't mean discussion. You just come down and watch us in the court house, if you wish.

But there are some important issues that I think need to be fixed. I don't think it takes a long time and I am not asking for a delay in the process, but it is critically important to do it right.

One: Both bills transfer all family cases now pending before judges outside the Family Division—that is section 3(b)(2)(B) in both bills—transfer every case, whether it is a divorce case that is under supervision by a judge. I have the Haft mediation that took 4 years to settle and they wanted me to retain jurisdiction, and that case should not be transferred. So it says all bills go back in.

Two: As written—I don't know whether this was intended or not. I rather hope and believe it was not, but, as written, H.R. 2657 would impair the operation of the Domestic Violence Unit, and S. 1382 would require its dismantling.

Three: The bills would impose 5-year terms on judges new to the bench, and I am going to ask that if that question comes up that Judge Satterfield address it.

Four: The bills micromanage the court in a way that could tie our hands, and particularly in ways that we may not be able to foresee sitting here today.

So I thank you for your concern and interest. This is a critically important issue to the District of Columbia, and your interest and attention is very much appreciated.

Senator DURBIN. Thank you, and when we get into our conversation here, I am going to ask Judge Satterfield for his comments as well. Dr. Golden.

TESTIMONY OF OLIVIA GOLDEN, Ph.D.,[1] DIRECTOR, CHILD AND FAMILY SERVICES AGENCY, DISTRICT OF COLUMBIA

Dr. GOLDEN. Thank you. Good morning, Chairman Durbin and Senator Carper. I am Olivia Golden. I am the new, recently-appointed Director of the Child and Family Services Agency, and it is an honor to be here to testify on behalf of Mayor Williams. In my previous life as Assistant Secretary for Human Services I worked with many of the bipartisan members on ASFA, Adoption and Safe Families Act. So I especially appreciate the chance to be here advancing the implementation of that law in the District of Columbia.

I want to commend the Subcommittee, Senators Landrieu and DeWine, Congressman DeLay and Delegate Norton for their commitment and leadership on the legislation, and Judge King, Judge Satterfield, and Judge Walton for the time that they have dedicated to regular planning with us at CFSA.

As Congresswoman Norton said, the Mayor strongly supports the proposals under discussion at this hearing because they represent major steps forward toward his key goals of safety, permanence and well-being for the District's most vulnerable children.

Enacting court reform now would coincide with the major changes that we are making within CFSA and other city agencies. To respond to your question, Chairman Durbin, the changes we are making within the agency in regard to how we do social work need to be synchronized with the changes in the court. Delay in enacting this important legislation would risk stalling our reform and failing to seize this moment of opportunity. In addition, the Mayor believes that full funding for the Court and the District's implementation of the legislation is critical to reaping the benefits of reform.

CFSA is responsible for addressing child abuse and neglect in the District of Columbia. It came into existence as a cabinet-level agency just 4 months ago, June 16, 2001, at the close of the Federal court receivership. Its enabling legislation, enacted in April 2001, represents landmark reform in the District's ability to serve children in a unified and accountable manner.

To serve abused and neglected children, as with any child welfare agency, we connect closely with many public and private agencies whose functions are inextricably interwined. The Superior Court is an integral part of this system, conducting, for example, more than 1,400 abuse and neglect hearings in September 2001.

Senator CARPER. In 1 month?

Dr. GOLDEN. In 1 month, absolutely. It is an enormous volume, which is why this is so central to us.

As so many people have commented at this hearing, this complex system of services in the District has a long history of failing to deliver successful outcomes for children. We have an extraordinary opportunity today to change that history dramatically by strengthening all of the elements of the system together.

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[1] The prepared statement of Dr. Golden appears in the Appendix on page 69.

We have that opportunity because the work of Mayor Williams and the City Council and the support of the Congress enabled us to address a wide range of critical systemic deficits. For example: We were able to successfully transition out of Federal court receivership.

CFSA's budget increased by more than $30 million from fiscal year 2000 to 2001, which will let us make investments to support children, such as investments in social workers.

The District is currently implementing a major commitment to expanding and reforming the legal support for our social workers at CFSA.

CFSA's enabling legislation fixed the issue that Congressman DeLay referred to, needing to unify child abuse and neglect, which had been fragmented. We achieved that on schedule October 1, 2001. So we have unified a fractured service delivery model.

The District has promulgated both foster and group home regulations for the first time ever, which will make it possible to support and enforce standards of quality.

Without family court reform, we risk sharply reducing the impact of all of these changes. With family court reform, we believe that we can achieve the maximum impact.

Two aspects of the proposed legislation stand out as key. The first, every single one of the Mayor's reforms will be most effective for children if implemented in conjunction with a core group of 12 to 15 highly-trained and well-supported judges, as in the proposed legislation, rather than with the full 59 judges who now handle abuse and neglect cases.

The second, both legislative proposals, House and Senate, envision key resources and supports that are critical to improving the speed and quality of decisionmaking in abuse and neglect cases.

In addition to the Mayor's strong support of prompt enactment, my written testimony provides four specific comments on the proposed legislation. I will see if the red and yellow lights will allow me to highlight two of them and I would love questions on the others.

First—and this goes, I think, Chairman Durbin, to some questions you asked—we believe that a key element of successful reform is ensuring that child abuse and neglect cases are concentrated with a core group of well-trained and well-supported judges. We urge the Subcommittee to defer to the House provision in regard to circumstances where judges can take cases with them when they leave the family court, because we believe that it is appropriately narrow and limited to the most extraordinary cases.

We are concerned that the broader exception in the Senate proposal could lead to wider dispersal of cases, making it more difficult to reap the benefits of reform. In regard to the initial transfer of cases, we believe that transfer of cases to the family court should occur as expeditiously as possible to reap the benefits for children and that core, well-supported group of judges.

Second, resources and staffing are critical to meeting the goals of the reform. We strongly urge the Subcommittee to fully address the Court's needs, which include staffing, space, technology. In addition, the Mayor has identified approximately $6 million, as an additional Federal appropriation required in fiscal year 2002 to meet

the District's responsibilities under the legislation, including $5 million to support integration across computer systems and $1 million for central liaison and agency on-site representatives.

In conclusion, we believe that a strong family court is the final piece needed as we strive to improve the District's child welfare system. Many people here alluded to the very sad death reported in the *Washington Post* today. For me, that redoubles my sense that we need to reform now and that it is truly important to be able to synchronize all of the reforms together.

Thank you.

Senator DURBIN. Thank you very much. Ms. Luxenberg.

TESTIMONY OF DEBORAH LUXENBERG,[1] CHAIR, CHILDREN IN THE COURTS COMMITTEE, COUNCIL FOR COURT EXCELLENCE

Ms. LUXENBERG. Good morning, Chairman Durbin and Senator Carper. Thank you very much for permitting the Council for Court Excellence to offer testimony here today. My name is Deborah Luxenberg and I have been in practice for 26 years in the Superior Court of the District of Columbia. Currently, I am serving as the Chair of the Children in Courts Committee for the Council for Court Excellence, and in that capacity I am here, but I hope I will be able to share a little bit of my practical experience in the court with you as we go along in this testimony.

The Council for Court Excellence is a District of Columbia-based, non-partisan, non-profit civic organization that works to improve the administration of justice in the local and Federal courts and related agencies in the Washington, DC, area.

For the past 20 years, the Council for Court Excellence has been a unique resource for our community, bringing together members of the civic, legal, business and judicial communities to work in common purpose to improve the administration of justice.

We do have judicial members on the board of the Council for Court Excellence, but I would like to stress that no judicial member of the Council for Court Excellence board of directors participated in or contributed to the formulation of our testimony here today.

At the outset, we really need to remember that one reason for the problems perceived in the Family Division of the Superior Court is that that division has long been underresourced in every category. We applaud the congressional priority on family law matters, but we urge the Congress not to enact D.C. family court legislation unless there is an equal commitment to providing the Superior Court with the necessary funding to execute the goals of such legislation.

Addressing the problems of the court's Family Division is laudable, and we understand that the Family Division and the court system of the Superior Court is under the jurisdiction of Congress and the other elements of the system are not. However, it is very important for Congress to keep in mind and for all of us to keep in mind the point that Olivia Golden raised, and that is that the court system is just one element of the process, that Child and

[1] The prepared statement of Ms. Luxenberg with an attachment appears in the Appendix on page 81.

Family Services, the police, the attorneys who serve the children in the system—everybody must work together.

It is very refreshing to have this momentum from Congress and to have the Mayor and the whole city focusing on children. It is unfortunate that the deaths of a few children caused some of that focus, but the momentum is fabulous, and we thank you for the thoughtfulness and the kind of cross-pollenization of everybody's ideas that have gone into this process.

We also really have to commend Chief Judge Rufus King and his colleagues for the diligence and quality of the Family Division reengineering project that they began in January 2001. Many new judges joined the Family Division at that time. There was a new presiding judge, and Judge King has implemented a lot of changes that were long overdue in the system.

For all of my 26 years of practice, there have been problems in that system. They come from all different places and reasons, but a lot of things have been changing very rapidly and almost noticeably since Chief Judge King became the new Chief Judge.

Now, I want to turn to specific provisions of the bill, beginning with those raised in your letter inviting us to testify today. We support the bill's mandate of one judge/one family to the greatest extent practicable and feasible, but we believe that the effective date of this provision should not be deferred for 18 months after enactment.

Rather, implementation should begin promptly for all newly-filed child abuse and neglect cases in the system. As to the child abuse and neglect cases already open, some cases are being handled by judges throughout the Superior Court who have been the only constant a child will see. The social workers come and go. There have been different attorneys for children. There have been different attorneys for families.

To remove all of those cases immediately just because we have the goal to move everything into the new family court really doesn't take into account what we are all trying to do, which is serve children and give them the continuity that they need so that they are not faced with strangers every time they come within the system.

One issue I didn't have in my written testimony but one of the Senators mentioned, and I think I should say something about it now, is how the one judge/one family principle is handled when judges rotate out of that family court.

The goal of this legislation and the way things are being planned is that there will be a team of social workers and clerks and magistrates and other professionals all giving support to the judges. So if the judge leaves the case, there will still be continuity on the case and a team to brief the incoming judge.

Now, what we have had is no continuity in any place in the system. In one case I handled within the last couple of years, every day I went down to the court system, I had no idea which attorneys I would deal with, what social workers I would deal with, whether the social worker would be from CFSA or from one of the vendors serving that agency. So how do you imagine the parents and children feel?

Second, we support the bill's creation of a new category of judicial officer, magistrate judge for the Superior Court, and its re-

quirement of specific additional qualifications of training and family law experience. We further support section 6 of the bill which authorizes the immediate appointment of a special task force of five magistrate judges to handle child abuse and neglect cases which have been open for more than 2 years.

However, we believe it is important, because there are thousands of cases that have been open for over 2 years, that the five-person magistrate task force devote its time to only a prioritized portion of those cases. We believe some old cases will actually be closed out of the system pretty quickly, but there needs to be some strategy to get the oldest and most difficult cases moving.

Senator DURBIN. If you can wrap up?

Ms. LUXENBERG. All right.

We support the bill's provisions extending judicial terms in the family court. We support the goal of the bill's requirements that all pending family law cases be reassigned to the family court, well acknowledging that strict immediate implementation of the mandate might cause more harm than good, so the 18-month transition period seems to be good policy.

On some other points, I am pleased to hear that the domestic violence court language in the bill has been fixed. The domestic violence court is working. It is a model for our country. It is one of the finest parts of the Superior Court of the District of Columbia and it should remain intact.

We also believe it is unwise for the statute to lock in particular numbers of judges for one division of a unified court such as the Superior Court because there may be fluctuations in the various types of caseloads and the Chief Judge should have authority to make adjustments.

I second what Olivia Golden said with respect to staffing and space. The bill is silent on those requirements, and seeing people in family cases where there is a lot of volatility sitting in darkened hallways is not a good way to go. There needs to be sufficient funding of a decent place for these families to have their cases heard.

We also believe that it is crucial to the successful implementation of this family court that the court's plan be developed in full consultation and collaboration with the various agencies and other participants in the process.

I would be happy to answer your questions, if you have any.

Senator DURBIN. Thank you very much. Ms. McKinney.

TESTIMONY OF MARGARET J. McKINNEY,[1] CO-CHAIR, FAMILY LAW SECTION, DISTRICT OF COLUMBIA BAR

Ms. MCKINNEY. Thank you, Chairman Durbin, and Senator Carper. My name is Meg McKinney. I am the Co-Chair of the Family Law Section of the D.C. Bar and I am a resident of the District of Columbia. I have been a family law practitioner practicing in D.C. and Maryland for approximately 9 years.

The Family Law Section is comprised of attorneys who represent the children and families who will be most affected by this legislation. As family lawyers, we have always worked to improve the

[1] The prepared statement of Ms. McKinney with attachments appears in the Appendix on page 90.

functioning of the Superior Court and the other agencies that affect the lives of our clients. We appreciate the opportunity to testify.

Although I understand that many of the issues have been addressed in discussions between staff—and I have had many conversations with staffers—we were asked to testify on the bills as they are currently written, and that is what our testimony addressed.

Getting to this point in the legislative process has, from our view, been a long and arduous journey. On behalf of the Family Law Section, I would like to thank on the record the sponsors of the bill, the Members of Congress, the Senators and their staffs, for listening to our concerns and attempting to address the issues in a constructive fashion, and for continuing to give this issue careful consideration. We are also grateful for the efforts to ensure the necessary funds that we will need to implement the reforms.

As the lawyers who represent the children and families, we know that the Family Division has long been in need of attention and better funding, and we are extremely glad that it appears we are going to get both of those now.

To its credit, during the past 10 months the court has spent many hours working with the bar and other stakeholders to improve the Family Division, even without legislation. The administration of the Family Division has already improved significantly. I can say that as a practitioner down there. There have been major changes.

My written testimony points out a number of very specific concerns about the two bills that are under consideration, but I thought it would be helpful to summarize for the Subcommittee the major areas of agreement amongst the court and the bar and CFSA and the Council for Court Excellence.

We all agree that one judge/one family should be the goal of the family court. We all agree that there must be sufficient funding of the family court this year and in all years in the future. We all agree that the new cases should stay in the family court, with some latitude—and there is some disagreement on how much—to make exceptions for the benefit of the children.

We agree that the reforms should be implemented when there is a sufficient infrastructure to handle the cases. We agree that the Domestic Violence Unit should not be dismantled or diminished by the legislation. Finally, we agree that the length of service by judges in the family court should be longer than it has been in the past.

It is clear that we are down to a very few truly substantive issues, and except for the length of service which I will turn to in a moment, the remaining issues are what I think could fairly be described as managerial or implementation issues. It is clear from both the bills and the testimony today that there is broad support for the general principles underlying the bill, and now we are down to the details.

We are concerned about the micromanagement of the court and the potential unintended consequences of over-legislating court reform. We urge Congress to do only what is absolutely necessary in this legislation to effectuate the reforms and not to unduly restrict the discretion of the chief judge.

Our specific comments on the bills raise several issues for the Subcommittee's consideration. It is our understanding that some of the proposed changes are non-controversial, and we hope that those will be included in the final bill.

But we must remember that whatever reforms are enacted will affect all of the family cases, not just the abuse and neglect cases, and the court as a whole. It is important to enact the best possible legislation so the system can function well.

I would like to raise one issue that is not described in detail in my testimony but was talked about by the previous panel. One of the great frustrations of the family lawyers in the District has been our inability to get family lawyers appointed to the bench.

The nomination system is a two-tiered system. First, there is the nomination commission and then there is the President. Just this spring, a panel of three names went over to the President. Two of the three names had significant family law experience, which is extraordinary in and of itself. The person who was chosen to become a member of the Superior Court was the one person who didn't have family law experience.

So one of the things that we hope will happen is that we will be able to get some family lawyers appointed to the bench. Incidentally, 6 months later the person who was chosen still hasn't made it through the process of being confirmed and actually taking the bench, which is another frustration, is how long it takes to get people appointed to the Superior Court. It causes problems, as you might imagine, with court administration.

Turning to the length of judicial assignment, in June, before the House Subcommittee, the City Council, the court, the Family Law Section, and Dr. Golden on behalf of Mayor Williams testified that 3 years was the appropriate length of mandatory minimum assignment. The Council for Court Excellence agreed that 3 years was long enough to meet the goals of the reform effort.

The Family Law Section speaks for the lawyers who represent the residents of this jurisdiction and who actually function in the Family Division. The Mayor and the City Council speak for the residents of the jurisdiction, the actual consumers of the court.

As the stakeholders of this system, the consumers of this court and the residents of this jurisdiction, I believe it is our vote that should carry the day on the length of assignment in this jurisdiction. Other jurisdictions have chosen their own term lengths, some of them longer than 3 years, some of them shorter.

Florida recently chose 3 years. Maryland has chosen 1 to 2 years. Chicago uses 2 years. It is clear from comparing jurisdictions across the country that there is no real right or wrong answer. The point is that the other jurisdictions have been able to choose the length of assignment that best fits the particular needs and limitations of their jurisdictions.

With all due respect, and with gratitude to the Members of Congress and the Senators who have worked so hard on this legislation and who have followed through on their commitment to provide the court with the funds it desperately needs, we, the residents, the stakeholders, and, yes, the judges, should be able to choose the length of assignment in our court.

So thank you for allowing me to express my views on behalf of the Family Law Section, and I would be happy to answer questions.

Senator DURBIN. Ms. McKinney, what is the average waiting time—yes, Senator Carper?

Senator CARPER. We all serve on a bunch of different committees and one of my committees is meeting next door on insurance. So I just want to say thank you to the witnesses for participating.

Senator DURBIN. Thank you.

Ms. McKinney, what is the average waiting time when you arrive in court before there is a hearing?

Ms. MCKINNEY. I think that varies from calendar to calendar. I mean, typically, in my experience, there is an initial calendar call.

Senator DURBIN. Is it a cattle call where everybody comes at the same time?

Ms. MCKINNEY. It varies from calendar to calendar, but typically, yes. I think it is not so much that way with the abuse and neglect courtrooms, but, yes, it is substantially that way.

Senator DURBIN. Judge King or Judge Satterfield, have you ever taken a look at what other jurisdictions have done to stagger the call so that people don't have to wait 2 or 3 hours for a hearing?

Judge KING. We are looking at that.

Judge SATTERFIELD. I think we have looked at that. We looked at that for our Domestic Violence Unit over the years. I know when I was the presiding judge of that unit, we looked at those issues and tried to stagger it. I know in our abuse and neglect calendars, the judges typically will set each one trial that day and maybe a pre-trial or something to that effect, and other trials later on. So judges are staggering. It does depend on the calendar.

That is something that we look at, but oftentimes when we did not schedule cases at the 9:30 call, a significant number of them, the judge sat in chambers or sat on the bench, depending on which judge you were, with nothing to do because the lawyers were not there or some parties did not show up. So we have to over-book so we can be in business, so we can get the calendar done.

Senator DURBIN. How often is that the case where you have continuance because of the failure of one party to appear?

Judge SATTERFIELD. Well, it happens. It is not uncommon. I mean, it is not an uncommon thing where it is not just a continuance, but a delay in the proceedings when people don't appear, whether they be social workers or the lawyers that we have to get together when they show up. So that is a common occurrence.

Senator DURBIN. Let me tell you why I ask that because I have tried to do a little calculation based on some of the things we have heard this morning and Dr. Golden's testimony. Let's assume we have these 15 judges in this court and they have a current caseload of 4,600 or so, so they each have 300 cases assigned to them.

According to Judge King, they will need about four hearings a year under the current circumstances. So that is approximately five hearings a day. Is that realistic when you look at the——

Judge SATTERFIELD. That is on top of the other trial matters that they might have in neglect and abuse cases. When we are talking about the cases coming back in, those are cases trying to achieve permanency that there has been a finding of neglect. So the num-

bers that you cite are on top of the additional numbers that the judge is going to have to deal with.

Senator DURBIN. Well, the same question: Is this realistic?

Judge KING. It is realistic. What happens is you get 5 minutes per hearing and the judges are basically neutralized as an effective force in protecting children. This is what we had in the 1970's and the 1980's. We had, we used to call it courtroom 2, and all the neglect and abuse review cases came on one calendar and you might have 15 reviews in an afternoon, or 20 reviews. By the time you got all the lawyers in place and opened the hearing and started hearing it, it was 5 minutes.

Senator DURBIN. Dr. Golden, first, is my math right? It is close. Go ahead.

Dr. GOLDEN. I would make two points. The first is that the volume is high, and that is why the resources, both the judicial staffing and the magistrates, are really important to make this work.

But the second point I would make is that, to us, when we look at what could bring children to permanence, comply with ASFA, the reason you saw Senator Carper's response to that number of hearings—it is very high even in relation to our caseload, and that is partly for all kinds of reasons that lead to the hearings not being as successful, not being able to make the decision at that moment.

It is partly about our ability, with our social workers and the Corporation Counsel, to staff 59 courtrooms. It is partly about the difficulties of scheduling effectively. If you have 12 to 15 judges and you have a team, you can know how to work together and you can know you will be in court on this day, you will be out in the field seeing children this day. So it can be much more effective. Part of my goal would be that we having fewer but more effective hearings that would get children to permanence much faster and will be the goal of the legislation.

Senator DURBIN. Here is the point I am getting to, and this is an old saying, but they say it. If the only tool you own is hammer, every problem looks like a nail. So right now we are talking about judges, how many in the courtrooms, whereas the discussion here leads us to conclude that this is a corporate effort involving a lot of different people to make this work.

If we pronounce great success here in the passage of legislation that establishes 15 magistrates——

Dr. GOLDEN. Plus the 15 judges.

Senator DURBIN [continuing]. In the situation and they have 5-minute hearings with social workers, with 50 to 100 assigned to them, how much success are we going to see in this system, how many more cases like those that were——

Dr. GOLDEN. Well, I would turn it around. If we continue trying to manage cases across 59 judges who don't have the support in the legislation, then I think it will be very hard for our reforms to take effect. But if we match our reforms—for example, we are doubling the number of attorneys to support our social workers. We now have the resources to recruit social workers.

Senator DURBIN. What is your goal, incidentally, on the caseload for social workers?

Dr. GOLDEN. The goals in the Federal court agreement—there is a modified final order—depend on the type of case, so they differ

on different cases. An intake worker would be aiming for 12 investigations; an ongoing worker 20, or something like that, families in some cases, children in others. We certainly have many social workers over that now. We have resources to dramatically——

Senator DURBIN. Was Judge King's number correct, 100 cases per social worker?

Dr. GOLDEN. I haven't ever heard anyone suggest that as an average. It is certainly true that——

Senator DURBIN. Judge, where did you come up with that?

Judge KING. It is not an average; it is as much as it can be, 60, 80, 100. It is far more than the 20 that I think we all agree is the optimum level.

Dr. GOLDEN. The resources that the City Council and the Mayor have put into our budget include a range of financial incentives.

Senator DURBIN. But the point I am trying to get to is this: Let's assume we do everything, the reforms we have all talked about, and we have all the judges sitting downtown and we decide that we are going to have these hearings and they are going to get 10 minutes, instead of 5. And I am worried about this family situation and I see keep an eye on this family; the child is back with the family, but I am not sure. In this morning's paper, it tells us if the social worker isn't there doing the job, all the judges downtown really aren't going to make that big a difference.

Now, what I am trying to do is to suggest that if we are going to do this, let's do it in a holistic, complete way.

Dr. GOLDEN. Absolutely. That is exactly the reason we feel so strongly.

Senator DURBIN. I am asking, from the District side of it as you support this legislation, what are you going to do to support the corporate entity that is necessary to make it work successfully?

Dr. GOLDEN. My testimony listed four or five steps, but let me go beyond that. I completely agree with that perspective. It is a corporate agenda. That is why we need it now.

To give an example, as we recruit dramatically more social workers and as we reform the structure of legal support for our social workers, because that is a big issue in many of the past situations with children—we have now doubled the number of attorneys supporting our social workers and we have restructured so they can plan together. Now that we have that team, that makes it just the right moment for us to be able to work with the core group at the family court.

One of the things we hear from social workers, to go back to the retention issue, is that one of the things that drives people away is the sense that they can't do a good job. They are working with 59 judges who have different levels of knowledge, experience, and training. They are constantly trying to get to a courtroom. It conflicts with being out in the field.

Judge King has done everything he could do within the existing structure, but what we need now is structural changes so that our part of the corporate changes and the court's part can go together.

Senator DURBIN. Ms. McKinney would take exception to this, but we are being very specific and very finite when it comes to judges and how many judges will be in the courtroom working.

What is your goal? Give me something specific in terms of the caseworker load that is going to come out of the reforms you are talking about, taking a look at the budget you have submitted to Congress and what your plans are. Will we see a dramatic increase in caseworkers to support the reforms that we are talking about in the court? What is the number?

Dr. GOLDEN. The number that I have been working with is an increase of about 80 or 90 caseworkers, beyond the 230 that we have now. We don't know for sure what the right number is for a couple of reasons. One is we also believe that cases are in the system much too long, and so as we do this reform it reduces our caseload because as we speed up children's movement out, we are able to have fewer social workers.

Another reason that it is hard for us to know for sure is the dramatic nature of our reforms which brought abuse and neglect together. We made estimates of the impact that will have on caseloads, but to the extent that the system works better for families and we hear about more situations, it is hard to know for sure. But our initial estimate is about 80 to 90 additional social workers.

What we need to get that done is a system that we can recruit people into because they find it satisfying and they can succeed. When I talk with those of my social workers who had experience other places, they actually talk about the teamwork aspects of a family court kind of approach in other jurisdictions as one of the things that makes the work feel as though you can make a difference, rather than be frustrated and leave.

Senator DURBIN. Ms. McKinney and Ms. Luxenberg, would you comment on your practical experience? When we talk about all of the elements that have to come together for the good of the child, we have talked a lot about judges, but if this is going to work, I think it involves a lot more.

Ms. McKinney.

Ms. MCKINNEY. Well, I think the problems you were alluding to are precisely the reasons why we have to be careful with the legislation. The judges are the ones who are in the best position to determine how to keep the court system running, given the changes that are hopefully going to happen with CFSA and the other limitations in the court system. That is why we think it is important to let the judges control the phase-in of the reforms.

It is a difficult system. In some cases, you have four lawyers who are due for the hearing, a social worker, sometimes two social workers, a host of witnesses. It is difficult to coordinate under the best of circumstances, and that is why from our perspective this is a work in progress and we have to give the court the flexibility to phase it in and to make adjustments and to make the modifications that are necessary so they can handle all the cases and so that we will have enough judges and staff.

Senator DURBIN. What is a realistic number of hearings that a judge can have each day?

Ms. LUXENBERG. I guess the question is what kind of hearings are you talking about.

Ms. MCKINNEY. Right.

Ms. LUXENBERG. As a practitioner, one of the things that I have been concerned about is the reform effort has all come about be-

cause of some children who have died, abused and neglected children. But the family court is made up of many kinds of cases, so that there are divorce cases, custody cases, adoption cases, paternity and support cases, and abuse and neglect cases in the system.

When we talk about whether a staggered system works or whether attorneys aren't down there for the hearings, I think it really depends on what kinds of cases we are talking about. Traditionally, in the abuse and neglect system there were many parties and players required for each case, and some of the attorneys appointed to represent the children were supposed to be in three courtrooms at the same time.

So I myself have gone up to drag somebody out of a courtroom because a judge was ready to take us and we didn't have this one last lawyer and I had to look through every floor of the Superior Court. I do not wear heels when I go to the Superior Court. I wear flat shoes, OK?

So you have cases where there may be 10 people involved. Then you have uncontested divorce cases where for a long time you would go to court for a 5-minute hearing and the courtroom door wouldn't be unlocked. You would not know when somebody was going to take the bench, and there was always an excuse that the cases weren't all ready.

These are some of the changes that I have seen happen recently. I was in court 2 weeks ago, in front of one of the judges in the Family Division. He was on the bench, he moved his cases, he had all of the consent custody cases in a row. And then the most refreshing thing he said: Are there any attorneys here who have a continuance or have a short matter that we can clear out of our calendar?

And I raised my hand and they couldn't find the file, which has always been a problem. So we hope with the computerization of the system that one of the most frustrating parts of practicing in the court system for all of us will disappear. But in the situation I just referred to, I was gone in 2 minutes. So I think it is important to remember as we focus on the abuse and neglect cases, that the Family Division has a great variety of cases.

Those families involved in the abuse and neglect cases—may have a range of related cases—custody actions, and adoption actions. They go across all parts of the system, and it is very complicated.

I am concerned about the resources and I do think it is important that when we fix one piece of the system—and I say the focus on the abuse and neglect—that we don't neglect the other types of cases in the system as well.

Senator DURBIN. Judge Satterfield.

Judge SATTERFIELD. I want to comment on the return of the cases to the "family court" that is being created. What we are afraid of is that while we are going to have this great name, "family court," within the Superior Court and we are going to return these cases there and they are cloaked with that name, they are going to be at greater risk, and they are going to be at greater risk because of some of the things that we are talking about today.

Our goal, just like everybody else's goal, is to achieve permanency for the children very fast, in their interests and serve them.

But the number of hearings are not going to change once they are cloaked with the family court's emblem because the social workers are overloaded. They want to do a good job. They have too many cases and they can't do a good job. Because they have so many cases, they attend a lot of different hearings. But when that caseload goes down, which I don't think is any time in the future, especially given the demands of the bill for when these cases come back in—when their caseload goes down, they don't have an ability to handle these cases.

The other problem is the resources for placement in this town. I mean, the fact is these children come to Superior Court, a lot of them badly damaged by their parents. They come to us at age beyond 8 years when we get them. The statistics show the probability of them being adopted at that point is lower than the probability of them waiting, and they wait and they wait and they wait. And that is the healthy children.

I am an adoptive parent. My wife and I chose to adopt. We made a very private decision to adopt, very personal. So I don't make any judgment calls on people's decisions as to what they want to adopt, what type of child, girl or boy. In fact, we got our boy because somebody didn't want a boy when they were lined up to get them and they took the girl that was born. So we were fortunate and we love our child.

But the fact is people will travel around the world to adopt a child before coming to the District of Columbia and adopting one of these children who are sitting and waiting. That is their judgment call and that is fine. I don't judge them. That is their personal decision, but we have extended the resources that we have. I mean, the resources in this town that have done most of the adoptions have been to single black women in this town and we have extended that resource and we need more help to take on these children. Until those things are solved, we can put this on in the family court, but the problems are still going to exist and there are still going to be hearings.

As a person who has been a resident of this town, born and raised here, worked in Superior Court as a lawyer and as a judge, to hear words like "turf war" and fate of the children behind the interests of the court and things of that nature—I know these judges and I know from my own personal experience that that is not the case; that we are here to serve those children, and no one wants a cranky old judge, burned out, serving these children.

Senator DURBIN. Talk to me a second about that, the two judges who are here, about this burn-out factor. I am trying to get my hands on this because I have not faced this and I want to understand what you all think.

Is 3 years unreasonable to ask someone to sit in this particular call and to deal with these cases? Is 5 years too much? Give me your own feeling, Judge Satterfield, and then Judge King.

Judge SATTERFIELD. Well, we think 5 years definitely is too much. We think that puts the children at greater risk, as well as the cases coming back into the system. The Chief Judge has committed to 3 years and, in fact, has asked the judges who are coming on in January or the ones staying that they will serve a consecu-

tive 3 years. The ones that have been in the division will continue to serve their tour. So he has committed to doing that.

And we are not alone out here with this whole issue. I mean, if you examine even some of the select States that the Council for Court Excellence has indicated with newly-created statutory family courts, if you look at some of the courts that are similar to ours, they have been addressing this same problem.

Michigan gives the chief judge the flexibility to determine the terms because of issues like this. In Missouri, while they have indicated 4 years on their chart, if you look at the statute closer, the chief judge has the ability, or the presiding judge has the ability to shorten or lengthen that term, depending upon the circumstances of the individual family court judge. In Vermont, the magistrate judges who are listed here for 6 years don't handle abuse and neglect cases. If you look at the statute, their judges rotate.

These are courts that are similar to ours. You can't hold out Nevada because they are suffering out there. In 1998, their panel instituted legislation trying to have the general jurisdiction court switch with the family court judges for some period of time to avoid burn-out. So we are not alone in this.

We are not doing this because we want our confidence level up. We are doing this for the children. We are not alone out there in understanding that there is a burn-out factor. You have social workers that can't be retained. You have the very lawyers that you want us to select from who are saying that they know there can be a burn-out factor, and that is why we think a maximum of 3 years is important.

So it is very heartening to hear that we are talking about turf wars or confidence level of judges when we are talking about the children in this case when we say that there is burn-out.

Senator DURBIN. I would like to just posit this as one of the thoughts for those who are for the reform. Would you agree that we would want to give to the Chief Judge or someone the ability to keep a case with a judge?

I assume that of 59 judges with cases now, some have been on the same family situation for years and have a level of understanding or expertise that we would not want to lose, maybe a connection with that family we would not want to automatically lose by transferring that case away.

On the other side of it, wouldn't we also want to create some flexibility, if a judge leaves the family law court, that the case could go with that judge, for the same reason, that there is a good bond here, a good relationship and it is in the best interests of the child to stick with that one judge?

Dr. Golden.

Dr. GOLDEN. Let me speak both from my experience at the Federal level working on the design of ASFA and looking at other jurisdictions, and then the District. What we are trying to accomplish for children is permanence and safety. On a child's time frame, a child of 5 years old, 2 or 3 years in foster care is a long time. The 4 or 5 years that you describe in Chicago, and that has happened here sometimes, is a terrifying thing that truly damages a child's development. So our goal is a permanent family for that child.

I think we have to assess all the strategies for dealing with that, not on whether a member of the team—the judge, the social worker, the lawyer—their length of time with the child. What we are trying to assess is what overall structure enables that child to get to a permanent family quickest.

I think the national experience, as well as our experience in the District, says that we can't get to that when we have cases dispersed so broadly. We don't have the supports for the judges when there are 59. We don't have the ability to work in——

Senator DURBIN. I am talking about the transition.

Dr. GOLDEN. Right.

Senator DURBIN. I am talking about a transition in and out from the current system to the reform system or the changed system, and then once that is in place there is going to be a turnover of judges. I am asking whether or not you believe, in the best interests of the child, there should be at least an option so that someone can stand back and say this judge understands this family. He has been through 3 years of hearings in family law court, and to just yank this judge away is to lose this knowledge they have, and relationship.

Dr. GOLDEN. What we propose—and, again, it comes a lot from the national experience and the changes that people have had to make to achieve the best interests of the child—is that when a judge leaves, the exception in the House bill, which is also our proposal, is a narrow one.

Senator DURBIN. Six months.

Dr. GOLDEN. Well, I think it is not in months. It says only if you are about to achieve a placement under ASFA and the move would disrupt it. The reason for that is that the cases that have been around a long time to us seem likely to be the most fragile children and the ones that most need the support that the family court and the team in the family court can offer. There will be a judge-magistrate team. There will be the array of other supports that will give that case the best service possible.

So I know it is a judgment call, but I think for us the weight of the evidence says that having those children served by the best possible services is going to be the way to go in most of the cases.

Senator DURBIN. Well, I thank you.

Judge did you want to comment?

Judge KING. Only that I think there seems a premise that the judges are the hold-up, the reason these cases are not reaching permanency. I am sure there are some judges who are better at this than others. I doubt it, but judges work very hard. We, believe it or not, do not go out looking for extra work. We don't want to retain cases that can safely be closed in a permanent resolution.

Chicago dropped the dramatic 60,000 down to 20,000 because they have a strong guardianship law. We have a new guardianship law which the lawyers are just getting used to and deciding how to recommend to their clients. So it hasn't been used very much, but this may enable us to close a lot more cases.

But I think if you premise legislation that says absolutely no exceptions to the rule that they have to, except for a time if it is going to close, there is going to be inevitably that child for whom it is decidedly an increase in danger or an increase in harm to say,

I am sorry, I would like to help you, I would like to stay with you, but the law says I can't.

Senator DURBIN. Thank you all very much for coming.

Dr. GOLDEN. Thank you very much.

Senator DURBIN. I hope that we can move this toward passage soon.

We are adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]

APPENDIX

Statement of Senator Mary Landrieu
Subcommittee on Oversight of Government and Management and D.C.
October 25, 2001

Mr. Chairman, I would like to thank you for the opportunity to come and testify before this committee today on an issue that, as you well know, I am very passionate about because the people that I represent care deeply about this issue. Before beginning. I would like to take a moment to recognize you, Mr. Chairman, for your outstanding work on behalf of children throughout your career, especially those with special needs. There have been several times throughout my career here in the Senate that I have looked to you for leadership and guidance on these issues and you have provided it. This hearing today is just one of the many examples of your commitment to ensure that our laws and systems are well designed to protect children and their well being and I am pleased to take part in it with you.

I would like to recognize my colleagues, the D.C. Appropriations Ranking Member, Senator DeWine, Delegate Norton, and Congressman Tom Delay, for the incredible amount of time and effort they have contributed to the issue of family court reform. Together, we have worked in a bi-partisan, bi-cameral fashion, with lawyers, judges and child advocates from the District and elsewhere to ensure that this legislation is designed to do what it purports to do - protect the lives and well being of children. Finally, I would like to thank Judge King, for his willingness to provide us with information, support and insight throughout this process. I can say with confidence that this bill is a better bill because of his input and the input of his associate judges.

The Family Court Reform Act of 2001, which is before this Committee for its consideration, is a compilation of best practices, innovative solutions and coordinated procedures designed to promote the best interests of children. There are three general points I would like to make from the outset. First, the provisions contained in the family court bill are not new or original. In fact, the majority of the principles espoused by this bill are currently practiced in the 14 states that maintain unified family courts and are under consideration by countless others that are moving their child welfare systems in this direction. Second, the principles contained in this bill were not pulled out of thin air or dreamed up in a day. Rather, they have been studied, tested and perfected by experts in child development and welfare and demonstrated with success in several hundreds of courtrooms throughout our country. Finally, the principles in this bill are not rocket science. They are common sense principles many of us may have assumed were the rule not the exception for courts charged with the protection of children and families.

In thinking about how best to explain to you what this bill means for the children of the District of Columbia, I decided that instead of recounting statistics and rationales, I would tell you a story. This story is about three young children, Sean, Janice and Jamal Jones, all of whom were born here in the District. Jamal is three, Janice is five and Sean is ten. They were removed

from their home and placed in foster care because their mother, Linda, has a very chronic substance abuse problem. She is 29 years old and her husband of five years left two years ago and has not been heard from him since. Despite best efforts to place them together, the children are in three separate foster homes. Jamal and Janice live with foster families in Maryland. Sean lives in a group home in Virginia. They have lived in foster care for one year.

Sean, the oldest has had a very hard time dealing with what has happened to his family. He feels rejected by his father and angry with his mother for being unable to hold it together. He has tried to run away several times and most recently was arrested for destruction of public property when he was caught "tagging" with some of the older boys from school. His court date for this offense is in one month. Judge Smith, who is currently in charge of the juvenile crime calendar, will hear his case.

The children are all assigned to the same social worker, who in order to keep regular visits, must travel back and forth a lot. She is currently responsible for the cases of over 50 other children. She is not as familiar as she would like to be with the Jones case because she just took it over after the previous caseworker quit. All she has to go on is the paper files that had been assembled by the two previous caseworkers before her. (Yes, in case you were counting, that was three caseworkers in a year.) She is also concerned about an upcoming court date for the Jones family, because the last time she went to court to testify she was unable to meet with the Corporation Counsel before trial and had no training in court procedure to rely on.

When the date of the hearing arrives, it proceeds as expected. The Corporation Counsel attorney, who is not the same attorney who handled the previous court hearing, makes an argument that parental rights should be terminated and the children should be placed for adoption. He points to the fact that the mother has not attended the drug rehabilitation program as directed and has made little effort to visit her children. Luckily, in this case the judge presiding over this hearing, Judge Matthews, is the same judge who presided over the last one, and he pushes the Corporation Counsel on this issue. The Court discovers that a contributing factor to the mother's non-compliance is that she does not have transportation _ her children and the drug program are located in Maryland. He orders for arrangements to be made and schedules a six-month review. He has no indication that Sean had been arrested and no information was presented on how the children are doing in their respective foster care homes.

Unfortunately, this goes on for a total of three years. During that time, Sean, Janice and Jamal have come to know many lawyers, social workers and judges. They have spent three years without each other and without permanency. Many consider Sean, who is now 13 years old, "unadoptable". The prospects for the other two diminish with each passing month.

Under the Family Court Reform Act, these children would have entered a system aimed at making the challenges facing their family better instead of worse. From the day their case was referred to Child and Family Services, their family would be assigned to one judge and that same judge would oversee their case, and all of its splinters, from beginning to end. What's more, this

would not be just any judge that was available, rather, he or she would be a highly qualified expert in family law who had received frequent and up to date training in best practices in child welfare, human development and family relations. These children would be watched out for by a social worker trained in courtroom procedure and child advocacy. She would be housed at the courthouse and supported by liaisons from the CFSA.

When the professionals involved in the Jones family's proceedings wanted more information, they could look for it in a database tracking system instead of a paper file. Sean, Janice and Jamal would be assigned a Court Appointed Special Advocate, designated to inform the court of their individual needs and desires. Under this bill, Sean's misdemeanor offense would have been referred to the same judge overseeing the abuse and neglect claim so that the court would view the full picture of the family and its needs.

While the children in the story I just told you are fictional, there are literally hundreds and thousands of Seans, Janices and Jamals in the system. 570,000 children live in foster care in the United States, that's more than the number of minutes in a year. There are over 3,000 children living in foster care in D.C. These timely reforms have come too late for the 200 children who have died in the custody of those responsible for "child welfare" in D.C. These important changes will help to protect the foster children of D.C., move them through the process and either back to their families or into a new family. It is my hope that several other states and districts throughout the country will follow the example set by the D.C. Courts and that it will one day serve as a model for the best the system can offer.

Again, I appreciate the time to address you today, and thank all of those involved in this bill for their efforts.

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
AVIATION
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES
RANKING MINORITY MEMBER, DISTRICT OF COLUMBIA
CIVIL SERVICE AND AGENCY ORGANIZATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

Statement of Congresswoman Eleanor Holmes Norton
Hearing on H.R. 2657, the District of Columbia Family Court Act of 2001
Senate Subcommittee on Management, Restructuring, and the District of Columbia

October 25, 2001

I want first to thank the chair of the Subcommittee, Senator Dick Durbin, and the Ranking Member, Senator George Voinovich, for holding this hearing today of great importance to the District of Columbia and for asking me to offer testimony concerning H.R. 2657, the District of Columbia Family Court Act of 2001, which passed unanimously in the House. I particularly appreciate that you have scheduled this hearing in a timely fashion in order to assure that this Family Court authorization bill will pass in time for the Fiscal Year 2002 appropriations process. As you are aware, both the House and Senate D.C. appropriations bills contain additional dollars for the new D.C. Family Court division, contingent upon an enactment of an authorization bill. I would especially like to thank my partner in this effort, House Majority Whip Tom DeLay, whose interest, energy, and commitment has been an indispensable force behind the Family Court Act. My special thanks as well to Senator Mary Landrieu and Senate Mike DeWine, the Chair and Ranking Member of the Senate D.C. Appropriations Subcommittee, for their important and thoughtful leadership on the companion bill to H.R. 2657 in the Senate.

The need to update the Family Division became a priority as a result the tragic death of Brianna Blackmond, an infant who was allowed to return to her troubled mother without a hearing after it was alleged that lawyers representing all the parties, the social workers, and the guardians ad litem had certified that the child should be returned. Following Brianna's death, the D.C. Subcommittee held two hearings on the District's child welfare system because the agency with jurisdiction over abused and neglected children, the Child and Family Services Agency (CFSA) was under the control of a federal court receivership rather than the District of Columbia. At the same time, my staff and I commenced a detailed investigation of best practices of family courts and family divisions here and around the country in preparation for writing a bill. My staff and I wrote our own bill but Mr. DeLay and his staff were also writing a bill, and soon we decided to work together to produce a single product, with support and assistance from Connie Morella, Tom Davis, and other interested members. The Family Court Act is the result of this joint effort, the culmination of always collegial, if occasionally tough negotiations spanning several months. The House D.C. Subcommittee held a hearing on the Family Court Act on June 26, 2001, prior to reporting it unanimously to the full committee. The House

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unanimously passed H.R. 2657 on September 20, 2001, by a vote of 408-0.

It must be noted that the D.C. City Council is far more familiar with the children and families of the city than we in Congress and was best qualified to write a bill. I regret that the Congress has had to take time out from its national agenda to spend time and effort on revising a local court bill. However, when the Home Rule Act was passed in 1973, Congress withheld jurisdiction over D.C. courts from the city. More than 25 years experience demonstrates that it is time to pass this jurisdiction to the D.C. Mayor and Council, and a bill soon to be introduced will do exactly that. Meanwhile, at my request, the Council passed a resolution in support of the reforms in this bill after scrutinizing it and offering recommendations for changes. We also have worked closely with Mayor Anthony Williams and Chief Judge Rufus King and the judges of the Superior Court in writing this bill.

The D.C. Family Court Act of 2001 is the first overhaul of our Family Division since 1970, when it was upgraded to be a part of the Superior Court of the District of Columbia. The old Family Court, then called "Juvenile Court," was a stand-alone court, that had become a place apart, in effect a ghetto court, to which the city's most troubled children and families were sent away from the "real" judicial system. Out of sight left children and families out of mind until the Juvenile Court was abolished as hopelessly ineffective and poorly funded.

All agree that the Family Division has proved to be a vast improvement over the Juvenile Court, despite the increasing number of abused and neglected children, troubled juveniles and families in crisis, typical of big cities and of foster care systems in rural areas and suburbs alike. However, no court or other institution should go a full 30 years without a close examination of its strengths and weaknesses. The Family Division in particular increasingly has been taxed by intractable societal problems it cannot control and, in addition, must depend on an outside agency, CFSA, which until recently had been adjudged so dysfunctional that it was taken over by the federal courts and placed in a receivership.

Our bill incorporates what we found in our investigation to be the best practices from successful independent family courts and family courts that are integrated into general jurisdiction courts across the country. These courts have in common several basic reforms: creating an independent family court or division; providing ample family court judges to handle family matters; mandating terms for judges in the family court; requiring family court judges, magistrate judges and other court personnel to have training or expertise in family law; requiring ongoing training of family court judges; employing alternative dispute resolution and mediation in family cases; adhering to the standard of "One Family One Judge" in family cases; retaining family cases in the family court; using magistrate judges to assist family court judges with their caseloads; and dedicating special magistrate judges to assist judges with current pending cases. The D.C. Family Court Act incorporates all of these best practices.

As important as our bill is, the major problem for children and families in the District is not the court but the Child and Family Services Agency (CFSA). The court needs more

resources and it needs modernization. CFSA needs a complete make over. Yet after six years in a federal court receivership, CFSA is returning to the District largely because the receivership failed, not because that agency has been revitalized. No matter what we achieve with our bill, children and families are unlikely to notice much difference in their lives unless CFSA is fundamentally changed by the city. The Congress does not seek to intervene into this serious home rule issue.

Courts are the back end of the process when all else has failed, the last resort when people must be compelled to do what they are required to do. Our bill assures that the city has a full time staff liaison on site at the court, but inevitably, the court will be handicapped by the condition of the CFSA in the first years of the agency's return to the District. Assuring that the CFSA and the new Family Court of the Superior Court are seamless in their response to our children and families is a formidable challenge for both the city and the court. Because the court has generally been well run and responsive to children and families, I believe that with new resources and both added and updated functions, the court can do the job. The city's challenge to both reform the CFSA and align the agency with the court is more serious. However, Mayor Williams' careful work on city management reform and accountability and the Council's diligent oversight encourages optimism. The Mayor's own background as a foster child will surely encourage dedication.

Mr. Chairman, let me conclude by saying that although I strongly support this bill, the speed with which we had to bring the bill to the floor in the House precluded me from offering several amendments to sharpen various provisions in the bill. These amendments are important to ensure, for example, that the necessary work of disposing of a large volume of pending cases and continuing intake of new cases coming into the Family Court division does not overwhelm the new court, while it meets timetables mandated in the bill. In addition, an amendment is necessary to ensure that the jurisdiction of the court's successful Domestic Violence Unit is not undermined by the bill. It is also critical to strengthen language in the bill calling on Maryland and Virginia to enter foster care border agreements with the District to ensure rapid placement of our children without undue expense to our state partners or harmful delay to the children. We have all agreed that these and other matters should be discussed with our Senate partners as we move forward in our negotiations to produce a consensus bill.

Once again, I want to thank the Chairman Durbin and Ranking Member Voinovich, and Congressman Tom DeLay, and our Senate partners for your indispensable work and leadership on this important piece of legislation. I urge the Committee to favorably report the bill with dispatch so that we may quickly bring the bill to the Senate floor.

Thank you, Mr. Chairman.

Testimony of the Honorable Tom DeLay
Senate Subcommittee on Oversight of Government Management,
Restructuring and the District of Columbia
October 25, 2001

Senator Durbin and Senator Voinovich and distinguished colleagues: Thank you for inviting me here today to testify about important provisions of the "District of Columbia Family Court Act of 2001" (H.R. 2657) that overwhelmingly passed the House of Representatives on September 20th with a vote of 408 to 0. I introduced H.R. 2657 along with by my colleague Congresswoman Norton, the Ranking Member of the House Subcommittee on the District of Columbia and the Chair of that Subcommittee Congresswoman Morella as well as the former Chair Tom Davis. I hope this hearing signals that the Senate is ready to pass the Senate version of our bill, S. 1382 introduced by Senators DeWine and Landrieu.

It's clear to me that the Subcommittee is especially interested in three provisions of both the House and Senate bills: (1) One judge, one child; (2) A five year term; and (3) Consolidation of all current cases within family court. Each provision is critical and indispensable to effective reform. Let me explain why. But before I do, let me tell you what some D.C. child advocates told me last week.

The people I met with work on the frontlines helping the District's abused and neglected children. They said children are burned, slashed, battered, terrorized, and raped every day in Washington. They told me that they wasted valuable time in courtrooms waiting for hearings that are ultimately cancelled because a drug addicted mother once again failed to show up. They described crying children who begged not to be returned to "my mother who hates me and beats me."

The child advocates pleaded with me to stand up for the reforms in the House bill. Without these reforms, they said, the suffering simply will not stop.

The rationale underlying these provisions is the main argument for the bill itself: To get someone to pay attention to the fear and suffering young children endure in the District.

As I listened to the advocates and read the series of articles in the *Washington Post*, it struck me that the terror, panic, and feelings of helplessness that many Americans impacted by the September 11th terrorist attack felt are similar to what abused children suffer. The war on terrorism may take years, but Congress can ease the suffering of abused DC children now by passing the District of Columbia Family Court Act to focus judicial attention on these children and their families.

Both the House and Senate bills are designed to make children's safety, well-being, and permanency the paramount concerns of the family court.

Legal experts and organizations like the ABA support one judge one child, but judges here in Superior Court resist it. The one judge one child/family concept requires that all the hearings for a particular child and family be before the same judge. This reform will end the practice of shuttling a child from courtroom to courtroom, hearing to hearing, and judge to judge. This current practice scatters a child's paperwork all over the courthouse and forces judges and social workers to make decisions with only half the child's story.

The deadly mistakes that killed Brianna Blackmond, Nicki Colma Spriggs, Devonta Young and many other District children happened because the system only knew half their stories. We must put together all the pieces of the child's life before we determine whether it's safe for a child to go home, remain in a particular foster home or facility, or be placed for adoption. A child is safer when a single judge understands the whole story of his or her life. Multiple judges increase the chance of errors or vital information not being considered.

The mandate that new judges sit on family court for a minimum of five years was established to ensure that only committed judges volunteer for family court.

The five-year requirement for new judges and the three-year mandate for current judges overseeing abused and neglected children of the District is a test. These terms will ensure judges volunteering for family court service are dedicated to the children and families on their dockets.

Five-year terms will sort judges who are committed and those who are just marking time. The five year commitment will weed out those lawyers who want to be a Superior Court judge and calculate that sitting on family court for three years is the price they must pay for an appointment to the bench.

Reform of the court system won't happen without committed judges. The Superior Court's resistance to this provision shows me in no uncertain terms that the provision is indeed a true test of commitment. The fact that so many judges currently on the bench are unwilling to make this commitment speaks volumes about the willingness of the current bench to accept real reforms.

The current family division doesn't comply with either the federal or district Adoption and Safe Families Act timelines requiring that permanency hearings be held within 12 months.

I believe that dispersing 4500 cases over 59 judges increases the likelihood that deadlines will be missed as judges try to work abused children onto other dockets.

Judges outside of the family division don't have current knowledge about the availability or quality of placement or service options or new laws and new regulations impacting the children before them.

House testimony convinced us that children's interests simply are not served when judges take cases with them. This practice only creates discontinuity and a lack of consistency for the child, for the families, for social workers, and for attorneys from the Office of Corporation Counsel, as well.

I believe that the best thing we can do for abused children in the District is to return all cases to a family court made up of committed judges who are all volunteers. Only their specialized knowledge of relevant federal and district laws will result in better decisions for abused children.

Senators, it's time to move the DC Family Court Act. The children are waiting. We must not disappoint them.

HEARING STATEMENT
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
RESTRUCTURING, AND
THE DISTRICT OF COLUMBIA
U.S. SENATOR MIKE DEWINE
OCTOBER 25, 2001

Thank you Chairman Durbin and Ranking Member Voinovich for holding this very important hearing today. Over the last several weeks, we have focused most of our attention on the aftermath of the September 11th terrorist attacks -- and rightfully so. We're living in a whole new world now, and this is certainly affecting children all over our country. We are doing all we can to protect our children and grandchildren so that they may live in a safe, stable, and secure world.

At the same time, we still must deal with the reality that, independent of terrorism, there are children everywhere who are living in unhealthy, dangerous, and abusive environments. We have an obligation to these children and must do all we can to give them futures filled with hope and opportunity.

That is why in August, Senator Landrieu and I introduced the "District of Columbia Family Court Act of 2001" (S.1382) and Congressman DeLay introduced a similar measure in the House. The tragic reality is that the District's child welfare system is, quite frankly, a mess. And sadly, the Superior Court's ability to adequately adjudicate cases involving the children in the system is equally dysfunctional.

I have said this over and over again, but the fact remains that every child -- I don't care if it's a child here in the District of Columbia, or in Cincinnati, or in New Orleans, or in Chicago or anywhere else in America -- but every single child everywhere deserves to live in a safe, stable, loving, and permanent home -- with loving and caring adults. No child deserve less. Unfortunately, many -- far too many -- children are not getting what they deserve. And, that is what is happening right here in the District.

These children are at risk -- their lives hanging in the balance of DC Superior Court decisions. Right now, the Superior Court assigns 12 judges to the family division, but asks all 59 of the judges on the bench to oversee a total of 4,000 neglect cases. These judges make the difficult decisions regarding the placement of children. It is also

the court's responsibility to ensure that children are not "re-abused" by the very system that has been designed to protect them.
However, the currently spread-out system is a structural nightmare. Judges don't get the training, the technical support, nor the experience they need to properly handle these cases. The recent *Washington Post* series on the District's "Lost Children," made this all too clear. The stories outline multiple mistakes that the District government has made by placing children in unsafe homes or institutions. Since 1993, over 180 children have died in the DC foster care system -- 40 of those deaths are the direct result of government workers' failure to take key preventative actions or by placing children in unsafe homes or institutions.

And, no one can forget the tragic local case 23 month-old Brianna Blackmond, who died just seventeen days after being returned to her mother from foster care. In the aftermath of this tragedy, DC Superior Court Judges told the Washington Post about the agony they feel in making child welfare decisions. One of the judges quoted in the article said this: "These cases are, for me, the most difficult thing we do. We feel the least trained and skilled at it."

Well, we have an obligation to give these judges the tools the need to do their jobs -- to protect the lives of these innocent children. Our Family Court bill is a step in that direction by helping to ensure that children who come into contact with the District's child welfare system are placed in a safe and stable environment. The bill makes several important and necessary changes. First, at the heart of the bill is the one-judge/one-family concept, which is designed to create judicial continuity, so that families aren't shuffled from one judge to another. This allows a one judge to stay with one family throughout that family's experience in the welfare system.

The simple fact is that if a judge who knows the entire history of a family, he or she can better protect the interests of the children and the parents involved.

Second, our bill ensures that the judges in the Family Court get specialized training in family law and have terms long enough to allow them to get the experience they need to properly deal with these cases. Right now, judges are assigned for two-year terms, though the average judicial term is about one year. This exceptionally high rate of

turnover means that cases involving children don't benefit from judges well trained in family issues. Judges who serve longer, become more familiar with the law, and therefore are better able to implement it.

Third, our bill helps make sure that the courts and the District comply with the permanency timelines outlined in the 1997 federal law I helped write called the Adoption and Safe Families Act (ASFA). Family and Juvenile Courts across the country have implemented this law, yet the District still only has a plan to implement ASFA. The time for compliance with the regulations has long since passed. The District needs to act -- and act now. Quite frankly, I am losing patience.

For the best possible treatment of families, a specialized family court is vital. And, in creating such a court, we must ensure that the resources we provide lead to sound structural changes -- changes that will make a lasting, long-term difference. As Ranking Member on the DC Subcommittee on Appropriations, I have worked with Senator Landrieu to provide the funding needed for the court improvements; however, many of the reforms are not monetary. The fact is that if we are to see any real changes, we need fundamental, systemic reform -- institutional, structural, and cultural reforms. It's just that simple.

Protecting at-risk children in the District is my number one priority. And we need to make these kinds of changes for the safety of the District's children.

Let me conclude by saying that I know there is some controversy surrounding the length of the judges' terms proposed in our bill. However, though I respect whatever the judges have to say about this, the fact is that we need long-term assignments. We need judges commited to children. I refuse to believe that we can't find lawyers in the District of Columbia willing to sit on the family court bench for more than one year. The Family Court is not a stepping stone to anything but a quality life for children. It is not a stepping stone to the Federal bench. It is not a stepping stone to a nice job in the U.S. Attorney's office. This is about children and their lives. What is more important than that?

Statement of Chief Judge Rufus King, III
Superior Court of the District of Columbia
To the Subcommittee on the District of Columbia
Committee on Government Affairs
United States Senate
October 25, 2001

Chairman Durbin, Senator Voinovich, members of the Subcommittee, thank you for the opportunity to appear today and present the views of the D.C. Superior Court on the Family Court Reform Act of 2001. I am Rufus G. King, III, and I am appearing in my capacity as Chief Judge of the District of Columbia Superior Court.

Thank you for calling this important hearing to discuss S 1382 and HR 2657. These bills are the outcome of a year-long effort in Congress and at the Court to reform the way child abuse and neglect cases are handled in the District of Columbia. We appreciate your interest in the Family Division and your commitment to our work with the District's children.

The Superior Court of the District of Columbia was established as a unified court by the District of Columbia Court Reform and Criminal Procedure Act of 1970. By statute, the Court has five operating divisions: Civil, Criminal, Family, Probate, and Tax. Several of the Court's divisions have received national recognition. The Civil Delay Reduction Project has served as a national and international model for expediting civil cases. The Court's Domestic Violence Unit, integrating family, civil, and criminal cases in one set of calendars, was named the 2000 winner of the Justice Potter Stewart Award by the Council for Court Excellence. The Family Division is recognized as a unified family court by the American Bar Association, and has been selected as a model family court by the National Council of Juvenile and Family Court Judges.

In the mid 1990's, neglected and abused children began entering the District of Columbia child welfare system in alarming numbers; three times higher than a decade earlier, despite a decline in the District's population. This disturbing trend seems to be continuing. In addition, in over 60% of cases now being filed, the child is over the age of seven, making adoption more difficult and the need for special services more pressing. Last year, more than 1,500 children's cases were filed, and this year a slight increase in new cases is expected. In addition, the Court has approximately 4,600 children whose cases require on-going review pending achievement of permanency.

By statute, the Court must hold review hearings in each case at six monthly or yearly intervals, depending on the age of the child. But because of a high turnover of social workers and heavy caseloads – as many as 100 children per worker, as opposed to the nationally recommended limit of 25, little is accomplished without more frequent hearings. In most cases judges are obliged to hold three or four hearings per year to maintain delivery of services and enforce orders. This means there as many as 1,500 review hearings each month for the 4,600 cases pending permanency resolution.

When I took office as Chief Judge last October, I indicated that reform of the Family Division would be one of my highest priorities. I appointed Judge Walton presiding judge of the Family Division and Judge Josey-Herring deputy presiding judge. When, after 18 years' service on Superior Court, Judge Walton was appointed to the United States District Court for the District of Columbia, I appointed as his successor Judge Lee Satterfield, who had been presiding judge of the Domestic Violence Unit and Chair of the D.C. Domestic Violence Coordinating Council. Judge Satterfield is with me today to respond to any questions you may have.

Given the magnitude of the abuse and neglect caseload, I considered it imperative that the Court take steps to address the problem comprehensively and promptly within existing law and resources. In January, I asked Judge Walton to set up working groups consisting of members of the bar, the D.C. Child and Family Services Agency, the office of Corporation Counsel and all other stakeholders who wished to participate. The working groups were asked to examine the nationally accepted "best practices" for serving families, consult experts in the field, and develop recommendations for reform of the Family Division. In addition to those tasks, they helped form consensus among stakeholders for a preliminary plan of reform, which was shared with Congress in May, and they continue to assist with modifications in preparation for the 2002 term.

I assigned an additional judge to hear neglect trials in order to reduce the caseloads for judges hearing those cases to more manageable levels. I directed the temporary remodeling of existing space to provide a more family friendly waiting area pending availability of funds to establish more permanent facilities. Recently, with the approval of Dr. Golden, the new director of the Child and Family Services Agency, I issued an administrative order limiting the scheduling of neglect and review hearings to certain times in order to better accommodate social workers' need to spend more time in the field. I directed the Court's information technology director to make the Family Division the first priority as soon as review of our plan is completed by Congress. I secured technical assistance from the National Council of Juvenile and Family Court Judges Model Court Project for improving case management techniques, training, and strategic planning.

At my direction, Superior Court judges and Family Division staff attended additional training on child abuse and neglect law and child and family development. Numerous experts addressed topics such as assessing the risk of abuse by parents, ASFA requirements, and child development. More of this kind of training is scheduled for later this fall. Additional training at off-site conferences has been provided to individual judges and hearing commissioners.

At my direction, the Court initiated a preliminary mediation project, which has enjoyed a very high success rate. The Council for Court Excellence is assisting with grant funds for a larger project. I asked judges to volunteer for terms of three years in the Family Division, beginning with the 2002 term. And most important, with the help of Judges Walton, Satterfield and Josey-Herring, I have expanded the related case rule to the Family Division in order to implement the principle of one judge one family as much possible, in the absence of additional staff and resources. This improvement builds on the current practice of consultation among judges hearing cases involving different members of the same family.

In addition to reforms within the Court, we have been strengthening our working relationships and the level of coordination with the District of Columbia Child and Family Services Agency and Mayor Williams, as he assumes control of that Agency and seeks to improve its performance. We welcomed the appointment of Dr. Olivia Golden as the new director of the CFSA. Judge Walton met, and now Judge Satterfield is meeting, with her regularly to assure that the Court and the Agency are working together as effectively as possible to serve children and families in need of help.

The scrutiny by Congress of our Family Division has prompted, accelerated and encouraged reform that will substantially benefit children in the District of Columbia. The two bills now before this Subcommittee are the outcome of an overall reform effort in Congress that has paralleled the Court's initiatives. We have been working with members and staff in a mutual effort to achieve the best improvements possible.

We agree with many principles of court reform, several of which are embodied in the pending bills. We agree the Family Court should be maintained a part of a unified court, consistent with ABA-recommended best practices. This optimizes the flow of vital information relevant to children and families before

different parts of the court, alleviates judicial burnout that can affect a separate family court, eliminates the costs for duplicative administrative functions, and enhances the Court's ability to provide comprehensive services for the child and his or her family. We agree that training in "best practices," in abuse and neglect law, case management, psychology and related areas should be enhanced and required. We agree that there should be attorney practice standards and that court operations should be evaluated according to leading court performance standards now in use throughout the nation. We agree that an automated Integrated Justice Information System, with connectivity to the city information system, is essential to enhance the ability of both court and city to track cases and implement provision of services to children and families who need them. We agree the Court should maximize the use of mediation in formulating plans among parents and other family members for the protection of children. We agree additional judges, magistrate judges, managers and other staff with appropriate expertise are important to effectively serve the best interests of children.

While reform efforts have positioned us to make real strides in protecting children at risk, there are some important areas where the Court remains concerned that these bills as now drafted would not lead to improved service, but would hinder the ability of judges to carry out their responsibilities in family cases, placing children at unnecessary risk. Four concerns are of paramount importance. 1) Both bills require transfer of all family cases now pending before judges outside the Family Division to judges within the Family Court. 2) HR 2657 would impair the operation of the Domestic Violence Unit, and S 1382 would require it to be dismantled. 3) The bills would impose five-year terms on judges new to the bench. 4) The bills would micromanage the Court in a way that prevents a chief judge from effectively managing the Court so as to respond to community concerns. Each of these results of the legislation would impair, rather than enhance, the Court's effectiveness in serving abused and neglected children.

Currently, each case in which the issue of neglect or abuse is not contested is referred to one of our 59 judges for review and permanency disposition, regardless of whether he or she is assigned in the Family Division. The children remain with that judge until permanency is achieved. Review is the most crucial and most attention-demanding stage of the process. During this time judges come to know the children, their parents and other family members. They become familiar with family circumstances and the psychological and other needs of the children. They monitor the performance of social workers every three or four months to ensure that steps necessary to conclude the case with a permanency disposition are being carried out and court orders are being implemented. The decision to distribute the cases among all judges was in response to a five-fold increase in the number of children being brought before the court, and we agree that keeping these cases in the Family Court, given adequate judicial and staff resources, is the better practice.

However, transferring all of the cases now under active supervision by judges outside the Family Division is potentially harmful to the children involved. Approximately 3,600 children would be transferred under this provision, introducing an overwhelming caseload at the outset of the reformed Family Court. The transfer would result in supervision of many of the cases by new magistrate judges with no familiarity with the particular children and in some cases limited experience on the bench.

A far better solution, in the Court's view, would be to allow the cases now outside the Family Division to remain with the judges to whom assigned until closed, and to support those judges with additional magistrate judges and enhanced training. All incoming cases would then remain in a Family Court undergoing an orderly transition and start-up, so that the children would receive adequate judicial time and resources in the processing of their cases. In any event, transferring cases into the new Family Court too rapidly would degrade, rather than improve, service to children and families.

The Court is also concerned that the transfer requirement applies to all cases within the jurisdiction of the Family court, not just abuse and neglect cases. There may be a number of reasons why a particular judge should retain other types of cases even if assigned outside the Family Division. Once a juvenile delinquency case has resulted in a finding of involvement (equivalent to a finding of guilt in an adult case), the child is placed under supervision of the court, either on probation or in detention. In some cases this supervision can continue until the child reaches the age of 21. It makes no sense to require that these cases be closed or transferred to a different judge from the one who tried the case and is most familiar with the facts and the child's circumstances. Some high conflict divorce cases can involve years of motions, hearings and trials, and, even if settled, can require continued supervision by a judge. Again, it makes no sense to set a time certain when these cases have to be closed, and transfer to a new judge may catalyze additional conflict – resulting in an additional drain on judicial resources and unnecessary expense to the parties.

Both bills, though using different language, would have the effect of impairing or dismantling the Court's highly successful Domestic Violence Unit. While our understanding from Congressional staff is that this change would be an unintended effect, it would be a serious one, and should be avoided. By design, the Domestic Violence Unit is a hybrid – it has civil, criminal and family jurisdiction. This approach allows one judge to handle the different issues that are raised when physical abuse occurs in a domestic setting. In one case, the victim often seeks a Civil Protection Order, pursues criminal charges and seeks to protect the safety and financial security of any children residing in the home. Currently judges in two divisions confer if family members come before different divisions. If appropriate, one of the cases can be transferred in order to place both family members before the same judge. This flexibility allows a decision as to what is in the best interests of the family to be made in each case on an *ad hoc* basis. The approach embodied by our Domestic Violence Unit has won national recognition. The Court strongly

believes that federal legislation should not mandate whether a particular case is heard in the Family Court or the Domestic Violence Unit.

The bills require judges appointed after their date of enactment to serve a minimum of five years in the Family Court. This imposes a requirement not imposed in any other division of the Court. The Court operates in calendar year terms. Normally a minimum assignment is one year, though judges may, and do, renew for additional terms. In the course of discussing reforms of the Family Division, the Court has decided to move to three-year assignments for Family Court. We recognize the need for continuity and longevity, so that judges can develop expertise and familiarity with the practice of family law and family development. We also share the aspiration that a few strong judges will emerge who will make the Family Court their life's work and bring an extra measure of expertise and leadership to the Court.

However, family cases, and particularly abuse and neglect cases, present some of the most challenging work trial court judges do. Requiring an initial threshold commitment of five years would discourage judges from applying to serve on the bench in general, and in the Family Court in particular, who might turn out to be the strongest judges in the field. With no option for even temporary reassignment, this would pose a heightened risk of burnout. Florida has recently completed a study conducted over several years, which concludes that minimum terms of three years strike an optimum balance between terms that are too short for judges to develop the necessary expertise and ones that are too long to attract the best applicants for family court service. Montgomery County, Maryland courts have terms of eighteen months. Cook County, Illinois does not legislate specifies terms, but the practice is terms of two or three years. Other jurisdictions have longer terms.

We believe that for the Court, the bar and the public in the District of Columbia, three years is the appropriate minimum term length. Longer terms are not the best way to serve the children and families who come before the Court.

The District of Columbia is unique in many ways -- most notably for the Court that it is under direct federal control. However, the level of specificity in the pending bills is of great concern. They set rigid maximum and minimum limits on the number of judges within the Family Court. How best to allocate resources to meet the demands of the children and families has traditionally been the subject of court rule or executive order. Judges become ill or take family leave. Caseloads change, following social trends. As the Child and Family Services Agency gains strength under its new leadership, fewer hearings may need to be held. There could be a resurgence of the crack epidemic of several years ago. The District of Columbia City Council is considering legislation that could substantially increase the number of abuse and neglect cases by specifying that use of drugs during pregnancy constitutes neglect. The recently canceled IMF demonstrations required plans to close most court operations for several days and to assign most judges to extra sessions of criminal arraignment court. Rigid limits, with no exceptions, places the Court in the position of awaiting legislative changes to adjust its resources or risk being in violation of federal statute. The limits on numbers of judges should at least include exceptions for emergencies and changed circumstances.

The proposed bills waive the consent requirement and provide contempt powers for magistrate judges only if assigned to the Family Court. This would limit the ability of the chief judge to meet the same kinds of contingencies for magistrate judges as for judges. Most dramatically, in the Domestic Violence Unit, magistrate judges would likely hear cases that had issues falling within different jurisdictions in the same case. The difference in authority depending on where the magistrate judge is sitting or whether the issue was a civil protection order, criminal bond review or

child support would be confusing to the public and a nightmare to administer. All magistrate judges should have the same authority, regardless of where they sit.

Finally, it remains true that for any of the reforms to work, there needs to be adequate funding. If, despite the Court's reservations, Congress decides to require immediate or very rapid transfer of all children's cases back into the Family Court, at least enough resources and time to add staff and complete temporary space acquisition, must be provided. Otherwise, the existing corps of Family Court judges would be severely hampered in their ability to serve any children and families adequately.

Congress exercises oversight over the Court. Even without oversight hearings, Congress's oversight and appropriations roles are clear. The bills contain requirements for reports to Congress and the Inspector General. These reports and the annual budget reviews provide Congress with frequent opportunities to evaluate the activities of the Court and its compliance not just with the wording of a statute but with the spirit of the law as well. These flexible and effective reviews should be born in mind in deciding how much of the Court's structure needs to be rigidly cast in legislation.

Chairman Durbin, Senator Voinovich, I want to thank you for your commitment to the children of the District of Columbia and your interest in the Court as a means to better serve them. I appreciate your consideration of the views of the Court on this most important issue. I look forward to continuing this dialogue and our positive working relationship throughout my tenure as chief judge. Judge Satterfield and I would be happy to answer any questions you may have. Thank you.

Testimony of Olivia Golden

Good afternoon, Chairman Durbin and other members of the Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. My name is Olivia Golden, and I am the recently appointed Director of the Child and Family Services Agency (CFSA) of the District of Columbia. I assumed this position on June 16, 2001, after the close of more than six years of Federal court receivership. I am most appreciative of this opportunity to testify on behalf of Mayor Williams on an issue of great importance to the future of the District's children. On a personal note, in my past position as Assistant Secretary at HHS, I had the opportunity to work closely with Senators Landrieu and DeWine on behalf of the Adoption and Safe Families Act, and I very much appreciate the opportunity to build upon that work today by testifying on legislation that will support the same goals for children here in the District.

I would like to commend the Subcommittee for your commitment both to moving this important legislation and to working closely with the District as you do so. I also wish to recognize the Superior Court's dedication to improving and strengthening the administration of the court. I want to express special appreciation to Judge King, Judge Satterfield, and Judge Walton for the time they have dedicated to regular planning with us at CFSA to ensure that the whole child welfare system works as effectively as possible on behalf of children.

The Mayor strongly supports the proposals under discussion today at this hearing (H.R. 2657 and S. 1382), because they represent major steps forward toward his key goals of safety, permanent homes, and well being for the District's most vulnerable children. We believe that it is essential to enact this legislation now, in order to synchronize reform across the major parts of the child welfare system and to take advantage of the extraordinary opportunity created by the return of CFSA from receivership. Enacting court reform now would coincide with the major changes we are making in CFSA's structure and capacity and parallel changes in other city agencies, including the Office of Corporation Counsel. Delay in enacting this important legislation would risk stalling reform and failing to seize this moment of opportunity for the District's children.

In addition, the Mayor believes that full funding for the Court's and the District's implementation of the legislation is critical to reaping the benefits of reform. To help children by moving cases more quickly, the Court needs sufficient staff, space and technical support. The District's critical responsibilities under the legislation include: on-site agency staff liaisons and information technology improvements that will integrate systems across agencies.

Finally, I would like to highlight the Mayor's strong support for key provisions of the House bill that ensure that all family law cases will truly be handled by the Family Court. To ensure that the Family Court benefits children as it is intended, by assigning cases to a core group of well-supported and specially trained judges, we believe that it is extremely important that cases pending at the time of enactment are promptly transferred to the Family Court and that judges who leave the family court do not take cases with them, except in the most narrowly defined circumstances set out in the House bill.

The remainder of this testimony lays out more fully the operation of the child welfare system as a whole, the reasons the Family Court proposals would strengthen the effectiveness of that system on behalf of children, and our specific comments on key elements of the proposals. We look forward to working with the Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia and the Chief Judge to complete this significant reform process.

Child Welfare in the District of Columbia

CFSA is responsible for addressing child abuse and neglect in the District of Columbia, including ensuring children's safety, enabling children to grow up in permanent families, and promoting the well being of the most vulnerable children and

most fragile families. It came into existence as a Cabinet-level agency on June 16, 2001, at the close of the Federal court receivership, and its enabling legislation, enacted in April 2001, represents landmark reform in the District's ability to serve children in a unified and accountable manner. Key features of the legislation include the creation for the first time ever in the District of a unified system for abused and neglected children, effective just three weeks ago on October 1, 2001; independent personnel and procurement authority; the creation of a new licensing and monitoring role to ensure quality in foster and group homes; and the centralization of responsibility for interstate placements, which had previously been fragmented. It is because of this reform legislation and the other key elements of reform described below that we believe so strongly that this is the moment to enact Family Court legislation. Now is the opportunity to synchronize reform of all the interrelated systems that serve abused and neglected children.

Before going on to a fuller account of how the systems fit together, let me begin by giving you a sense of scale, of the sheer number of children being served. (These data are from calendar year 2000, prior to CFSA assuming responsibility for abuse cases and therefore, probably represent a lower level of need and services than we will see in 2001 and future years.) In 2000, the CFSA Hotline received over 7,000 calls, of which more than 4,000 represented reports of abuse or neglect and the remainder were requests for information and referral or other types of calls. During the course

of the year, about 4,500 children spent time in a paid foster care or kinship placement and almost 1,200 children received services in their own homes, and more than 300 children were adopted in 2000.

In serving each of these several thousand children, CFSA connects closely with multiple public and private agencies whose functions are inextricably intertwined. The Superior Court is an integral part of this system, hearing evidence from social workers, families, and others at each stage of the child welfare process. The Court makes the initial determination regarding abuse or neglect, conducts the review hearings that occur during the pendancy of the case, adjudicates adoption proceedings, and renders the ultimate decision about whether to return a child to the home. The volume of court activity is very great: more than 1,400 hearings were scheduled in September 2001 and more than 1,500 in October, most of them case review hearings.

As the Subcommittee's invitation letter indicates, this complex system of services in the District has a long history of failing to deliver successful outcomes for children. In the past, children's safety has too often been at risk, and children have waited too long in foster care before going home or moving to a permanent family. We have an extraordinary opportunity today in the District to dramatically change this history, by strengthening <u>all</u> elements of the system together. We have this opportunity because

of the work of Mayor Williams and the City Council to address a wide range of critical systemic deficits within the Child and Family Services Agency and the Office of Corporation Counsel that have impeded the performance of the child welfare system in the past. For example:

- Under the Mayor's auspices, we were able to work cooperatively with the stakeholders in the child welfare class action, to successfully transition out of Federal court receivership. Pursuant to a negotiated court order, Mayor Williams regained both operating and fiscal control over CFSA on June 16, 2001.

- Because of the commitment of the Mayor and the Council and with the support of the Congress, CFSA's budget increased by more than $30 million from FY2000 to FY2001. This budget increase, which represents a dramatic departure from the agency's history, is intended to make possible certain critical steps to support children, such as hiring sufficient social workers to reduce caseloads and investing in key supports for families.

- The District is currently implementing a major commitment to expansion and reform of the legal support provided to CFSA social workers by the Office of Corporation Counsel. We have more than doubled the number of attorneys hired to represent CSFA social workers, through resource commitments by both CFSA and OCC. We have restructured the legal support and are in the process of co-locating so that attorneys and social workers will be able to work more closely together on behalf of children.

- As indicated already, CFSA's enabling legislation, enacted in April of this year, established the post-receivership CFSA as a Cabinet-level agency with independent personnel, procurement and licensing authority. This legislation also required the unification of the child abuse and neglect systems, which we accomplished on schedule on October 1, 2001. While there is much more to do to institutionalize this major transition, it is an important accomplishment to have ended a fractured service delivery model identified by the American Humane Society, among other recent reviewers, as a barrier in providing effective services to families.

- As part of the consent decree that ended the Receivership, the District has promulgated both foster and group home regulations after a broad public process. These regulations will make it possible at last to establish, support, and enforce high standards of quality for all the settings where our children live.

Without Family Court reform, we risk sharply reducing the impact of these reforms. With Family Court reform, we will be able to create the maximum impact by implementing the Agency reforms in a way that is coordinated and timed with reform of the rest of the system – and, in particular, in conjunction with the critical court reforms proposed in this legislation. For this reason, we urge the Subcommittee to continue your commitment to prompt enactment of the Family Court legislation.

How the Proposed Legislation Would Improve Outcomes for Children

From our experience working with the Court on behalf of abused and neglected children, two aspects of the proposed legislation stand out as key. First, every single one of the Mayor's reforms will be most effective for children if implemented in conjunction with a core group of 12-15 highly trained and well-supported judges, as in the proposed legislation, rather than with the full 59 sitting judges plus additional senior judges who now handle abuse and neglect cases. Under the proposed legislation, CFSA and the Office of Corporation Counsel will be able to work closely with the Family Court judges to address policy and scheduling issues of mutual

concern, to develop approaches to reporting that meet judges' needs, to design appropriate joint training, and – at the most basic but also the most critical level - to ensure that attorneys and social workers provide timely and high quality reports that support excellent judicial decision-making. By contrast, under today's system, the dispersal of some 1500 neglect hearings each month among 59 sitting judges and additional senior judges places enormous demands on both CFSA and OCC staff. It also has substantial operational and budget implications for both agencies.

Thus, we would like to emphasize the importance of the provisions in both bills that provide a core group of dedicated and appropriately credentialed judicial officers who will serve multi-year terms in the Family Court assignment, that require the prompt transfer of pending cases into the Family Court, and that limit the transfer of cases out of the Family Court. Ensuring that children's cases are heard by the core group of Family Court judges promotes child protection as well as the timely movement of cases toward permanency – a goal at the heart of ASFA's mandate.

Second, both legislative proposals envision key resources and supports that are critical to improving the speed and quality of decision-making in abuse and neglect cases. Among the key examples are implementation of an electronic records, tracking and case management system; alternative dispute resolution models; attorney practice standards; one family/one judge case assignment practices; training requirements;

accessible services and materials; the expedited appointment of Magistrate-Judges to handle backlogged cases, and on-site access to and coordination of social services – all of which add up to ensuring that the Family Court represents a state-of-the art approach to judicial administration.

Thus, we believe that overall, these proposals represent extremely important next steps in reform of the entire child welfare system to support the best interests of children. Both the strategies and the resources envisioned in the proposals will leverage the maximum impact for children through their congruence with key reforms elsewhere in the system; will assist the District in improving outcomes for abused and neglected children; and will support movement to much shorter timelines for handling abuse and neglect cases, thus improving the District's compliance with the Federal Adoption and Safe Families Act (ASFA). Improving timeliness matters a great deal for children – because delays in achieving permanency adversely affect our children who need long-term stability in their lives – as well as for the District, since violations of the ASFA timelines risk compromising the District's ability to maximize Federal revenue. Any appreciable reduction in Federal revenue threatens progress toward the goal of a fully functional and robust child welfare system.

Key Elements of the Proposals

In addition to the Mayor's strong support of prompt enactment, I would also like to convey specific comments on the proposed legislation. We would be glad to provide additional technical comments or assistance in whatever way would be most useful to the Subcommittee.

1. **Ensuring that child abuse and neglect cases remain within the Family Court.** As noted above, we believe that a key element of successful reform is ensuring that child abuse and neglect cases are concentrated with a core group of well-trained and well-supported judges. Both the House and Senate proposals include provisions intended to ensure that cases are promptly transferred into the Family Court and that when judges leave the Family Court, they do not take cases with them except in limited circumstances. We strongly urge the Subcommittee to defer to the House provision in regard to circumstances where judges can take cases with them, because we believe that it is appropriately limited to the most extraordinary cases: in particular, to "extraordinary circumstances, subject to approval and certification by the presiding judge and based on appropriate documentation in the record, which demonstrate that a case is nearing permanency and that changing judges would both delay that goal and result in a violation of the Adoption and Safe Families Act." We are concerned that the broader exception in

the Senate proposal could lead to continued wider dispersal of cases, making it much more difficult to reap the benefits of reform.

In regard to the initial transfer of cases, we believe that transfer of cases to the Family Court should occur as expeditiously as possible, in order to achieve the benefits of the Family Court as soon as possible. We recognize that practical considerations may prevent all of the transfers from taking place immediately, but we would urge that case reassignment occur as expeditiously as possible.

2. **Supporting reform with sufficient funding.** Resources and staffing are critical to meeting the goals of the reform, both for the Family Court and for the District government. We strongly urge the Subcommittee to fully address the Court's needs for space, staffing, and technology in support of the goals of the legislation. In addition, the Mayor has identified approximately $6 million, as an additional Federal appropriation required in FY 02, to meet the District's responsibilities under the legislation. Of this amount, $5 million is required for the extensive information technology planning and assessment required by the bill to support integration across computer systems. The remaining $1 million supports the FY 02 cost, beyond existing agency budgets for the central liaison and multiple agency on-site representatives required by the bill. We strongly urge the Subcommittee to

support these costs in full, in order to ensure successful implementation of the Family Court.

3. **Effective Date.** We believe that the effective date of the legislation needs to be sooner than the 18 months proposed in the Senate bill, in order to achieve the benefits for children as promptly as possible and to fully synchronize reforms.

4. **Border Agreements.** The Mayor appreciates the language in both bills supporting border agreements among the District, Maryland, and Virginia to ensure that District children can be placed with kin and other appropriate foster families without delay. This metropolitan approach to the well being of our children truly supports our families and our communities in their efforts to care for children.

Conclusion

We strongly support the prompt enactment of this proposed legislation. We believe a strong Family Court is the final piece needed as we strive to improve the District's child welfare system, and it is needed now. This is the moment to seize our unique opportunity to complete the reform of the District's child welfare system, in order to truly make a difference in children's lives. Thank you for your commitment to this important legislation, and we look forward to working with you on its expedited enactment. I appreciate very much the opportunity to testify, and I look forward to responding to your questions. Thank you.

PREPARED STATEMENT OF DEBORAH LUXENBERG, CHAIR,
CHILDREN IN THE COURTS COMMITTEE,
COUNCIL FOR COURT EXCELLENCE

COUNCIL FOR COURT EXCELLENCE

Good morning, Chairman Durbin, Senator Voinovich, and other members of the Senate Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. Thank you for inviting the Council for Court Excellence to provide testimony at today's hearing on the subject of "Promoting the Best Interests of Children: Proposals to Establish a Family Court in the District of Columbia Superior Court." My name is Deborah Luxenberg, and I am Chair of the Children in the Courts Committee of the Council for Court Excellence. I have been a family practitioner in the Superior Court's Family Division for 26 years, have held leadership positions in a number of family law organizations, and have taught family law practice for the Court, the bar, and law schools. Our Board Chairman, Stephen Harlan, regrets not being able to be here today in response to your invitation, but he fully supports the positions we take in this statement today.

Permit me for the record to summarize the mission of the Council for Court Excellence. The Council for Court Excellence is a District of Columbia-based non-partisan, non-profit civic organization that works to improve the administration of justice in the local and federal courts and related agencies in the Washington, D.C. area. For the past 20 years, the Council for Court Excellence has been a unique resource for our community, bringing together members of the civic, legal, business, and judicial communities to work in common purpose to improve the administration of justice.

I want to stress that no judicial member of the Council for Court Excellence Board of Directors participated in or contributed to the formulation of our testimony here today.

I am honored to present the views of the Council for Court Excellence to this Committee. Our organization has been directly engaged over the past two years in facilitating the joint work by the city's public officials to reform the child welfare system, and specifically to meet the challenge of implementing the Adoption and Safe Families Act of 1997 (ASFA). While important progress has been made, the city still has a long way to go to meet the requirements of ASFA. We believe our work with the Superior Court and other city officials on this matter affords us a relevant contemporary perspective on the issues before this Committee.

Today's hearing focuses solely on the D.C. Superior Court's Family Division, and particularly its role in the city's child protection system. One indisputable reason for the problems perceived in the Family Division is that the Family Division of the Superior Court has long been under-resourced in every category to meet its responsibilities to the children and families of this city. We applaud the Congressional priority on child protection and other family law matters, but urge the Congress not to enact D.C. Family Court legislation unless there is an equal commitment to providing the D.C.



Superior Court with the substantial new operating and capital funding it will need over an extended period to execute the goals of such legislation. That funding must be forthcoming if we expect the District's child welfare system to change for the better. We can no longer afford to have only the will to mandate change in law. We must also have the resolve to put the necessary resources to work for the children. Otherwise, these Senate and House bills are little more than a recipe for disaster.

In addition, the Congress must not forget that we are dealing with a multi-agency child welfare system, and the D.C. Superior Court is simply one of several principal players in it. Addressing the problems of the Court's Family Division is laudable and long-needed. But "fixing" the Court will not by itself yield a smoothly functioning child protection system in the District of Columbia. It is imperative that each part of the safety net – the DC Child and Family Services Agency, the DC Office of Corporation Counsel, the DC Metropolitan Police Department, the Family Division of the D.C. Superior Court, and the private bar appointed to represent parents and children – be "fixed" simultaneously, and their reforms synchronized. Otherwise, they will not be able to work together as a cohesive unit, which they must do in order to protect and promptly find permanent homes for the abused and neglected children that they serve. We commend Chief Judge Rufus King and his colleagues for the diligence and quality of the Family Division re-engineering project they began in January 2001, and for the Court's willingness during this process both to re-think all facets of its approach to family law case management and to work closely with the other involved city agencies on the re-engineering.

Early this year, the Council for Court Excellence conducted site visits or research on five family courts identified as innovators in meeting the rigorous case management standards of the federal Adoption and Safe Families Act of 1997 (ASFA): Chicago, Cincinnati, Louisville, Newark, and Tucson. Each of the five courts serves a diverse urban jurisdiction with a larger population than the District of Columbia. Representatives of the D.C. Superior Court bench and administration joined us on these useful site visits.

We issued a site visit report in March 2001 which we distributed widely, including to many D.C. Superior Court judges and administrators and which we will provide for this hearing record. The report listed ten family court "best practices" we found through our research: (1) an explicit and sustained commitment to permanency for children; (2) partial or full implementation of the one judge/one family concept, with one judge hearing all family law matters relating to one family; (3) multi-year judicial assignments and prior experience in family law; (4) strong staff support to judges and teamwork between judges and staff; (5) continuous use of alternative dispute resolution

techniques throughout the case; (6) close collaboration among judges, lawyers, social workers, and other child welfare personnel; (7) improved scheduling practices, including time-specific case calendaring, longer more substantive hearings and conferences, and few continuances; (8) inter-disciplinary training on ASFA, court practices, and behavioral science issues; (9) rigorous tracking of children's cases to ensure compliance with ASFA; and (10) allocation of sufficient, well-designe space for family court operations.

In our opinion, the bill under discussion today, S.1382, supports these family court "best practices," and we commend this Subcommittee for your leadership on this important issue. We believe that early passage of such Congressional legislation plus sufficient appropriations to implement its provisions would help the District of Columbia Superior Court and the city's other child protection agencies improve the quality of services to children and families in this city.

In your letter inviting the Council for Court Excellence to testify today, you stated that the purpose of this hearing is to:

> examine the components of reform bills, including, among other elements, placing all cases involving one family before one judge, assigning a cadre of magistrates to assist the judicial function, mandating minimum terms for service on the family court, and transferring all child abuse and neglect cases now dispersed across the court back under a family court helm.

We believe that, sensibly implemented, each of those components is an important building block necessary to construct a better child welfare system in the District of Columbia.

I turn now to the bill, S. 1382. I will comment on a number of policy issues, beginning with those raised in your letter inviting us to testify today.

1. One judge/one family. We support the bill's mandate of this case-assignment system "to the greatest extent practicable and feasible," to ensure that all of a family's issues in Family Court can be handled by a single judicial officer.

However, for the sake of the abused and neglected children of this city, we believe that the effective date of this provision should not be deferred for 18 months after enactment, as currently provided in S.1382. We believe that implementation of this new case-assignment system should begin promptly for all newly filed child abuse and neglect cases including all subsequent legal actions to place a child in a permanent home. The city must begin doing a demonstrably better job than it is now of



moving our children out of foster care and into permanent homes within the time frames required by ASFA. We believe having a single team, of a judicial officer with supporting case-management staff, in charge of a child's situation from intake until the child achieves permanency is one important step toward that goal. Implementation of the one judge/one family case-assignment system for other types of family law cases could reasonably be phased in during the 18 months after enactment.

The Court's Family Court implementation plan, which the bill asks the Chief Judge to develop within 90 days of enactment, should address how it expects to phase in the one judge/one family case-assignment system. It is our understanding that the D.C. Superior Court is committed to the goal of one judge/one family and has already devoted prodigious effort to this planning process, and we commend them for that.

A one judge/one family assignment system would be a dramatic change from the current case-assignment practice for child abuse and neglect cases in the Superior Court Family Division. Under current practice, a child's case is handled by as many as four different judicial officers as it progresses from intake through status hearings, trial, disposition, and reunification with his family. If the child cannot be safely reunified with his family, then his case is passed on to additional judges, to oversee the adoption, or guardianship, or custody actions.

We believe that a one judge/one family case-assignment system has advantages for both court users and judges over this current practice. The families and children who come before the D.C. Family Court would need to deal with only one judicial officer for all family matters. They would find a judge and staff team who are aware of the family's total situation. Families would thus experience more uniformity, consistency, and predictability in all their dealings with the Court than they now do. Accountability for ensuring that children find permanent homes promptly would be enhanced. Assigning judges to all types of family law cases might also reduce judicial burnout, both because judges would have a greater variety of cases, and because they could get a greater sense of having a positive, productive, consistent impact on a child's and family's situation.

2. Using Magistrate Judges in Family Court. We support the bill's creation of a new category of judicial officer, Magistrate Judge, for the Superior Court, and its requirement of specific additional qualifications of training and family law experience for those Magistrate Judges assigned to the Family Court. This is a good, flexible, cost-effective way to increase family law expertise in the



Family Court, to increase the judicial manpower available in the Family Court, and to provide stability and predictability with Magistrate Judges' four-year terms of service.

We further support Section 6 of the bill, which authorizes the immediate appointment of a special task force of five Magistrate Judges to handle child abuse and neglect cases which have been open for more than two years. However, because the latest Court inventory shows that nearly 3600 children's cases fit that category, we believe it is important that the five-person Magistrate task force be devoted to some prioritized portion of that total and not assigned the entire 3600 cases. The Court's implementation plan should detail its strategy for dealing with all child abuse and neglect cases which have been pending for more than fifteen months.

With respect to the residency requirement prescribed in the bill for both judges and magistrate judges, we much prefer the version included in the House bill, H.R. 2657, because it significantly broadens the potential qualified applicant pool while still ensuring that Associate Judges and Magistrate Judges become residents of the District of Columbia.

3. Judicial term of service in Family Court. We support S. 1382's provisions extending judicial terms in the Family Court, which are identical to those in HR. 2657, passed unanimously by the House. We believe longer terms are a needed change to provide increased judicial expertise and continuity to Court users. Tours of duty in the Superior Court's Family Division have traditionally been one year, which we believe has impaired the Division's effectiveness.

Statutory terms of service in family courts have been set at 12 years in Delaware, 10 years in New York, 6 years in South Carolina, and 4 years in Missouri. (I have attached a chart to this statement showing the provisions of selected state family court statutes.) Notwithstanding the minimum term enacted by statute, however, we would hope that, as Family Court operations improve, many judges will welcome the opportunity to serve longer than the statutory minimum in this critically important assignment. That has been the experience in other family courts we visited.

4. Keeping all family law cases in the Family Court. We strongly support the goal of the bill's dual requirements that all now-pending family law cases be reassigned to the Family Court and that all new cases remain in the Family Court until closed. However, we also acknowledge that, for some currently pending cases, strict implementation of the mandate might cause more harm than good to the children it would affect.



The bill gives the Court 18 months to complete the transfer of open cases into the Family Court. I understand that the Court estimates that a substantial proportion of the 3600 cases which have been pending for two years or more will be closed within the next 12 months, thus leaving a far smaller universe of cases subject to the transfer. As a practical matter, we believe the Chief Judge should be given latitude to consider the special circumstances which have developed around some of these cases and authority to exempt some from transfer if that would clearly be in the best interest of the child.

Like S.1382, the Delaware, South Carolina, and Vermont state family court statutes transferred jurisdiction over all pending family law cases to their new family courts. However, I cannot comment on the mechanics of the transition or any of the problems that these court systems might have encountered during the transition. Again, I emphasize that we strongly agree with the goals, but urge latitude to deal with specific problems in the implementation.

We support the legislation's granting the new Family Court exclusive jurisdiction of child abuse and neglect cases because, based on our research, we know of no court other than the D.C. Superior Court which disperses its child abuse and neglect cases to judges outside the Family Division. As this Committee knows, the Superior Court now distributes child abuse and neglect cases, after adjudication, among all 59 judges of the Court. Most of these judges are not in the Family Division and have other full-time assignments.

From our past two years' work with officials of the city's judicial and executive branches who are responsible for the D.C. child abuse and neglect system, we know that this dispersal, while trying to provide uniform judicial action, impairs the capacity of the Child and Family Services Agency and the Office of Corporation Counsel to properly handle the cases. We also believe the dispersal of cases outside the Family Division impairs quality control and accountability on these cases. Accordingly, with respect to new cases, we prefer the House bill's more restrictive language regarding the circumstances that would permit a Family Court judge to retain a family law case when transferring out of the Family Court assignment.

As noted previously, the bill authorizes an immediate task force of Magistrate Judges to work on pending child abuse and neglect cases, and it directs the Court within 90 days to develop a detailed implementation plan which, among other things, identifies the total number of judges and additional magistrate judges that will be needed in Family Court to handle its total caseload (of which child abuse and neglect is just a portion). We believe that those provisions, plus the provision in S.1382 permitting the transfer into Family Court of now-pending cases to be phased in over the 18 months



after enactment, (if given latitude for exempting certain cases), will relieve twin concerns some may have about "overloading" the Family Court and about transferring cases without considering the best interests of the child.

We know of no compelling policy or management reason to exempt Senior Judges from disposing of or transferring their family law cases to the Family Court in the same manner as any other judge of the Court, and we respectfully urge that you drop that exception.

We would now like to comment on several additional policy issues beyond those specified in your invitation to testify.

1. Jurisdiction. We urge the Senate to defer to the House bill's provision which exempts actions within the jurisdiction of the Superior Court's Domestic Violence Unit from the exclusive jurisdiction of the Family Court. The Domestic Violence Unit has proven successful and should not be required to be scrapped. Indeed, since there have been appellate challenges to the existence of the Unit, we would urge the Congress to use this opportunity to confirm it as a proper branch of the Superior Court.

2. Number of judges. S. 1382 sets the minimum number of Family Court judges at 12 and the maximum at 15, with permission for upward but not downward adjustment. We believe it is unwise for the statute to lock in particular numbers of judges for one division of a unified court such as Superior Court, where the different types of caseloads fluctuate greatly over time.

Thus we strongly urge that the appropriate level of judicial manpower in the Family Court (both judges and magistrate judges) should be within the discretion of the Chief Judge, and that he should present those needs initially in his implementation plan due 90 days after enactment, and thereafter he should set them on an annual basis, based on caseload-per-judge and time-to-disposition measures among others. Congress should review the Chief Judge's decision both initially, for the implementation plan, and annually as part of its ongoing oversight of the Court's performance and its annual appropriations for Court operations.

If future Family Court caseloads drop as they have in other divisions of Superior Court over the past decade (and as they have in family courts around the country which are farther along on ASFA compliance), we believe it would be unwise to have a statute in place which precludes proportional reductions in Family Court judicial manpower.



In addition, we support the provisions in H.R. 2657 titled "One-Time Appointment of Additional Judges to Superior Court for Service on Family Court" and "Judges Appointed Under One-Time Appointment Procedures Not to Count Against Limit on Number of Superior Court Judges" and we urge this Subcommittee to include them in S.1382.

3. Staffing and Space. I began my testimony emphasizing the importance of fully funding this new D.C. Family Court if the Congress is serious about achieving the goals of S.1382. One clear lesson learned from good family courts is the invaluable support that is provided to the judicial officers when the court has sufficient strong, professional case-management staff. Another lesson is the need for sufficient well-designed, family-friendly space to accommodate both the public activities and the support functions of the family court. We believe it is an error that this bill is largely silent on these issues.

4. Collaboration on the Implementation Plan. As I have said earlier, the Family Court is only one part of the city's interwoven child protection system. How the Court organizes to do its work can either support or impair the ability of the other agencies to discharge their statutory duties to children and families. We believe it is crucial to the successful implementation of this Family Court bill that the Court's implementation plan be developed in full consultation and collaboration with the D.C. Child and Family Services Agency, the D.C. Office of Corporation Counsel, the D.C. Metropolitan Police Department, the bar, and others as appropriate, so that all reforms can be synchronized.

5. Effective date. To convey the urgency of reform, we believe the bill should have a prompt effective date, not eighteen months down the road. However, we also believe that all necessary judicial, staff support, and facilities resources must be provided to the Court prior to the effective date, or we will be setting up the Family Court to fail. Thus we urge this Subcommittee to make the bill effective promptly but specify that its provisions may be phased in over a period not to exceed 18 months. The Court should have latitude to detail the phase-in in their implementation plan due 90 days after enactment.

This bill will be the first major change to the D.C. Superior Court's structure since July 1970. We commend the Subcommittee for your leadership on this issue and for your desire to provide the District of Columbia with a Family Court that embodies the best principles and practices now known. I would be happy to answer your questions at this time.

SELECTED STATES WITH STATUTORILY CREATED FAMILY COURTS

State	Family Court	Judicial Term of Service	Transition of jurisdiction	Judicial Qualifications	# of Judges Specified	Training	Implementation Plan	1 Judge/ 1 Family	ADR
Delaware	Statewide; Del Code Ann. tit.10, §§ 921-928	12 years; § 906(a)	All matters not yet disposed of; § 923	Knowledge & interest in fam law; § 906(c)	Yes, § 906(b)				
Michigan	Some areas; Mich Comp. Laws Ann. § 600.1001	Gives chief judge flexibility to determine; § 600.1011(3)			Must be reflective of caseload; § 600.1013	Required; § 600.1019	Yes, must be approved by state supreme ct § 600.1011	Whenever practical; § 600.1023	
Missouri	Some areas; Mo. Rev Stat. § 487.010	4 years; § 487.050 (5)		Educ, training, desire, etc; §487.050(1)-(4)	No	Required; § 487.050(4)			Provides for mediation, counseling; § 487.100
Nevada	Some areas; Nev. Rev. Stat. § 3.0105				Yes, § 3.011-3.020	Required; § 3.028		Yes; § 3.025(3)	Encouraged; § 3.225
New York	Statewide; N.Y. Fam. Ct. Act § 113	10 years, § 123		10 yrs of practice; § 124	Yes, §§ 121 & 122				
South Carolina	Statewide; S.C. Code Ann. § 14-2-10	6 years; § 20-7-1370	All cases filed or pending on effective date; §§ 14-2-10; 14-2-60	Age, residency; member of bar; § 20-7-1370	No				
Vermont	Statewide; Vt. Stat. Ann. tit. 4, § 451	Magistrates - 6 years; § 461	All cases filed or pending on effective date; § 454		No	Minimum of 30 hrs - mandatory; § 461b(d)			

PREPARED STATEMENT OF MARGARET J. McKINNEY, CO-CHAIR, FAMILY LAW SECTION OF THE DISTRICT OF COLUMBIA

Before the Senate Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia

October 22, 2001

Good morning, Chairman Durbin, Senator Voinovich, and other members of the Senate Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. The Family Law Section of the District of Columbia Bar is pleased to submit to this Subcommittee this testimony on the House and Senate drafts of the District of Columbia Family Court Act of 2001. Our members are attorneys who represent children, parents, grandparents and other caretakers in all types of family law cases, including adoption, abuse and neglect, divorce, custody, child support, paternity and other such proceedings. The Family Law Section of the D.C. Bar represents the most highly respected family lawyers in the D.C. area and some of the best family lawyers in the country. The District of Columbia Bar has approximately 74,000 members. The Family Law Section is comprised of those members of the D.C. Bar practicing family law in Washington, D.C. and neighboring jurisdictions. The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The reason for the Family Law Section's interest in this legislation is very simple. The Section is wholly comprised of individuals who represent, on a daily basis, the children and families who will be most affected by the proposed legislation. Our collective knowledge and experience regarding D.C. family law, our deep concern for the persons these laws seek to serve and protect, and our unique understanding of the pressures facing the Family Division of the D.C. Superior Court and the judges that labor therein, give the Section an enlightened and valuable perspective on the issues facing the Superior Court today. It is important to state at the outset that the Family Law Section has always had a strong interest in ensuring that the Family Division of the Superior Court provides the best services that it possibly can to the children and the families of the District of Columbia. The Section has always supported positive and

productive movements initiated both inside and outside of the Court to improve its ability to meet the needs of its constituents.

The Family Law Section is grateful to the Senators and the members of the House of Representatives for including us in the discussions which led to the draft legislation. We appreciate having the opportunity to voice our concerns. We are pleased to see that both drafts keep the family court within the Superior Court. We view this as the most critical element of any reform plan.

We applaud the sponsors of the legislation for including in the draft bills mandates for a new computer system, continual education and training of Family Court judicial officers and personnel, increased provisions for alternative dispute resolution, practice standards for court-appointed attorneys, permissive extension of a judge's assignment to the Family Court, the use of specially trained magistrate judges, on-site coordination with other government agencies necessary to the efficient management of abuse and neglect cases, a social service liaison, and annual reporting by the Family Court. It is crucial, however, that the Court receives the annual funding necessary to support these mandates.

The Family Law Section would like the Subcommittee to know that since January, there have been significant improvements in the functioning of the Family Division of the Superior Court. Chief Judge King added an additional calendar and judge to handle abuse and neglect matters in the Family Division. Judge Walton established working groups that have studied the Family Division. The working groups include judges, court personnel, children's advocates, members of the bar and others. The changes suggested by the working groups would significantly improve the Division. Some of the suggestions from the working groups have already been implemented and we understand the Court intends to implement additional changes in the near future. All of the calendars in the Family Division are being run much more efficiently and with greater success. We attribute these changes to the dedication and extraordinary efforts of Chief Judge King, Judge Walton, Judge Satterfield and Judge Josey-Herring, along with all of the other judges currently sitting in the various branches of the Family Division.

The Family Law Section has several concerns about the proposed legislation. We have conducted an independent analysis of the draft legislation to determine its potential impact upon the children and families we represent in D.C. Superior Court. Day after day, we see the

problems faced by children and families, both systemic and societal. We are pleased that the Family Division has received the attention it needs. However, from our perspective there is a significant tension between the desire to implement legislation that would prevent today's improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that prevents it from adapting to the needs of the community it serves. We urge Congress to consider the potential unintended consequences of tightly constricting the discretion of the Court to manage its busy dockets, which may inhibit the Court's ability to adapt to the changing needs of this city. As practitioners we want to see continued improvements to the system but we recognize that it is important not to over-legislate the particulars of the Family Court, as addressed more fully below. With strict Congressional oversight, all parties affected by the system will be assured that there will only be forward progress.

I. Length of Judicial Assignments to the Family Court

Aside from the need for ongoing funding, the most important issue in the current drafts of the legislation is the length of any mandatory assignment to the Family Court. As we have consistently stated, we believe the initial assignment to the Family Court should be no more than three years, with the opportunity for judges to voluntarily extend the assignment. In taking this position, we are primarily concerned with protecting the humanity of our judges and, thereby, the integrity of our judicial system. It was a life and death issue that brought us to this point and we should not forget that fact in our haste to make improvements to the system. It is imperative that each judge sitting on the Family Court has compassion, tolerance, patience, and the quality of spirit necessary to look at the most difficult family situations day after day and not lose hope or become desensitized.

The Senate should be aware that in Maryland, which has a family division system within its Circuit Courts, judges are assigned to the family division for one to two years. In Montgomery County, judges are assigned to the family division for approximately 18 months with voluntary extension of the assignment. In Prince George's County, Maryland, which has the longest family division assignment in the state of Maryland, judges are assigned to the family division for two years. In the Circuit Court for the City of Baltimore, arguably the only truly "urban" jurisdiction in Maryland, judges have one-year assignments to the juvenile/abuse and neglect calendars and one-year assignments to the domestic relations calendars, where they preside over divorce, custody, child support/paternity, and domestic violence proceedings.

In order to understand why the Family Law Section recommends that the initial assignment to the Family Court not exceed three years and that the assignment be extended only voluntarily, it is necessary to recognize the difficulties inherent in being a Family Court judge in the District of Columbia. Family cases differ from civil and criminal cases in some very important ways. In civil and criminal cases it is usually the jury who considers the facts, applies the law, and makes the ultimate decision. However, and more importantly, Family Court cases do not have juries—the judge is the sole decision-maker. At the end of the day, a Family Court judge cannot simply turn the case over to the jury and receive a decision. In a Family Court case a judge must listen to whatever evidence is presented, apply his or her knowledge of the law and his or her experience, decide on the issues, and often write detailed findings of fact to justify the decision. Every decision made by a Family Court judge will irrevocably alter the lives of children and their families.

Making the Family Court judge's job more difficult, many people in the District of Columbia who are involved in family cases come before the Court without the benefit of an attorney. In divorce, child custody, child support, paternity and domestic violence cases many of the litigants do not have attorneys and have no right to court-appointed counsel. Divorce, child custody, and child support/paternity cases accounted for slightly less than fifty percent (50%) of the approximately 13,000 filings in the Family Division of D.C. Superior Court in fiscal year 2000. That meant 13,000 families entered the Court system that year. In addition, there were more than 3,715 new domestic violence cases filed in the D.C. Domestic Violence Unit in fiscal year 2000.[1] When one or both parties appear before the court in these cases without an attorney, the judge must protect and, therefore, educate the unrepresented parties in order to ensure a fair hearing. Hearings are protracted in these cases and require more of a judge's patience, tolerance and time. This causes an extreme tension between the individual needs of the family members and the Court's need to manage its congested docket. Even in cases where all parties are represented by counsel, the judge faces difficulties. The judge must allocate the available time and resources in order to provide those parties ample time to try their cases while also taking into account the needs of those parties waiting in the courtroom. Given very limited time, the judge must balance and manage the docket in order to give all parties their day in court. With overcrowded dockets and many unrepresented parties, this is an extraordinary challenge.

[1] All Superior Court statistics reported herein are from the 2000 Annual Report, District of Columbia Courts.

In fiscal year 2000, there were 3,064 juvenile cases, 1,494 abuse and neglect cases, 1,915 mental health/retardation, and 406 adoption cases filed in the Family Division. These cases account for slightly more than fifty percent (50%) of the cases filed (or placed at issue) in the Family Division in fiscal year 2000, with abuse and neglect proceedings accounting for approximately eleven percent (11%) of the total. There are more than 3,000 ongoing abuse and neglect proceedings, in addition to the 1,494 new or reactivated cases.

In juvenile, abuse and neglect, termination of parental rights, and certain mental health/retardation cases, children and indigent parties have a right to free court-appointed counsel. As with indigent criminal defendants, the right to counsel in these matters is axiomatic. Attorneys are provided and paid for through Court programs, with some *pro bono* attorneys provided through other non-profit agencies. In abuse and neglect cases, the child and, in many cases, each of his or her parents has court-appointed counsel. In certain instances foster parents, relative caregivers, and adoptive parents also receive court-appointed counsel. Most of these attorneys are appointed through the Counsel for Child Abuse & Neglect Office (CCAN) in Superior Court, which currently has approximately 275 attorneys on its list of approved counsel. Only approximately four of those attorneys speak Spanish, in a city with thousands of low-income Spanish-speaking residents. Attorneys for juvenile proceedings are appointed through the Criminal Justice Act Office (CJA) in Superior Court or the Public Defender Service (PDS). There are currently fewer than 250 lawyers approved to handle juvenile matters. For some of the same reasons it is difficult to recruit judges to the Family Division, it is difficult to recruit lawyers to represent parents and children in abuse and neglect proceedings and juveniles in delinquency proceedings. In addition to the difficult and frustrating nature of the work, lawyers who represent children and parents through the CCAN and CJA offices are paid only $50.00 per hour. CCAN lawyers must zealously represent their clients with the knowledge that the fees they will receive for the representation are capped at $1,100 per case, except in exceptional circumstances. Clearly, there are not enough lawyers to provide quality legal representation to all the individuals in family cases who desperately need it. The Court needs additional funding for the CCAN and CJA offices in order to attract additional quality lawyers to represent children and indigent people. Raising the hourly rate of pay would help the CCAN office find more lawyers willing to take these difficult cases.

Unfortunately, in addition to not having enough lawyers, Family Court judges also see a number of cases where a party or a child has inadequate representation by counsel. In these cases it is the judge who must ensure that the child's best interest and the parent's rights are protected. This is often a very delicate balancing act for the judge. To further complicate the abuse and neglect cases, the social services agencies involved have been understaffed and overworked. Often, for these reasons, the social service agencies are simply unable to perform their role. We hope that with the new leadership at the Child and Family Services Agency (CFSA), and with better funding, CFSA will have the resources it needs to adequately manage the overwhelming number of abuse and neglect cases in the District.

In family cases, particularly child abuse and neglect cases, the Superior Court judge often must try to assist a child in need without vital information or access to the services necessary to improve the child's situation. Lack of counsel, inadequate counsel, and overworked social workers, often mean there is less evidence available upon which the judge can make these difficult decisions. In these cases the judge begins to perform several roles—not just the role of the decision-maker. The judge may become the investigator, the provider of information as to available services, or the protector of the unrepresented or poorly represented party. The judge must spend significant time explaining the process to the litigants, maintaining control in the courtroom, and assuring that each party receives a full and fair hearing. However, at the end of the day, the responsibility lies with the judge, and he or she must make a decision.

Day after day, Family Court judges see children and families in crisis. But not only do the judges face people in crisis every day, they generally see only the worst cases of family crisis. The "easy" and "simple" cases resolve themselves through mediation or negotiation, often before they even reach the court. Family Court judges often see cases in which one or more of the people involved has a serious mental illness, substance abuse problem, physical limitation, or some combination of the three, and where there is not enough money to provide basic support for the family. There is often emotional, physical or psychological abuse on the part of one or more family members. Sometimes the problems of the family are readily apparent; sometimes the problems are subtle and much time is needed to identify and find a solution to the problems. Often there is no light at the end of the tunnel for the families that come before the Court. One cannot underestimate the emotional and psychological toll these cases take on all the people involved in them—litigants, family members, lawyers, and most importantly

the decision-makers, the judges. Family Court judges are charged with making life-altering decisions each day in cases where there is no simple solution to the families' problems and where there is often inadequate information and support from the people who should be informing the judge. This is especially true in this urban jurisdiction where there are such significant problems with substance abuse, poverty, and lack of education.

As family lawyers we have some ability to limit the number of these particularly difficult cases we handle at a given time. We try to avoid fatigue by keeping our hours in check and working on cases with varying levels of difficulty and trauma. Many family lawyers choose not to work on abuse cases because they are simply too heart wrenching and stressful—the stakes are too high. Judges have no such luxury. In general, the cases Family Court judges see are before the Court precisely because the problems were too complex or severe for the family members to resolve on their own.

In addition to the emotional and psychological demands of being a Family Court judge, the Senate should also consider the practical aspects of the assignment when determining its length. Judges in Superior Court typically preside over cases from approximately 9:30 a.m. to 4:30 p.m. five days per week. Family Court judges typically use the time before 9:30 a.m. and after 4:30 p.m., as well as weekends, to write decisions and issue orders. To sit on a family court docket is to have what amounts to two full-time jobs. After hearing cases all day, judges must return to their chambers to spend additional time making decisions, writing opinions, issuing orders and performing their administrative duties. The decisions are not easy to make in most cases and judges struggle to find the best possible result for children. We know judges in the Family Division, past and present, who regularly work 12 and 14-hour days, or longer, and weekends in order to keep up with their caseload. Even the most dedicated advocate of children and families could not be expected to maintain such a demanding schedule day after day and year after year.

Judicial fatigue, like fatigue in any area of life, leads to mistakes. Even with all of the improvements called for by this legislation and by the Superior Court reform plan, we fear that judges sitting on the Family Court will become fatigued and desensitized if they are required to stay more than three years. We worry about what could happen if the judge has seen too much misery, when he or she has heard the same story one too many times, and has been drained of the necessary compassion, tolerance, and energy it takes to make wise decisions. The children and

families of the District of Columbia need judges who have the time, the resources, and the assistance from other branches of government that the children need. It is primarily for this reason that we hope the Senate will provide the funds necessary to implement the planned reforms to Superior Court.

Finally, the children and families of the District of Columbia deserve to have the best and brightest Superior Court Judges sitting in the Family Court. For good reason, many judges hesitate to take an assignment to the Family Division. Requiring by law a specific length of assignment to the Family Court would make it more difficult to recruit qualified judges. Even three years is a long time for a judge to serve in the Family Court. More judges are likely to volunteer for the Family Court if the assignment is not more than three years. For many people, including many family law practitioners, more than three years on the Family Court bench would be far too long. Five years represents fully one-third of a judge's initial term of appointment--too many to make it an appealing assignment for many judges. Moreover, a five-year assignment would likely eliminate a judge's willingness or ability to return to the Family Court after serving in a different division. The Family Division has benefited greatly from the experience and insight gained by judges who have served in other divisions and returned to the Family Division bringing with them fresh perspectives, new skills, renewed energy and dedication. The Family Division has also benefited from having judges from all backgrounds sitting in the Division. Although we believe it is important to include family law practitioners on the bench, some of the best Family Division judges had no prior experience in family law. What matters most is that the judge has excellent judicial skills, life experience, and a great deal of compassion.

If Congress feels it necessary to mandate the length of judicial assignments to the Family Court, for all of the reasons set forth above, we strongly recommend that the assignment be no longer than three years.

II. Minimizing the potential negative impact of the proposed legislation.

As stated previously, for family law practitioners there is a significant tension between the desire to implement legislation that would improve the Superior Court and prevent those improvements from being dismantled by future leaders versus micromanaging the Superior Court in a manner that may have a negative impact on the Court and the community it serves. We have analyzed the two draft bills. Our concerns about the legislation arise from our interest

in having the best possible judges in the Family Court and the best possible structure for it. The proposed legislation may inhibit the ability of the Chief Judge to ensure that there is a full complement of highly qualified judges in the Family Court and the D.C. Domestic Violence Unit at all times. It is imperative that the Chief Judge retains the discretion necessary to ensure that the Family Court and the D.C. Domestic Violence Unit have the highly qualified and skilled judges needed to resolve these complicated family cases.

From our perspective as family law practitioners, we make the specific comments on the House draft set forth on Exhibit A attached hereto and on the Senate draft set forth on Exhibit B. We believe it is important not to over-legislate the day-to-day functioning of the Court and to allow the Court sufficient flexibility to adapt during this time of reform.

III. Conclusion

In conclusion, we would like to thank the Senate and Congress for its attention to these very important issues. We recognize the need to improve the handling of abuse and neglect matters in D.C. Superior Court and throughout the system. We believe that as a result of the attention these issues have received, there have already been substantial improvements. We believe the improvements will continue under the watchful eyes of the Senate and the House, advocacy groups, and the bar. According to the most recent Annual Report of the District of Columbia Courts, in fiscal year 2000 the Family Division had 29,204 active cases under its jurisdiction. In addition, there were more than 4,675 active domestic violence cases. The open abuse and neglect cases represent approximately thirteen percent (13%) of those 33,879 cases. We realize that these are in fact the most important cases the Court handles. However, the draft legislation would impact all family cases.

It is important for this Subcommittee to understand as it considers legislation that would dramatically affect the entire Family Division exactly what challenges the judges of Superior Court face in handling abuse and neglect cases. In fiscal year 2000, approximately seventy-five percent (75%) of the 1,417 new children who entered the abuse and neglect system in Superior Court were over four years of age; more than fifty-eight percent (58%) were over the age of seven. In order to provide this Committee with a true picture of the abuse and neglect situation in the District of Columbia, I would like to share with you what I observed in just one hour of one day in one of the three abuse and neglect courtrooms in D.C. Superior Court:

On that particular day, the judge was scheduled to hear two trials, two status hearings, and two review hearings. In addition, the trial from the preceding day had to be completed.

When the court called the first trial scheduled at 9:30 that morning, the attorneys and social workers stepped forward. There was an attorney from OCC, a social worker, an attorney for the child (a *guardian ad litem* or GAL), an attorney for the mother, and an attorney for the father. The attorney for the mother was substituting for the attorney who had been appointed by the Court but who had never actually appeared in the case, or returned the phone calls of the father's attorney or the GAL. The substitute attorney had only recently learned of his role in the case. The child was not residing with either parent. The man alleged to be the father of the child was denying paternity but could not be tested because he was in jail in another jurisdiction. The social worker had not been able to perform her job because the mother, who had previously spent time in a psychiatric hospital, refused to participate in the court-ordered psychological evaluation. Despite the judge's gentle but firm admonishment and warning as to how it might affect the decision as to whether her child returned to her custody, the mother refused to participate saying she had already been evaluated once, she did not have mental problems, and she had to work. Since the trial from the preceding day had to be finished, the case was continued for several weeks. Simply rescheduling the case took twenty minutes of Court time.

As the first case was being rescheduled, the judge received an emergency telephone call from a third party caretaker of a child in the system. After taking the call, the judge learned that the caretaker was about to be evicted from her apartment. The judge tried to calm down the caretaker and asked the courtroom clerk to call the social worker to give the caretaker assistance.

When the Court called the second trial, present were an attorney for OCC, two social workers, the GAL, the father and his attorney, and the mother. The mother's attorney was not present and the mother had been unable to reach him. He is also her attorney in the case of another child she and the father have in the system. The Court could not proceed without the mother's attorney present. The case was passed by the Court in the hope that the mother's attorney could be located and a new hearing date set. This case was before the court for approximately ten minutes.

The first status hearing took approximately ten minutes. The child in question had been shot in a drive-by shooting two nights before. The mother was in the Superior Court lock-up because she had been arrested the night before. The child's grandmother was the long-time

official custodian of the child, but had only just learned of the shooting. The child's condition was unknown. Present for the status hearing were the attorney from OCC, the grandmother's attorney, the mother's attorney and the GAL. The case was rescheduled for six days later.

The first case called for a review hearing was delayed because the mother's attorney was not present and the father was expected to appear at the hearing but had not arrived. Present in the courtroom for this review hearing were the GAL, the foster mother and her attorney, the mother, the father's attorney, the father's wife, an adult child of the mother, several social workers, and several witnesses. The case would be called again later in the day.

In the second case called for a review hearing, the facts were devastating but a permanent placement was achieved for the child. The child suffers from sickle cell anemia, but no longer has legal immigration status. The child's father lives in a war-torn third world country. Her parents hoped she would receive better medical treatment in the U.S. She had been living with her mother and an uncle before the uncle was accused of sexually abusing her. Present in the courtroom for the hearing were the attorney for OCC, a court social worker, a CFSA social worker, the GAL, the mother's attorney, the accused uncle's attorney, the father's attorney, the aunt who was the current caretaker and her attorney, the uncle who hoped to become the child's custodian so she could move to the jurisdiction where her mother now lives and works, and the social worker, nurse and art therapist from the local hospital where the child has received treatment for several years. The child's immigration status and need for health insurance were critical issues. There was also an issue of whether the father had consented to an adoption by the accused uncle, and whether he consented to the other uncle having custody. The case was before the Court for twenty-five minutes before it was clearly established that all the relevant parties consented to the second uncle having custody, that the immigration issue was resolved, and that the child would have health insurance through the uncle. The parties and counsel left the courtroom to prepare a consent order for the judge to sign. The case would be called again when the consent order was ready.

As for the trial that started the day before, the attorney from OCC had not finished presenting her evidence to the Court. A total of fifteen witnesses were expected to testify. Approximately half of those witnesses had already testified. At issue in the case was the alleged abuse of a teenage mentally retarded child whose mother had put her in the care of a family friend more than ten years earlier. The child's mother has an alcohol problem and her father has

been in and out of jail. The family friend cared for the child until her death at which point her adult child began to care for the mentally retarded child. It is this caretaker who is accused of abuse and neglect. This trial was scheduled to resume at 10:30 a.m.

This is what unfolded before one judge, in one hour, on one random day in D.C. Superior Court. These were not even some of the more difficult cases. Imagine, if you would, what the other hours of that day are like and all of the other days that came before and that will certainly follow.

It is admirable that the Subcommittee is willing to tackle this problem. We urge it to tread gently in reforming the Family Division of the Superior Court. Family cases, particularly abuse and neglect cases, are extremely complex. They are intellectually and emotionally challenging for all of the individuals involved. The Court is only one small part of the entire system. Reforming the Court will not solve the underlying societal problems that lead to the abuse and neglect of our city's children, nor will it create more permanent homes for the children in need. A judge can only do so much to protect children and families. Dedicated as they are, the judges cannot prevent abuse and neglect, or create permanent homes for the children affected by it. Until we have adequate mental health services, educational and job training programs, residential drug and alcohol treatment programs where parents can bring their children, and effective employment programs, we cannot hope to solve this problem.

Respectfully submitted,

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Margaret J. McKinney
Co-chair, Family Law Section
District of Columbia Bar

EXHIBIT A

Comments of the Family Law Section of the D.C. Bar on HR 2657, D.C. Family Court Act

Section 11-902(d), page 3, line 5: We suggest inserting "may" instead of shall at the end of the section. The use of "shall" may frustrate the goal of one judge/one family because it could prevent cases from moving from the DV Unit to the Family Court even if other actions related to the family are pending in the Family Court. It could also prevent cases from moving from the DV Unit to the Criminal Division.

Section 11-908A(a), page 5, lines 12 through 19: The limit on the number of judges, both a minimum and maximum, is unduly restrictive. Congress should not limit the discretion of the Chief Judge to manage the Court effectively by tying his hands with respect to the assignment of judges to the Family Court. With changes in population and cultural phenomena, there may be a need for more than 15 judges or significantly less.

Section 11-908A(c), page 6, lines 11 through 14: As we have consistently stated, for all of the reasons set forth in the written testimony submitted to this Subcommittee, the Family Law Section believes three years should be the maximum mandatory length of assignment for new judges. It would also be reasonable for all judges to receive credit for previous service in the Family Division since this will allow the Family Court to benefit from the more experienced judges in several years when there are vacancies in the Court.

Section 3(b) Plan for Family Court Transition, Subparagraphs (1)(I), (2), and (3), page 10, line 5: We suggest inserting the phrase "abuse or neglect" before "actions and proceedings" in each subparagraph. This will limit the analysis by the Chief Judge to abuse and neglect proceedings. Otherwise, the Chief Judge would be expected to report on all other types of proceedings in the Family Division, such as divorces, child support/paternity, mental health, juvenile and other matters. This would be extremely burdensome. It would expand the Court's job from an analysis of approximately 4,500 cases to more than 30,000. It would also prevent the 18-month time limit from applying to divorces, child support/paternity and other matters that are not subject to the same time limits as abuse and neglect cases.

Subparagraph 2, page 10, line 22: We suggest inserting the phrase "abuse or neglect" before actions.

Subparagraph 2, page 11, lines 3 through 7: The limitation of 18 months to close all pending cases in the Family Division (approximately 30,000 divorce, custody, child support, mental health, juvenile, abuse or neglect) is not necessarily in the best interest of the children. The entire subparagraph (2) should apply only to abuse or neglect actions and should not require all such cases to close within 18 months. The law should provide for reasonable exceptions to the 18-month closure rule. We suggest that the phrase "to the greatest extent practicable, feasible and lawful" be inserted at the end of line 7.

Subparagraph 3, page 11, lines 11 and 17: We suggest inserting "abuse or neglect" between each and action. We suggest inserting "unless to do so would delay permanency" at the end of line 17.

Section 11-1104(b), page 20, line 15: We suggest inserting "or if the matter or proceeding is not an abuse or neglect proceeding, for good cause."

Section 9, Effective Date, page 37: We suggest revising this section to state that the act shall become effective when the number of judges deemed necessary under the transition plan are available to be assigned to the Family Court. It must also be clear, whether in the statute or the legislative history, that Congress does not intend the act to become effective before the physical space and other necessities are available for the Family Court. Certainly, Congress does not intend for the act to become effective and thousands of children's cases to be transferred to the Family Court before the infrastructure is sufficient to handle the cases.

The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

EXHIBIT B

Comments of the Family Law Section of the D.C. Bar on S. 1382 D.C. Family Court Act

Section 11-902(d), page 2, line 21: The bill states that the Family Court shall have "original" jurisdiction over the actions described in D.C. Code Section 11-1101, which includes domestic violence actions which are currently heard in the Domestic Violence Unit (DV Unit). Unlike the House bill, it does not specifically address the DV Unit or allow actions that would otherwise be in the Family Court to proceed in the Unit. We understand that the intent of the drafters was to allow the DV Unit to remain outside the Family Court, without making a specific exception in the statute. Although technically this language should be effective to allow DV cases to proceed outside the Family Court, it conflicts with and is undermined by Section 11-1101 (page 15, line 19) which states that actions under D.C. Code Section 11-1101 "shall be assigned" to the Family Court. According to the language in Section 11-1101, the court would be required to assign DV actions to the Family Court. In addition to revising the language on page 15 (see below), it would be prudent to add language to the "Jurisdiction Described" section on page 2 specifically authorizing the continuation of the DV Unit and the continued movement of cases between the DV Unit and the Family Court as necessary.

Section 11-908A(a)(1), page 5, line 3: The limit on the number of judges, both a minimum and maximum, is unduly restrictive. The Senate should not limit the discretion of the Chief Judge to manage the Court effectively by tying his hands with respect to the assignment of judges to the Family Court. For example, this provision would prevent the Court from ever bringing other relevant actions into the Family Court because it would not be able to add additional judges to handle the additional cases. It also prevents a decrease in the number of judges even if the caseload decreases significantly. This could cause severe problems if there were too many judges assigned to the Family Court and not enough assigned, for example, to the Criminal Division. There are other, less burdensome, ways that the Senate could provide oversight of the Court to prevent having too many or too few judges on the Family Court at any given time. For example, the annual reporting requirement would allow the Senate to determine whether there were sufficient judges (or too many) on the Family Court without the Court having to seek amendment of this legislation in order to address changes in case loads.

Section 3, Appointment and Assignment of Judges; general: The bill does not provide for the one-time appointment of judges in excess of the general statutory limit in order to have sufficient judges in the Family Division. The Family Law Section believes it is necessary to provide for the one-time appointment of additional judges to the Family Court in excess of the statutory limit. It is unlikely that there will be a sufficient number of judges currently on the bench who would be available to fill the Family Court given the other requirements set forth in the bill. Moreover, given the historical pattern of judicial appointments, it is extremely unlikely that there are enough judges currently on the Court who will bring significant prior experience as family law practitioners to the Family Court. Having enough qualified and enthusiastic judges is crucial to the functioning of the Family Court. The bill as currently written would undermine the Family Court's ability to function at its best.

Section 11-908A(b)(4), page 6, lines 5 and 6: Linking the qualifications of judges to the provisions relevant to magistrate judges in this manner would severely restrict the ability of the Chief Judge to assign judges to the Family Court. If Section 11-1731A(3) were strictly interpreted, none of the current judges would qualify for the Family Court since they are currently judges and, therefore, have not been engaged in the active practice of law, on faculty of a law school, or employed as a "lawyer" by the U.S. or D.C. government for the 5 years immediately preceding the appointment. Most of the current judges would not qualify for the requirement of 3 years "of training or experience in the practice of family law" immediately prior to appointment. Those who qualify may not volunteer for service on the Family Court because they would not be given credit for previous time in the Family Division and would have to commit for 3 years. In combination with the failure to provide the Court the ability to exceed the cap for one-time appointments to fill the Family Court, this would effectively prohibit the Family Court from becoming functional. However, appointing 15 new judges would not be a good solution either. It is important that the Family Court have seasoned judges, with or without family law experience, as well as experienced family law practitioners. The provision for training or expertise in Section 11-908A(b)(1) should be sufficient to ensure that judges are properly qualified to sit in the Family Court while providing the Court with the flexibility necessary to maintain the functionality of the Family Court. We believe it would be best to delete the new subparagraph (4) from page 6.

Section 11-908A(c), page 6, lines 18: As we have consistently stated, the Family Law Section believes three years should be the maximum mandatory length of assignment for judges.

Section 11-1101(a), page 15, lines 18 through 20: The provision undermines the DV Unit since it states that all of the enumerated actions, including DC Code 11-1101(12) (civil proceedings for protection), "shall be assigned" to the Family Court. This language appears to require that all such actions be assigned to the Family Court, which would nullify the DV Unit.

Section 11-1732A(b)(3)-(4), Page 31: If paragraphs (3) and (4) are included in the final legislation, it should be made clear that service as a hearing commissioner would count toward the 5 year and 3 year requirements.

The views expressed herein represent only those of the Family Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.



Memorandum October 16, 2001

TO: Honorable Tom DeLay
Attention: Cassie Bevan

FROM: Johnny H. Killian
Senior Specialist, American Constitutional Law
American Law Division

SUBJECT: Separation of Powers Issues in re D. C. Family Court Bill

This memorandum is submitted pursuant to your request that we review H. R. 2657, 107th Congress (S. 1382, the companion bill) to evaluate the concerns expressed by some that certain provisions of the bill may violate the constitutional doctrine of separation of powers. The bill would create within the D. C. Superior Court a Family Court, replacing the Family Division of the Superior Court, and it contains particular provisions dealing with the terms of service, the transition to the Family Court, and the development of a transition plan for the transfer of the functions of the Family Division to the Family Court. As we understand, some objections, or at least, concerns, have been raised whether separation of powers constraints would be violated by the following matters: 1) the bill's provision of a fixed term for Family Court judges; 2) the transfer of all family law cases pending in the Superior Court at the time of enactment of the bill to the new Family Court; and 3) the requirement that the Superior Court's implementation plan be reported to Congress and the President and not become effective until 30 days after the date of the submission.

In brief, and dealing only with the bill's provisions that are subject to objection or concern, the proposed legislation would provide that the Family Court's judgeships be filled by assignment by the Chief Judge of the Superior Court for a term of three years. An incumbent judge may be reassigned for subsequent terms under appropriate circumstances. The three-year period would be reduced by the length of time an assignee had served in the Family Division of the Superior Court. As already indicated, all family law cases pending upon the effective date of enactment would be transferred to the Family Court expeditiously. As for the transition plan, it would be developed by the Chief Judge of the Superior Court and submitted to Congress and the President within 90 days of enactment. The plan could not be implemented until the expiration of 30 days after the submission.

We briefly state the tests used in separation of powers analysis, turn to the contrasts between Article III and Article I courts, and then examine the provisions.

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As we will discuss below, it does not appear that any of the bill's provisions that are referenced would raise separation of powers concerns within the doctrinal precedents of the Supreme Court. However, just to fix the parameters of the debate, we note here that the Court has not been entirely consistent in its formulation of separation of powers principles, but in general it can be said that the Court has, in parallel lines of cases, followed a strict approach, a formalist adherence to doctrine, and a less strict approach, a functional analysis to separation. The formalist analysis emphasizes the necessity to maintain three distinct branches of government through the drawing of bright lines demarcating the three branches from each determined by the differences among legislating, executing, and adjudicating. The functional approach emphasizes the core functions of each branch and asks whether the challenged action threatens the essential attributes of the legislative, executive, or judicial function or functions. In more recent times, the Court appears to have subscribed more to the latter approach.

But, in any event, we believe that under either approach the provisions of this bill would be sustained by the courts; that is, it does not appear that, judged from the text of the Constitution, the historical practice, or the judicial precedents, any of the bill's provisions sufficiently implicate a congressional incursion into the province of the judiciary to require application of the two tests to which we have referred. To explain this conclusion, we first treat some general structural and historical matters dealing with the kind of court that the D. C. Superior Court is and that the Family Court would be.

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Even were it the case that the "judicial power" of the United States was left pure and committed to "Article III courts," that is, to courts whose judges were constitutionally guaranteed security of tenure and compensation, those courts exercising the judicial power would not be hermetically sealed off from congressional legislation. Article III is a spare provision and leaves much to Congress to fill in. The number of Supreme Court Justices is not specified, leaving to Congress the power to fix the number. The Court is guaranteed only a limited amount of jurisdiction, "original jurisdiction," that is not subject to congressional specification; most of the High Court's jurisdiction is appellate, and it is subject to such exceptions and to such regulation as Congress shall make. Article III, sec. 2, parag. 2. The Constitution does not create lower federal courts, but leaves it to Congress from time to time to ordain and establish. Article I, sec. 8, cl. 9, and Article III, sec. 1. Rules of procedure for the federal court system are subject to congressional provision. More elaboration is possible, but the additional matters would be only tangential to those issues that concern us.

Separation of powers doctrine imposes considerable constraints on Congress. It cannot enlarge the Supreme Court's original jurisdiction, *Marbury v. Madison*, 1 Cr. (5 U.S.) 137 (1803), and Congress may not disturb the final judgment of any federal court. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). Congress may not impose nonjudicial duties on Article III courts, such as the obligation to issue advisory opinions, *Muskrat v. United States*, 219 U.S. 346 (1911), and it may not subject court decisions to nonjudicial review before they become effective. *Hayburn's Case*, 2 Dall. (2 U.S.) 409 (1792). But nothing in the bill implicates these or other barriers.

What is critically involved, instead, is the fact that the judicial power of the United States is not or may not be confined to Article III courts. It was established long ago, in a Chief Justice Marshall opinion, that Congress could create in the territories federal courts that were staffed by judges without good behavior tenure or security of compensation. *American Insurance Co. v. Canter*, 1 Pet. (26 U.S.) 511 (1828). Congress and the Court were faced with a dilemma. The territories were temporary entities, on the way to statehood; it would be imprudent to confer life tenure on federal judges in the territories. But, if federal judicial power can be conferred on non-Article III courts, on "Article I courts," or "Article IV courts" (named after the territorial clause), or "legislative courts," then could the reason for guaranteeing federal judicial independence be avoided and subverted simply by giving judicial power to courts that could be made less independent or even subservient?

That question has haunted our jurisprudence ever since, but it has not been much of an actual problem, even as the number of non-Article III judges has substantially exceeded the number of Article III judges. Thus, magistrate judges and bankruptcy judges have been created as adjuncts of Article III trial courts, not without constitutional and political controversy. E.g., *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). Special legislative courts, such as Veterans Appeal and the Tax Court, have been created. Administrative Law Judges exercise federal judicial power. But, most critical and most distinctive for our purposes are the judges of the District of Columbia.

For many years, the courts of the District of Columbia were treated as some sort of hybrid, sometimes considered to be legislative courts, *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929), and sometimes as Article III courts. *O'Donoghue v. United States*, 289 U.S. 516 (1933). Even as Article III courts, they were considered hybrids, able to perform functions other Article III courts could not, on the theory that in creating them Congress was exercising both federal powers and the authority of a local legislature. Id., 535-46. Finally, in 1970, Congress enacted the present structure, a set of Article III courts and a set of courts equivalent to state and territorial courts, created pursuant to Article I. To constitutional challenges claiming that litigants as to local law issues were as entitled as anyone else to a hearing before an Article III judge, the Court, in *Palmore v. United States*, 411 U.S. 389 (1973), upheld Congress' authority to endow D. C. courts with both federal judicial power and non-constitutional status. The Court held that Congress has the power of a local legislature and may pursuant to Article I, sec. 8, cl. 17, vest jurisdiction to hear matters of local law and local concern in courts not having Article III characteristics. See also *Pernell v. Southall Realty Co.*, 416 U.S. 363, 365 (1974); *Swain v. Pressley*, 430 U.S. 372 (1977); *Key v. Doyle*, 434 U.S. 59 (1978).

The D. C. Superior Court, thus, is a legislative court. No doubt there are constitutional limitations growing out of separation of powers and due process that govern how far Congress may go in acting in regard to them. No doubt exists, for instance, that Congress could not reach in and reverse the result of a final decision of the Superior Court. But, as we hope to demonstrate below, none of the noted provisions in the bill under consideration can be deemed to approach the line.

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We are now ready to consider the three questioned items.

First, it is suggested that the fixing of three year terms for judges serving on the Family Court would violate separation of powers. Why this result might eventuate has not been

explained or argued, and it is difficult to construct a theory that would enable a court to reach that result. Every Article I or legislative court that we have examined is staffed with judges who are appointed or designated for a term of years. That fact is one of the two critical differences between Article III and Article I courts. Congress, when it creates an Article III court, does not and cannot affix a term to the office, because Article III judges serve during good behavior, that is, for life, subject only to impeachment. If Congress creates an Article I court, it must specify a term, else it has stamped the office with an indicia of a constitutional court. If it does not specify a term, the judges of that court will serve indefinitely. Now, at least with respect to the Family Court, there would be a limit, because Superior Court judges, from whose ranks Family Court judges are drawn, serve for only 15 years, so that in fact Family Court judges could not serve beyond their terms as Superior Court judges.

What is the rationale of the possible argument? Congress has authorized Superior Court judges who will serve 15 year terms; they are appointed by the President with the advice and consent of the Senate. Is there some reason why, then, it would be argued that the Chief Judge of the Superior Court, who is charged with designating Family Court judges, cannot be limited to appointing them for no more than three years? It cannot be anything in the appointments clause, Article II, sec. 2, parag. 2, because the Chief Judge of the Superior Court does not exercise his authority pursuant to this clause, although he might well be empowered to do so, cf. *Freytag v. CIR*, 501 U.S. 868 (1991), though, *quaere*, are Superior Court judges (inferior) officers of the United States? In any event, the Chief Judge merely designates them for service on the Family Court.

The real nub of the problem, when one seeks to make the argument, is that it is difficult, if not impossible, to make the argument that the Chief Judge's power to designate is judicial, so that Congress could not limit it. Clearly, he is not exercising a judicial power but rather an executive power. Congress may confer that authority because the Superior Court, as a legislative court, and its judges may be invested with powers other than purely judicial, as the Supreme Court has many times noted. Even if the designating power were judicial, why should the Chief Judge's power trump Congress' legislative power? The President, after all, when appointing Superior Court judges, is exercising a quintessential executive power, and Congress can nonetheless limit those judges to 15 year terms.

Unless, therefore, Congress has been acting unconstitutionally for most of the last 200 years, the specification of terms for legislative courts cannot violate separation of powers. Even if we apply one or the other of the tests spelled out above for separation of powers analysis, what is it about this position or the exercise of the power to designate that it is so within core or general judicial powers as to activate the judicial censor?

Second, the argument that Congress' specification that the family cases pending in the Superior Court at the time of enactment be transferred to the Family Court violates separation of powers seems to rest on a foundation that will not support such a contention. Someone has to decide what happens to cases that are pending when legislatively enacted changes in courts or in the jurisdiction of the courts occurs. Perhaps, Congress could vest in the Superior Court or in the Chief Judge the authority to make that determination. But if it decides to make the decision itself, what raises a difficulty? Is the decision to transfer or not to transfer pending cases a judicial function or an administrative function? Moreover, in all the instances of which we are aware, when Congress has abolished a court, as in the old Commerce Court, or merged and consolidated courts, as in the creation of the Court of Appeals for the Federal Circuit to take over the jurisdiction of the Court of Customs and

rules. The history may not be determinative, but in the absence of an argument founded on separation of powers theory, it would seem that proponents of the argument of invalidity bear a heavy burden.

Third, little difference appears to attach to the argument that the provision relating to the transition plan violates separation of powers. The Chief Judge of the Superior Court is to develop the plan within 90 days and submit it to Congress and the President. No implementation of the plan may be essayed until 30 days have elapsed from the reporting. Now, what is the separation of powers problem?

This provision incorporates the typical "report and wait" provision that for decades has existed in the Rules Enabling Acts. The Supreme Court is specifically authorized to prescribe rules of procedure for the lower federal courts in civil and criminal actions, including rules of evidence, and in bankruptcy. 29 U.S.C. secs. 2072, 2075. When the Court promulgates rules, or amendments to them, it reports them to Congress and must wait 90 days before putting them into operation. During this period, Congress has occasionally altered the rules or enacted variations in them, and Congress as well has enacted amendments to rules that have gone into effect. If Congress chooses to act in either circumstance, it must legislate, that is a bill must pass both Houses of Congress and be presented to the President. If Congress purported to veto the rules, by action of one House or both, that would be unconstitutional, under *INS v. Chadha*, 462 U.S. 919 (1983). But the bill does not purport to authorize Congress so to act; it merely copies the Rules Enabling Acts' "report and wait" provisions.

Congressional delegation to the Supreme Court of the power to make rules traces back to a law enacted in 1793. When that delegation was challenged in the Supreme Court, the Court, through Chief Justice Marshall, upheld it in *Wayman v.Southard*, 10 Wheat. (23 U.S.) 1 (1825). Chief Justice Marshall wrote that the rule making power was a legislative function and that Congress could have formulated the rules itself, but he denied that the delegation was impermissible.

Is there any reason to doubt that the development of the transition called for in the bill is likewise a legislative function that Congress would delegate to the Chief Judge of the Superior Court? So what part of the provision could be deemed unconstitutional? Precedent would seem to be firmly on the side of validity.

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On the basis of the constitutional text, of the historical practice, and of judicial precedent, we have examined the questioned provisions of the bill. While it is certainly possible that those who find problems with the bill may have identified some supposed flaw that we have failed to identify, it seems to us that the three provisions we were asked to examine fall well within the area of permissible constitutional discretion of Congress.

Testimony of State District Judge Scott McCown of Texas
Supporting a Family Court for the District of Columbia
June 2001

The District of Columbia Family Court Act of 2001 proposes significant changes in how the Superior Court of the District of Columbia adjudicates family cases. My perspective on the proposed act may be useful to you from two vantage points. First, as a state district judge with general jurisdiction, including family cases, I understand the judicial management issues with which you are grappling. Second, I have lived through legislatively mandated court reform in family law, and I can explain why mandated reform is often necessary and how it made me a better judge in a better court.

The Need for a Family Court

Let me begin with the central issue. I have concluded, after many years as a judge, and after much study as a member of my state's Court Improvement Project, that in urban areas, children and families are best served by a court in which one judge specializing in family law hears each family case from beginning to end. I want to be quick to say that this model has not been adopted in every urban jurisdiction in my state, not even my own. I think, however, that I can convincingly explain to you why it should be.

To begin with, I offer the circumstances of the first child death on my docket, which is tragically reminiscent of the recent death of Brianna Blackmond in the District. Over ten years ago, I was a committed, young judge with fancy legal credentials on a general civil jurisdiction docket, but I had no training or experience in family law. Under our system, in the normal course of events, I was assigned to hear a case brought by Texas Child Protective Services in the interest of a young boy who was about two-years old.

His mother's boyfriend had beaten him. CPS was recommending that I place him in foster care. After hearing the evidence, which included that the mother had a job, her own place to live, had separated from her boyfriend, and was willing to attend protective parenting classes, I returned the child to the mother. A short time later, CPS was back before me because the boy had again been beaten—not by the old boyfriend, but by a new boyfriend. At this hearing, the father appeared and asked for custody. He had a job, a home, and a fiancé. He was willing to take parenting classes. CPS again asked that I place the child in foster care, but I instead placed the boy in his father's care. Then one morning a few weeks later, as I came into the office, I was met by the child's guardian ad litem who said to me, "Judge, I have some bad news." The bad news was that the father's fiancé had killed this two-year old boy.

What was my role in this child's death? I have often reflected on that question. I know I was not a trained and experienced family law judge. A trained and experienced family law judge would have understood that children from chaotic homes where they have been abused can be particularly difficult to parent; these children can act out in

ways that create abnormal stress for inexperienced caregivers who then further abuse them. A trained and experienced family law judge would have moved more slowly and required a more careful home assessment of the father and his fiancé. I now know that making good decisions about families requires more than common sense; it requires a great deal of expert knowledge.

Of course, no judge however expert can guarantee the safety of the children on the judge's docket. Judges must make difficult decisions about children on often little or unclear evidence. When doing so, judges must balance the strengths and weaknesses of various placements, including safety risks, and determine what is in the best interest of the child. Sometimes tragedy will follow even when the judge makes the best decision possible. Even so, from my experience, I have come to the certain conclusion that a trained and experienced judge specializing in family law and presiding over a family law case from beginning to end can obtain a better outcome.

At this point, I need to define some terms. In judicial administration, judges refer to "family courts" and "unified family courts."[1] The distinction is important. A family court is a court hearing only family cases. Different jurisdictions with family courts will divide family cases differently between various "dockets" or "calendars." Some jurisdictions will have less division than others. In any given jurisdiction, however, one family with multiple cases may find itself before multiple judges. For example, one judge may hear a child support case, while another judge hears a child

[1] The history and theory of family courts, including unified family courts, are thoroughly discussed by Judge Robert Page in Page, *"Family Courts" An Effective Judicial Approach to the Resolution of Family Disputes*, 44 Juvenile & Family Court Journal 1 (1993).

abuse case, while yet another judge hears a domestic violence case, all involving the same family.

A unified family court is a court hearing only family cases using a "one-judge, one-family" model. Under the "one-judge, one-family" model, a single judge presides over all the family law issues of a family from the beginning until the end. To offer the most complex example: For one nuclear family, a unified family court judge would decide all applications for protective orders regarding family violence, all complaints of child maltreatment, any divorce and custody case between the mother and father, all questions of child support, and, if the child were removed from the parents, the same judge would decide about termination of parental rights, guardianship, and adoption. Some models go a step further by having the judge also hear any juvenile delinquency case involving a child of the family or any criminal case of a parent regarding a crime within the family such as domestic violence or child abuse.

So, a "unified family court" can be more or less unified depending upon the choices of a particular jurisdiction. In a unified family court, the system does not parcel out questions about the family between judges in different courts or between judges on different calendars. This does not necessarily mean that the system does not have branches. The court may still organize by logical branches since most families will find themselves before only one branch such as child support or child abuse. Regardless in

what branch a case begins, however, a single judge will hear and resolve all the legal issues of the family.[2]

The advantages to judicial decision-making of the unified family court are significant. A single trained and experienced judge who specializes in family law learns all about the family and develops a coordinated plan for the family, including the delivery of social services. A modern family court does more than just adjudicate; a modern family court determines what services a family needs, such as substance abuse treatment, and both orders the use of services and oversees compliance. (A modern family judge is one part cheerleader and one part referee. Because of the need to be a cheerleader, not every good judge can be a good family judge.)

To be clear, the District does not have anything approaching a unified family court, and a harsh critic might go so far as to say it does not have a family court of any sort. The District's "family division" operates on a "slice-and-dice" model. The problems of a family are sliced by dividing issues between various "calendars," each heard by a different judge, and then to compound the problem, the calendars are diced by rotating the judge on each calendar frequently, and then diced yet again by frequently rotating judges out of the family division altogether.[3]

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[2] My personal experience with a unified family court comes from my special assignment to hear half of all the CPS cases filed in our county. When CPS files a case in our county, we treat the family in a unified way. One judge hears all issues, including divorce, child support, domestic violence, termination of parental rights, and any issues of guardianship or adoption. As long as the child remains a dependent of the court, the same judge hears the child's case, so I have been responsible for some children for ten years. We have recently added the issue of delinquency to the unified court, though we do not hear criminal cases. If I am unavailable, another judge may hear a lengthy contested termination trial, though the case remains my responsibility going forward

[3] In child maltreatment cases, when a child cannot be returned to the family, but adoption or permanent guardianship has not been achieved, the judge keeps the case when the judge rotates out of the family

The Importance of Specialization, Training, and Experience

Frequently rotating judges is problematic because specialization is important in law just as it is in medicine. Like medicine, law grows increasingly complex. For example, we know more now than in the past about family dynamics, child development, child maltreatment, domestic violence, mental health/mental retardation, and substance abuse, and since we know more, our laws – and the public – require us to do more. In the highly complex area of family law, to achieve the level of competence necessary to be effective, a judge must specialize in family law. Of course, specialization has its disadvantages, just as generalization has its advantages. In an urban area, however, given the number and complexity of the cases, on balance, specialization is both necessary and desirable.

With specialization come the advantages of training and experience. Of course, every judge has to hear their first case, but no judge should hear family cases without training and experience in family law. The decisions made on the family docket are some of the most profound decisions made by any judges. Understanding family law and families is essential to being a capable family law judge. Preferably, judges should learn through training rather than from their mistakes on the bench. Moreover, quality

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division. The proposed act calls for these cases to be returned to the family court; the superior court wants to leave them with the judge familiar with the case. In my judgment, these cases need to be collected before one judge so that progress in permanency can be the responsibility of a judge current in best practices and available services and whose performance can be measured. These advantages offset any familiarity with the case. Moreover, your child welfare agency has limited resources, and it would be much more efficient for the agency to answer to fewer judges.

training will teach a judge far more than years on a bench. Like training, experience improves decision-making. The more one sees, the more one knows. Both training and experience, however, require an investment of time.

The Importance of a Five-Year Term

The proposed legislation ensures that judges stay in a family court for a significant period of time—at least five years. A significant period of time is required for three different but equally important reasons.

First, a significant period of time is necessary to realize the advantages of the training and experience just discussed. It is helpful to look at the issue in percentages of time. Training and experience are the investment you make in a judge. In my judgment, the point at which training and experience become valuable is about two years. In other words, it takes about two years for a judge to take the courses and hear the cases necessary to become a seasoned decision-maker.

To realize your investment in training and experience, you must therefore have a term longer than two years. If the judge's term is no more than three years, however, you have spent 66% of the time investing in the judge and only 34% of the time realizing your investment. If the judge's term is only four years, you have spent 50% of the time investing in the judge and only 50% of the time realizing your investment. At the five-year mark, you finally get ahead. If the judge's term is at least five years, you

have spent 44% of the time investing in the judge and 56% of the time realizing your investment.

Second, staying in the family court for a significant period is necessary to achieve the decision-making advantages of having a single judge. Keep in mind that rotating a case from judge to judge has the same effect as rotating the case from calendar to calendar or court to court. To put it simply, to have the advantages of "one judge" you must have one judge.

But why do you have to have the same judge for five years? The reason is again related to time. To illustrate: Assume that the average length of a case is one year. If a judge has a term of one year, the judge will hear few cases to a conclusion because litigants will have filed new cases each day throughout the year. If the judge has a term of two years, the judge can at best hear half of the cases to conclusion (50%). If a judge has a term of three years, the judge can at best hear two-thirds of the cases to a conclusion (66%). If a judge has a term of four years, the judge can at best hear three-fourths of the cases to a conclusion (75%). If a judge has a term of five years, however, the judge can hear four-fifths of the cases to a conclusion (80%). Thus, for the greatest number of children and families to achieve the advantage of a unified family court, the term needs to be at least five years.

Finally, a term of five years is important as a test of commitment—sort of like the difference between being married and living together. You want judges who propose to marry the family court, not who offer to just shack up. But again, why five years? Because a lawyer that wants to be a superior court judge, but not a family court judge, is

likely to see doing three years as a family judge with a rotation to another division as a reasonable price to pay for an appointment to the bench (20% of the fifteen-year term), while the same lawyer is unlikely to see five years as a reasonable price to pay (33% of the fifteen-year term). Whoever applies for an appointment to the superior court, knowing that they will serve for at least five years on the family court, is simply more likely to be a family law practitioner who is committed to children and families.

Quality Judges

Some have argued, however, that you cannot find enough judges willing to make a five-year commitment to the family court, and some have suggested that you cannot find enough quality judges among family law practitioners. Both arguments are demonstrably wrong. In the urban jurisdictions of our country, we do not have a shortage of quality applicants for family courts. Furthermore, many fine judges have come from the ranks of family law practitioners.

Moreover, even if it were true that family law practitioners are somehow less able as a class than say corporate lawyers, it is a strange sort of logic that would have us looking for family judges among corporate lawyers. Again, consider an analogy from medicine. A child's general medical needs are best met by a doctor who is trained as a pediatrician and cares about children; a child's general medical needs are unlikely to be well met by a hot-shot heart surgeon, even if the surgeon is a whole lot "smarter" in some abstract way than the pediatrician, particularly if the hot-shot really doesn't care to treat the child.

Judicial "Burnout"

Some have nevertheless argued that serving for five years on the family court will result in "burnout," so judges should serve only three years or even less. "Burnout" means that a judge becomes so worn down by the work that the judge stops making good decisions. The concern about burnout, however, is misplaced for three reasons.

First, the argument is demonstrably wrong. In many urban jurisdictions, judges sit on family benches as difficult as those in the District for their entire careers and continue to make good decisions. We know family judges can work without burnout because we have many of them doing so across the country.

Second, like the argument about quality judges, the argument about burnout is based on a strange sort of logic. We want to avoid judicial burnout because burnout leads to bad decisions. But if your plan is to frequently rotate judges through family court to avoid judicial burnout, then your plan leaves you with the very problem you are trying to avoid – judges who make bad decisions.

Third, and most important, the argument is wrong because it misunderstands the cause of judicial burnout. The cause of judicial burnout is not the number or difficulty of the cases; the cause of judicial burnout is failure at one's work – a feeling of hopelessness about the task. A committed judge with training and experience who sits in a specialized family court doing good work draws deep satisfaction from helping children and families. While such a judge may eventually tire and seek a new assignment, the judge is not likely to do so in a mere five years.

Judicial Leadership

A unified family court is about more than just child welfare cases, but I want to focus for a moment on child welfare. Recently, much study has been done and many steps have been taken to address the issues of the child welfare system in the District. In light of all that has been done and all that remains to be done outside the court, some have suggested that now is not the time for judicial reform. To the contrary, now is the critical time. Nothing in the child welfare system works if the court does not work, so reforming the court is essential for the success of other reforms.

Moreover, by mandating strong judicial oversight of the system through a unified family court, you will empower judges to become community leaders. In this role, judges will work with each part of the public-private partnership that composes the child welfare system to help identify and solve problems.[4] Judicial oversight will also enable you to track how and where the child welfare system is failing. While judicial reform alone is not enough, it is required now.[5]

Separation of Powers

Some have suggested, however, that Congress should leave judicial improvement to the bench and bar. Some have even suggested that to do otherwise would be "unusual." Unfortunately, in the area of family law, legislative action is not only the usual way for reform, usually it is the only way for reform. There are inherent

[4] For further information about judicial leadership in child welfare, see The National Council of Juvenile and Family Court Judges, *Judicial Leadership and Judicial Practice in Child Abuse Cases*, 2 Technical Assistance Bulletin 5 (July 1998).

[5] The District's children live especially precarious lives. About 100,000 children live in the District. About 36% live in poverty. About 20% live in extreme poverty. About 35% of all children under five live in poverty. The median family income of families with children is about two-thirds of the national average (not quite $29,000). The percentage of female-headed families receiving child support is about

barriers to the judiciary creating a unified family court. Such a change potentially affects 1) what lawyers will become judges and 2) how many judges will be available to hear what cases. For judges, these questions are internal and external political hot potatoes.

Moreover, creating a unified family court will allocate more judicial resources toward low-income families. Low-income families have little political influence, particularly with regard to judicial administration. Even though judges want to do right by low-income families, it is politically difficult both internally and externally for judges to allocate resources toward low-income families. For these reasons, if change is going to happen, the legislative branch must cause it.

Legislatively Mandated Change in Texas

I myself have lived through legislatively mandated reform. In 1996, Governor Bush, now President Bush, appointed the Governor's Committee to Promote Adoption. He charged the committee specifically with looking at judicial barriers to adoption in the child welfare system. From the work of this committee[6] and others, significant legislative reform emerged in 1997 that imposed a schedule for hearings and timelines for disposition much more stringent than the federal Adoption and Safe Families Act. Like many judges, I thought we were already doing a good job and was appalled that the legislature did not leave judging to judges.

13% compared to the national average of 34%. *See* The Annie E. Casey Foundation, 2000 Kids Count Data Book. Given such conditions, numerous and complex cases will come before the court.

[6] Report of the Governor's Committee To Promote Adoption (September 1996).

However, the challenge of implementing the new legislation intrigued me. The legislation took effect for new cases on January 1, 1998. The judges and others worked hard to implement the legislation. In my county, since January 1, 1998, no CPS case has taken more than eighteen months from start to final order, and the overwhelming number have taken less than twelve months. In those cases where appropriate, the court terminates parental rights on average within ten months of removing a child from a parent. We achieve adoption, on average, in twenty months—not twenty more months, but twenty months from removing the child from a parent. In those cases where appropriate, the court establishes a guardianship with a relative or the state on average within ten months of removing a child from a parent. Our courts, however, are not termination mills. In those cases where appropriate, which is about 50% of the time, we return children to a parent, after providing services for the family, on average within nine months. About 25% of the time, we place a child with a relative. About 15% of our children are adopted, and we raise about 10%.

Judicial Responsibility

The reason a judge working in a unified family court can make such a difference is that the structure of the court both requires and empowers the judge to take personal responsibility for the children and families on the judge's docket. On my CPS docket, I am responsible for what happens and when it happens. Making responsibility personal substantially improves performance, particularly when performance is measured. None of us, judges included, like to have our performance measured. Yet, nothing

changes unless you measure it. With a unified family court, you place responsibility on an individual and you measure performance. By doing so, you achieve results.

A unified family court can achieve results in the District. The District's problems are not overwhelming. To the contrary, the District is a small place with many resources. In my single county, we have more than twice as many children as in the District and more children living in poverty, but through legislative reform, we have eliminated our child welfare case backlog and met stringent disposition time tables. Through legislative reform, you can do the same in the District.

Home Rule

As an outsider, I venture with great trepidation into any discussion of home rule. Because I am an outsider, however, my dispassionate perspective may be helpful: As I have explained, only the legislative branch can make the sort of change proposed. In a state, the legislature would make such a change. In a city, the council would make such a change. In the District, however, Congress controls the court. Some argue that this is good for the District because of the prestige and funding it brings the court. Some argue that it would be better for the District to have control of its court because of legitimacy and responsiveness. Regardless of which is true, the reality is that right now the Congress is responsible for the court. The court should not escape effective legislative oversight as sort of a no-man's land in the struggle over home rule. Nor should children and families—mostly low-income families—be caught in the cross fire between opponents and proponents of home rule.

Conclusion

In this unique moment, the District has the opportunity to obtain something truly meaningful for its residents, particularly its children. By embracing the unified family court and deploying the resources that would come with the proposed legislation, the judges of the superior court would be able to do much good. Judges, like others, are naturally resistant to change and naturally hesitant to assume responsibility for the problems of children and families. With the legislative mandate of the District of Columbia Family Court Act of 2001, however, I am confident the judges will rise to meet the challenge. Both they and you will be proud of the results. While I might have an issue with a detail here or there, I strongly support passage of this landmark legislation.

Respectfully submitted,

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J.Carter
ELC: APPROPRIATIONS UPDATE

THIS WEEK

Interior: in Full Committee tomorrow

- Close to a CBO freeze level, but is $800 million over the President's request. RSC is agitated, but the bill will pass overwhelmingly. We may have an ANWR fight in committee or on the floor.

Ag: in Full Committee tomorrow - complicated by potential riders.

- Dairy (Walsh): the Speaker is going to try to dissuade him and Ag subcommittee, the Administration and our offices (Speaker's and DeLay's) are working the vote.

- Emergency funds for apples (Walsh): we're trying to steer him toward Combest, who's marking up the Mandatory Emergency bill on Thursday. Combest won't commit to helping him, though, because he's pressured by OMB (and Leadership) to stay to a $5.5 billion limit.

- Cuba (Serrano): we're working with the Administration to implement regulations from last year's compromise, which will help us defeat it.

Supplemental: in Full Committee Thursday

- Offsets: the House appropriators have questionable offsets, including a rescission of $360 million of FY02 advance appropriations for Department of Labor: Employment and Training Administration Training and Employment Services and $389 million emergency funding for FEMA to offset emergency spending for fire and floods.

- Spending: House and Senate (Byrd) Appropriators have committed to OMB to hold to $6.5 billion. The House has included bizarre programs not requested by the Administration, including a hold harmless on Title I education funds and allowing DC to use local funds for traffic cameras.

NEXT WEEK

Energy & Water: in Subcommittee next week

- Missouri River rider: will be included in mark, prohibiting funds to make changes to the Corp's Missouri Water River Control manual. Clinton vetoed the E&W bill over this language last year - the enviros want to increase the flow during springtime, which could create flood danger.

Transportation: in Full Committee next week

- No CAFÉ standards - the Administration was supportive of the inclusion of this language but the industry apparently wants it out.

Steamrolling the Superior Court

WHEN CONGRESS decides to legislate on the District of Columbia's courts, the views of the chief judge and 59 judges of the D.C. Superior Court don't seem to count much. At least that is the case with respect to the Family Court Reform Act of 2001, the legislative brainchild of House Majority Whip Tom DeLay (R-Tex.) and Del. Eleanor Holmes Norton (D-D.C.). The bill, which ostensibly creates a family court within the D.C. Superior Court, has sailed through the House and is now on a fast track in the Senate despite reservations of D.C. Council members, the D.C. bar and the court. Before rushing to the yeas and nays, senators at today's Government Affairs Committee hearing should pause to consider the city's objections.

Critics of the DeLay-Norton bill are not at odds with the sponsors over the need to reform the way the Superior Court handles child abuse and neglect cases. Tragic accounts of children in the District's custody have sparked widespread calls for change in the city's child welfare system and the courts. Both sides agree on the need to better train judges and staff, create a better court information system, upgrade standards for attorneys and appoint more judges and staff with expertise in family law and child protection. But critics part company with the bill's far-reaching changes—changes, they contend, that will set back, rather than advance the court's capacity to protect abused and neglected children.

The bill, for example, would immediately transfer roughly 4,500 family cases from the court's 59 judges—who are familiar with the children's needs and the circumstances of their families—to new and inexperienced magistrate judges. Such an abrupt transfer of complex cases involving troubled children will degrade rather than improve service to vulnerable children and their families. Likewise, the bill eliminates the court's domestic violence unit, which many consider an effective vehicle for comprehensively addressing civil, criminal and family issues. And without producing compelling evidence to support their position, the bill's sponsors would require new judges to serve a minimum of five years in family court. That risks judicial burnout, the judges say. A minimum term of three years strikes a better balance between terms that are too short and lengthy fixed assignments that discourage well-qualified judges and lawyers from stepping forward for family court service. Critics support their position with credible data.

The DeLay-Norton bill also micromanages the court. It sets a floor on the number of family division judges. Hence, the chief judge is prevented from assigning family court judges to the criminal division even if an emergency arises. And if a judge is unsuitable for family court work but wants the assignment anyway? The judge must be seated under the bill—the chief judge would be prohibited from making an alternate assignment.

That is not the way to reform the court's family division. The Senate can make the bill better. It should.

Washington Post
10/25/01

IIB

107TH CONGRESS
1ST SESSION

H. R. 2657

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2001
Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Family Court Act of 2001".

SEC. 2. REDESIGNATION OF FAMILY DIVISION AS FAMILY COURT OF THE SUPERIOR COURT.

(a) IN GENERAL.—Section 11–902, District of Columbia Code, is amended to read as follows:

"§ 11–902. Organization of the court.

"(a) IN GENERAL.—The Superior Court shall consist of the Family Court of the Superior Court and the following divisions of the Superior Court:

"(1) The Civil Division.

"(2) The Criminal Division.

"(3) The Probate Division.

"(4) The Tax Division.

"(b) BRANCHES.—The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.

"(c) DESIGNATION OF PRESIDING JUDGE OF FAMILY COURT.—The chief judge of the Superior Court shall designate one of the judges assigned to the Family Court of the Superior Court to serve as the presiding judge of the Family Court of the Superior Court.

"(d) JURISDICTION DESCRIBED.—The Family Court shall have exclusive jurisdiction over the actions, applications, determinations, adjudications, and proceedings described in section 11–1101, except that those actions within the jurisdiction of the Domestic Violence Unit (a section of the Civil Division, Criminal Division, and the Family Court) pursuant to Administrative Order No. 96–25 (October 31, 1996) shall remain in that Unit.".

(b) CONFORMING AMENDMENT TO CHAPTER 9.—Section 11–906(b), District of Columbia Code, is amended by inserting "the Family Court and" before "the various divisions".

(c) CONFORMING AMENDMENTS TO CHAPTER 11.—(1) The heading for chapter 11 of title 11, District of Columbia, is amended by striking "FAMILY DIVISION" and inserting "FAMILY COURT".

(2) Section 11–1101, District of Columbia Code, is amended by striking "Family Division" and inserting "Family Court".

(3) The item relating to chapter 11 in the table of chapters for title 11, District of Columbia, is amended by striking "FAMILY DIVISION" and inserting "FAMILY COURT".

(d) CONFORMING AMENDMENTS TO TITLE 16.—

(1) CALCULATION OF CHILD SUPPORT.—Section 16–916.1(o)(6), District of Columbia Code, is amended by striking "Family Division" and inserting "Family Court of the Superior Court".

(2) EXPEDITED JUDICIAL HEARING OF CASES BROUGHT BEFORE HEARING COMMISSIONERS.—Section 16–924, District of Columbia Code, is amended by striking "Family Division" each place it appears in subsections (a) and (f) and inserting "Family Court".

(3) GENERAL REFERENCES TO PROCEEDINGS.—Chapter 23 of title 16, District of Columbia Code, is amended by inserting after section 16–2301 the following new section:

"§ 16–2301.1. References deemed to refer to Family Court of the Superior Court.

"Upon the effective date of the District of Columbia Family Court Act of 2001, any reference in this chapter or any other Federal or District of Columbia law, Executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Family Division of the Superior Court of the District of Columbia shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.".

(4) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 23 of title 16, District of Columbia, is amended by inserting after the item relating to section 16–2301 the following new item:

"16–2301.1. References deemed to refer to Family Court of the Superior Court.".

SEC. 3. APPOINTMENT AND ASSIGNMENT OF JUDGES; NUMBER AND QUALIFICATIONS.

(a) NUMBER OF JUDGES FOR FAMILY COURT; QUALIFICATIONS AND TERMS OF SERVICE.—Chapter 9 of title 11, District of Columbia Code, is amended by inserting after section 11–908 the following new section:

"§ 11–908A. Special rules regarding assignment and service of judges of Family Court.

"(a) NUMBER OF JUDGES.—The number of judges serving on the Family Court of the Superior Court at any time may not be—

"(1) less than the number of judges determined by the chief judge of the Superior Court to be needed to serve on the Family Court under the transition plan for the Family Court prepared and submitted to the President and Congress under section 3(b) of the District of Columbia Family Court Act of 2001; or

"(2) greater than 15.

"(b) QUALIFICATIONS.—The chief judge may not assign an individual to serve on the Family Court of the Superior Court unless—

"(1) the individual has training or expertise in family law;

"(2) the individual certifies to the chief judge that the individual intends to serve the full term of service, except that this paragraph shall not apply with respect to individuals serving as senior judges under section 11–1504; and

"(3) the individual certifies to the chief judge that the individual will participate in the ongoing training programs carried out for judges of the Family Court under section 11–1104(c).

"(c) TERM OF SERVICE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an individual assigned to serve as a judge of the Family Court of the Superior Court shall serve for a term of 5 years.

"(2) SPECIAL RULE FOR JUDGES SERVING ON SUPERIOR COURT ON DATE OF ENACTMENT OF FAMILY COURT ACT.—

"(A) IN GENERAL.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge of the

Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of not fewer than 3 years.

"(B) REDUCTION OF PERIOD FOR JUDGES SERVING IN FAMILY DIVISION.—In the case of a judge of the Superior Court who is serving as a judge in the Family Division of the Court on the date of the enactment of the District of Columbia Family Court Act of 2001, the 3-year term applicable under subparagraph (A) shall be reduced by the length of any period of consecutive service as a judge in such Division as of the date of the enactment of such Act.

"(3) ASSIGNMENT FOR ADDITIONAL SERVICE.—After the term of service of a judge of the Family Court (as described in paragraph (1) or paragraph (2)) expires, at the judge's request the judge may be assigned for additional service on the Family Court for a period of such duration (consistent with section 431(c) of the District of Columbia Home Rule Act) as the chief judge may provide.

"(4) PERMITTING SERVICE ON FAMILY COURT FOR ENTIRE TERM.—At the request of the judge, a judge may serve as a judge of the Family Court for

the judge's entire term of service as a judge of the Superior Court under section 431(c) of the District of Columbia Home Rule Act.

"(d) REASSIGNMENT TO OTHER DIVISIONS.—The chief judge may reassign a judge of the Family Court to any division of the Superior Court if the chief judge determines that the judge is unable to continue serving in the Family Court.".

(b) PLAN FOR FAMILY COURT TRANSITION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall prepare and submit to the President and Congress a transition plan for the Family Court of the Superior Court, and shall include in the plan the following:

(A) The chief judge's determination of the number of judges needed to serve on the Family Court.

(B) The chief judge's determination of the role and function of the presiding judge of the Family Court.

(C) The chief judge's determination of the number of magistrate judges of the Family

Court needed for appointment under section 11–1732, District of Columbia Code.

(D) The chief judge's determination of the appropriate functions of such magistrate judges, together with the compensation of and other personnel matters pertaining to such magistrate judges.

(E) A plan for case flow, case management, and staffing needs (including the needs for both judicial and nonjudicial personnel) for the Family Court.

(F) A description of how the Superior Court will meet the requirements of section 11–1104(a), District of Columbia Code (as added by section 4(a)), regarding the promulgation of rules to enforce the "one family, one judge" requirement for cases and proceedings in the Family Court.

(G) An analysis of the needs of the Family Court for space, equipment, and other physical plant requirements, as determined in consultation with the Administrator of General Services.

(H) An analysis of the success of the use of magistrate judges under the expedited appointment procedures established under section

6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia, as amended by subsection (a)).

(I) Consistent with the requirements of paragraph (2), a proposal and timetable for the disposition of actions and proceedings pending in the Family Division of the Superior Court as of the date of the enactment of this Act (together with actions and proceedings described in section 11–1101, District of Columbia Code, which were initiated in the Family Division but remain pending in other Divisions of the Superior Court as of such date) in a manner consistent with applicable Federal and District of Columbia law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(2) DISPOSITION AND TRANSFER OF PENDING ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court shall take such actions as may be necessary to provide for the earliest practicable disposition of actions and proceedings pending in the

Family Division of the Superior Court as of the date of the enactment of this Act (together with actions and proceedings described in section 11–1101, District of Columbia Code, which were initiated in the Family Division but remain pending in other Divisions of the Superior Court as of such date), but in no event may any such action or proceeding remain pending longer than 18 months after the date the chief judge submits the transition plan required under paragraph (1) to the President and Congress.

(3) TRANSFER OF ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court shall take such steps as may be required to ensure that each action or proceeding within the jurisdiction of the Family Court of the Superior Court (as described in section 11–902(d), District of Columbia Code, as amended by subsection (a)) which is pending as of the effective date described in section 9 is transferred or otherwise assigned to the Family Court immediately upon such date.

(4) EFFECTIVE DATE OF IMPLEMENTATION OF PLAN.—The chief judge of the Superior Court may not take any action to implement the transition plan under this subsection until the expiration of the 30-day period which begins on the date the chief judge

submits the plan to the President and Congress under paragraph (1).

(c) TRANSITION TO APPROPRIATE NUMBER OF JUDGES.—

(1) ANALYSIS BY CHIEF JUDGE OF SUPERIOR COURT.—The chief judge of the Superior Court of the District of Columbia shall include in the transition plan prepared under subsection (b)—

(A) the chief judge's determination of the number of individuals serving as judges of the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court under section 11–908A, District of Columbia Code (as added by subsection (a)); and

(B) if the chief judge determines that the number of individuals described in subparagraph (A) is less than the number of individuals the chief judge is required to assign to the Family Court under such section, a request that the President appoint (in accordance with section 433 of the District of Columbia Home Rule Act) such additional number of individuals to serve on the Superior Court who meet the qualifications for judges of the Family Court under such section as may be required to enable

the chief judge to make the required number of assignments.

(2) ONE-TIME APPOINTMENT OF ADDITIONAL JUDGES TO SUPERIOR COURT FOR SERVICE ON FAMILY COURT.—If the President receives a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B), the President (in accordance with section 433 of the District of Columbia Home Rule Act) shall appoint additional judges to the Superior Court who meet the qualifications for judges of the Family Court in a number equal to the number of additional appointments so requested by the chief judge, and each judge so appointed shall be assigned by the chief judge to serve on the Family Court of the Superior Court.

(3) ROLE OF DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION.—For purposes of section 434(d)(1) of the District of Columbia Home Rule Act, the submission of a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B) shall be deemed to create a number of vacancies in the position of judge of the Superior Court equal to the number of additional appointments so requested by the chief judge.

In carrying out this paragraph, the District of Columbia Judicial Nomination Commission shall recruit individuals for possible nomination and appointment to the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court.

(4) JUDGES APPOINTED UNDER ONE-TIME APPOINTMENT PROCEDURES NOT TO COUNT AGAINST LIMIT ON NUMBER OF SUPERIOR COURT JUDGES.—Any judge who is appointed to the Superior Court of the District of Columbia pursuant to the one-time appointment procedures under this subsection for assignment to the Family Court of the Superior Court shall be appointed without regard to the limit on the number of judges of the Superior Court under section 11–903, District of Columbia Code. Any judge who is appointed to the Superior Court under any procedures other than the one-time appointment procedures under this subsection shall count against such limit, without regard to whether or not the judge is appointed to replace a judge appointed under the one-time appointment procedures under this subsection or is otherwise assigned to the Family Court of the Superior Court.

(d) REPORT BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall prepare and submit to Congress and the chief judge of the Superior Court of the District of Columbia a report on the implementation of this Act (including the effect of the transition plan under subsection (b) on the implementation of this Act), and shall include in the report the following:

(A) An analysis of the procedures used to make the initial appointments of judges of the Family Court under this Act and the amendments made by this Act, including an analysis of the time required to make such appointments and the effect of the qualification requirements for judges of the Court (including requirements relating to the length of service on the Court) on the time required to make such appointments.

(B) An analysis of the impact of magistrate judges for the Family Court (including the expedited initial appointment of magistrate judges for the Court under section 6(d)) on the workload of judges and other personnel of the Court.

(C) An analysis of the number of judges needed for the Family Court, including an analysis of how the number may be affected by the qualification requirements for judges, the availability of magistrate judges, and other provisions of this Act or the amendments made by this Act.

(D) An analysis of the timeliness of the resolution and disposition of pending actions and proceedings required under the transition plan (as described in subsection (b)(1)(I) and (b)(2)), including an analysis of the effect of the availability of magistrate judges on the time required to resolve and dispose of such actions and proceedings.

(2) SUBMISSION TO CHIEF JUDGE OF SUPERIOR COURT.—Prior to submitting the report under paragraph (1) to Congress, the Comptroller General shall provide a preliminary version of the report to the chief judge of the Superior Court and shall take any comments and recommendations of the chief judge into consideration in preparing the final version of the report.

(e) ONGOING REPORTS ON PENDING CASES AND PROCEEDINGS.—

(1) IN GENERAL.—The chief judge of the Superior Court of the District of Columbia shall submit a status report to the President and Congress on the disposition of actions and proceedings pending in the Family Division of the Superior Court as of the date of the enactment of this Act (together with actions and proceedings described in section 11–1101, District of Columbia Code, which were initiated in the Family Division but remain pending in other Divisions of the Superior Court as of such date) and the extent to which the Court is in compliance with the requirements of this Act regarding the timetable for the disposition of such actions and proceedings.

(2) TIMING OF REPORTS.—The chief judge of the Superior Court shall submit the report required under paragraph (1) not later than 6 months after submitting the transition plan under subsection (b) and every 6 months thereafter until the final disposition or transfer to the Family Court of all of the actions and proceedings described in such paragraph.

(f) CONFORMING AMENDMENT.—The first sentence of section 11–908(a), District of Columbia Code, is amended by striking "The chief judge" and inserting "Subject to section 11–908A, the chief judge".

(g) CLERICAL AMENDMENT.—The table of sections for chapter 9 of title 11, District of Columbia Code, is amended by inserting after the item relating to section 11–908 the following new item:

"11–908A. Special rules regarding assignment and service of judges of Family Court.".

SEC. 4. IMPROVING ADMINISTRATION OF CASES AND PROCEEDINGS IN FAMILY COURT.

(a) IN GENERAL.—Chapter 11 of title 11, District of Columbia, is amended by adding at the end the following new sections:

"§ 11–1102. Use of alternative dispute resolution.

"To the greatest extent practicable and safe, cases and proceedings in the Family Court of the Superior Court shall be resolved through alternative dispute resolution procedures, in accordance with such rules as the Superior Court may promulgate.

"§ 11–1103. Standards of practice for appointed counsel.

"The Superior Court shall establish standards of practice for attorneys appointed as counsel in the Family Court of the Superior Court.

"§ 11–1104. Administration.

"(a) 'ONE FAMILY, ONE JUDGE' REQUIREMENT FOR CASES AND PROCEEDINGS.—

"(1) IN GENERAL.—The Superior Court shall promulgate rules for the Family Court which require all issues within the jurisdiction of the Family Court concerning one family or one child to be decided by one judge, to the greatest extent practicable, feasible, and lawful.

"(2) SPECIFIC REQUIREMENTS.—Under the rules promulgated by the Superior Court under paragraph (1), to the greatest extent practicable, feasible, and lawful—

"(A) if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned; and

"(B) if an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate

judge to whom the individual's initial action or proceeding is assigned.

"(b) RETENTION OF JURISDICTION OVER CASES.—Any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed. If the judge to whom the action or proceeding is assigned ceases to serve on the Family Court prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court, unless there are extraordinary circumstances, subject to approval and certification by the presiding judge and based on appropriate documentation in the record, which demonstrate that a case is nearing permanency and that changing judges would both delay that goal and result in a violation of the Adoption and Safe Families Act of 1997 (or an amendment made by such Act).

"(c) TRAINING PROGRAM.—

"(1) IN GENERAL.—The presiding judge of the Family Court shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court, other judges of the Superior Court, and appropriate nonjudicial per-

sonnel, and shall include in the program information and instruction regarding the following:

"(A) Child development.

"(B) Family dynamics.

"(C) Relevant Federal and District of Columbia laws.

"(D) Permanency planning principles and practices.

"(E) Recognizing the risk factors for child abuse.

"(F) Any other matters the presiding judge considers appropriate.

"(2) USE OF CROSS-TRAINING.—The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

"(d) ACCESSIBILITY OF MATERIALS, SERVICES, AND PROCEEDINGS; PROMOTION OF 'FAMILY-FRIENDLY' ENVIRONMENT.—

"(1) IN GENERAL.—To the greatest extent practicable, the chief judge of the Superior Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the

Court, and that the Court carries out its duties in a manner which reflects the special needs of families with children.

"(2) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

"(e) INTEGRATED COMPUTERIZED CASE TRACKING AND MANAGEMENT SYSTEM.—The Executive Officer of the District of Columbia courts under section 11–1703 shall work with the Joint Committee on Judicial Administration in the District of Columbia—

"(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under section 4(c) of the District of Columbia Family Court Act of 2001;

"(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

"(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

"§ 11–1105. Social services and other related services.

"(a) ON-SITE COORDINATION OF SERVICES AND INFORMATION.—

"(1) IN GENERAL.—The Mayor of the District of Columbia, in consultation with the chief judge of the Superior Court, shall ensure that representatives of the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) are available on-site at the Family Court to coordinate the provi-

sion of such services and information regarding such services to such individuals and families.

"(2) DUTIES OF HEADS OF OFFICES.—The head of each office described in paragraph (1), including the Superintendent of the District of Columbia Public Schools and the Director of the District of Columbia Housing Authority, shall provide the Mayor with such information, assistance, and services as the Mayor may require to carry out such paragraph.

"(b) APPOINTMENT OF SOCIAL SERVICES LIAISON WITH FAMILY COURT.—The Mayor of the District of Columbia shall appoint an individual to serve as a liaison between the Family Court and the District government for purposes of subsection (a) and for coordinating the delivery of services provided by the District government with the activities of the Family Court and for providing information to the judges, magistrate judges, and nonjudicial personnel of the Court regarding the services available from the District government to the individuals and families served by the Court. The Mayor shall provide on an ongoing basis information to the chief judge of the Superior Court and the presiding judge of the Family Court regarding the services of the District government which

are available for the individuals and families served by the Family Court.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Mayor of the District of Columbia for each fiscal year such sums as may be necessary to carry out this section.

"§ 11–1106. Reports to Congress.

"Not later than 90 days after the end of each calendar year, the chief judge of the Superior Court shall submit a report to Congress on the activities of the Family Court during the year, and shall include in the report the following:

"(1) The chief judge's assessment of the productivity and success of the use of alternative dispute resolution pursuant to section 11–1102.

"(2) Goals and timetables to improve the Family Court's performance in the following year.

"(3) Information on the extent to which the Court met deadlines and standards applicable under Federal and District of Columbia law to the review and disposition of actions and proceedings under the Court's jurisdiction during the year.

"(4) Information on the progress made in finding and utilizing suitable locations and space for the Family Court.

"(5) Information on any factors which are not under the control of the Family Court which interfere with or prevent the Court from carrying out its responsibilities in the most effective manner possible.

"(6) Based on outcome measures derived through the use of the information stored in electronic format under section 11–1104(d), an analysis of the Court's efficiency and effectiveness in managing its case load during the year, including an analysis of the time required to dispose of actions and proceedings among the various categories of the Court's jurisdiction, as prescribed by applicable law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

"(7) If the Court failed to meet the deadlines, standards, and outcome measures described in the previous paragraphs, a proposed remedial action plan to address the failure.".

(b) EXPEDITED APPEALS FOR CERTAIN FAMILY COURT ACTIONS AND PROCEEDINGS.—Section 11–721, District of Columbia Code, is amended by adding at the end the following new subsection:

"(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals and shall be certified by the appellant.".

(c) PLAN FOR INTEGRATING COMPUTER SYSTEMS.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Mayor of the District of Columbia shall submit to the President and Congress a plan for integrating the computer systems of the District government with the computer systems of the Superior Court of the District of Columbia so that the Family Court of the Superior Court and the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court of the Superior Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) will be able to access and share information on the individuals and families served by the Family Court.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Mayor of the District of Columbia such sums as may be necessary to carry out paragraph (1).

(d) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, District of Columbia Code, is amended by adding at the end the following new items:

"11–1102. Use of alternative dispute resolution.
"11–1103. Standards of practice for appointed counsel.
"11–1104. Administration.
"11–1105. Social services and other related services.
"11–1106. Reports to Congress.".

SEC. 5. TREATMENT OF HEARING COMMISSIONERS AS MAGISTRATE JUDGES.

(a) IN GENERAL.—

(1) REDESIGNATION OF TITLE.—Section 11–1732, District of Columbia Code, is amended—

(A) by striking "hearing commissioners" each place it appears in subsection (a), subsection (b), subsection (d), subsection (i), subsection (l), and subsection (n) and inserting "magistrate judges";

(B) by striking "hearing commissioner" each place it appears in subsection (b), subsection (c), subsection (e), subsection (f), subsection (g), subsection (h), and subsection (j) and inserting "magistrate judge";

(C) by striking "hearing commissioner's" each place it appears in subsection (e) and subsection (k) and inserting "magistrate judge's";

(D) by striking "Hearing commissioners" each place it appears in subsections (b), (d), and (i) and inserting "Magistrate judges"; and

(E) in the heading, by striking "**Hearing commissioners**" and inserting "**Magistrate Judges**".

(2) CONFORMING AMENDMENTS.—(A) Section 11–1732(c)(3), District of Columbia Code, is amended by striking ", except that" and all that follows and inserting a period.

(B) Section 16–924, District of Columbia Code, is amended—

(i) by striking "hearing commissioner" each place it appears and inserting "magistrate judge"; and

(ii) in subsection (f), by striking "hearing commissioner's" and inserting "magistrate judge's".

(3) CLERICAL AMENDMENT.—The item relating to section 11–1732 of the table of sections of chapter 17 of title 11, D.C. Code, is amended to read as follows:

"11–1732. Magistrate judges.".

(b) TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.—Any individual serving as a hearing commissioner under section 11–1732 of the District of Columbia Code as of the date of the enactment of this Act shall serve the remainder of such individual's term as a magistrate judge, and may be reappointed as a magistrate judge in accordance with section 11–1732(d), District of Columbia Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a hearing commissioner prior to the effective date of section 11–1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6. SPECIAL RULES FOR MAGISTRATE JUDGES OF FAMILY COURT.

(a) IN GENERAL.—Chapter 17 of title 11, District of Columbia Code, is amended by inserting after section 11–1732 the following new section:

"§ 11–1732A. Special rules for magistrate judges of Family Court of the Superior Court.

"(a) USE OF SOCIAL WORKERS IN ADVISORY MERIT SELECTION PANEL.—The advisory selection merit panel used in the selection of magistrate judges for the Family Court of the Superior Court under section 11–1732(b) shall include certified social workers specializing in child welfare matters who are residents of the District and who are not employees of the District of Columbia Courts.

"(b) SPECIAL QUALIFICATIONS.—Notwithstanding section 11–1732(c), no individual shall be appointed as a magistrate judge for the Family Court of the Superior Court unless that individual—

"(1) is a citizen of the United States;

"(2) is an active member of the unified District of Columbia Bar;

"(3) for the 5 years immediately preceding the appointment has been engaged in the active practice of law in the District, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government, or any combination thereof;

"(4) has not fewer than 3 years of training or experience in the practice of family law; and

"(5) is a bona fide resident of the District of Columbia and has maintained an actual place of

abode in the District for at least 90 days immediately prior to appointment (or becomes a bona fide resident of the District of Columbia and maintains an actual place of abode in the District not later than 90 days after appointment), and retains such residency during service as a magistrate.

"(c) SERVICE OF CURRENT HEARING COMMISSIONERS.—Those individuals serving as hearing commissioners under section 11–1732 on the effective date of this section who meet the qualifications described in subsection (b)(4) may request to be appointed as magistrate judges for the Family Court of the Superior Court under such section.

"(d) FUNCTIONS.—A magistrate judge, when specifically designated by the presiding judge of the Family Court of the Superior Court, and subject to the rules of the Superior Court and the right of review under section 11–1732(k), may perform the following functions:

"(1) Administer oaths and affirmations and take acknowledgements.

"(2) Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the

Family Court of the Superior Court (as described in section 11–1101), excluding jury trials and trials of felony cases, as assigned by the presiding judge of the Family Court.

"(3) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

"(e) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, magistrate judges of the Family Court of the Superior Court shall conduct proceedings at locations readily accessible to the parties involved.

"(f) TRAINING.—The Family Court of the Superior Court shall ensure that all magistrate judges of the Family Court receive training to enable them to fulfill their responsibilities, including specialized training in family law and related matters.".

(b) CONFORMING AMENDMENTS.—(1) Section 11–1732(a), District of Columbia Code, is amended by inserting after "the duties enumerated in subsection (j) of this section" the following: "(or, in the case of magistrate judges for the Family Court of the Superior Court, the duties enumerated in section 11–1732A(d))".

(2) Section 11–1732(c), District of Columbia Code, is amended by striking "No individual" and inserting "Except as provided in section 11–1732A(b), no individual".

(3) Section 11–1732(k), District of Columbia Code, is amended—

(A) by striking "subsection (j)," and inserting the following: "subsection (j) (or proceedings and hearings under section 11–1732A(d), in the case of magistrate judges for the Family Court of the Superior Court),"; and

(B) by inserting after "appropriate division" the following: "(or, in the case of an order or judgment of a magistrate judge of the Family Court of the Superior Court, by a judge of the Family Court)".

(4) Section 11–1732(l), District of Columbia Code, is amended by inserting after "responsibilities" the following: "(subject to the requirements of section 11–1732A(f) in the case of magistrate judges of the Family Court of the Superior Court)".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 17 of title 11, District of Columbia, is amended by inserting after the item relating to section 11–1732 the following new item:

"11–1732A. Special rules for magistrate judges of Family Court of the Superior Court.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXPEDITED INITIAL APPOINTMENTS.—

(A) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall appoint not more than 5 individuals to serve as magistrate judges for the Family Division of the Superior Court in accordance with the requirements of sections 11–1732 and 11–1732A, District of Columbia Code (as added by subsection (a)).

(B) APPOINTMENTS MADE WITHOUT REGARD TO SELECTION PANEL.—Sections 11–1732(b) and 11–1732A(a), District of Columbia Code (as added by subsection (a)) shall not apply with respect to any magistrate judge appointed under this paragraph.

(C) PRIORITY FOR CERTAIN ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court and the presiding judge of the Family Division of the Superior Court (acting jointly) shall first assign and transfer to the mag-

istrate judges appointed under this paragraph actions and proceedings described as follows:

(i) The action or proceeding involves an allegation of abuse or neglect.

(ii) The action or proceeding was initiated in the Family Division prior to the 2-year period which ends on the date of the enactment of this Act.

(iii) The judge to whom the action or proceeding is assigned as of the date of the enactment of this Act is not assigned to the Family Division.

(3) SPECIAL REFERENCES DURING TRANSITION.—During the period which begins on the date of the enactment of this Act and ends on the effective date described in section 9, any reference to the Family Court of the Superior Court of the District of Columbia in any provision of law added or amended by this section shall be deemed to be a reference to the Family Division of the Superior Court of the District of Columbia.

SEC. 7. SENSE OF CONGRESS REGARDING BORDER AGREEMENT WITH MARYLAND AND VIRGINIA.

It is the sense of Congress that the State of Maryland, the Commonwealth of Virginia, and the District of

Columbia should promptly enter into a border agreement to facilitate the timely and safe placement of children in the District of Columbia's welfare system in foster and kinship homes and other facilities in Maryland and Virginia.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the District of Columbia courts such sums as may be necessary to carry out this Act and the amendments made by this Act, including sums necessary for salaries and expenses and capital improvements for the District of Columbia courthouse facilities.

SEC. 9. EFFECTIVE DATE.

The amendments made by sections 2 and 4 shall take effect on the first date occurring after the date of the enactment of this Act on which 10 individuals who meet the qualifications described in section 11–908A, District of Columbia Code (as added by section 3(a)) are available to be assigned by the chief judge of the Superior Court of the District of Columbia to serve as associate judges of the Family Court of the Superior Court (as certified by the chief judge).

Passed the House of Representatives September 20, 2001.

Attest: JEFF TRANDAHL,

Clerk.

RESPONSE TO QUESTION FROM SENATOR AKAKA SUBMITTED BY MR. DELAY

Sen. Akaka:

"You have been a strong advocate for protecting the District's children. We all appreciate your efforts. I understand that you support the one family/one judge concept, but feel that once a judge is transferred from the Family Court, he or she may no longer work on the case. Advocates for carrying over cases state that in some instances, the judge may be the only constant in the child's life and that by removing the judge, the child may be at risk. Could you comment on your position, particularly in light of the fear that removing the judge may hurt the child?

Response:

The judge should not be the only constant in a child's life. We want children to have families, not judges. Therefore, it is the role of the courts and the judges to find permanent placements for the children, either with birth parents or in an adoptive family. The fact that a judge is allowed to become the only constant in a child's life is a symptom to the problem of the failing courts.

Response to Questions from Senator Daniel K. Akaka Subsequent to the October 25, 2001 Hearing

Submitted by Chief Judge Rufus G. King III November 8, 2001

1. **The House Appropriations Committee has approved $18 million for the creation of a Family Court in DC and the Senate Appropriations Committee has recommended $23 million. I understand that the original request was for $46 million. With the vast difference between the amount approved and requested, what parts of current proposals before us today would be underfunded or would be postponed until additional funds are authorized?**

The D.C. Courts submitted a comprehensive plan for a reform of the Family Division of the Superior Court in May of 2001. A two-page budget was provided and is attached. This is an estimate of the full costs of implementing the plan. Approximately $13.5 million annually is needed for additional judges and staff. An additional, one-time cost of $32.5 million will be incurred to fund construction to house them and to provide space suitable for family friendly and safe operations. Thus the total costs to bring the Family Court to a fully operational status will be $46 million. Of that, we believe $23 million would be adequate for the first year to hire the first magistrate judges and to begin construction. If less than $23 million is made available in the first year, we will have to move more slowly with construction, and therefore would be delayed in completing the transition to the new Family Court. The full costs of additional personnel, additional space, an integrated case management system and the other requirements of the draft legislation have always been estimated at $46 million. This amount may be spread over two years, depending upon when we can start and whether GAO or other audits will be required.

If full funding is not provided over two years, and thereafter for recurring costs, the Court would have to postpone bringing existing family cases into the Family Court or risk handling them without the necessary judicial resources to assure the necessary oversight that safety of children and families requires.

2. **An integrated information system for the Superior Court of DC is a high priority so that all judges and magistrates have access to the information necessary to make the best decisions about placement and child safety. I understand that the Appropriations Committee has recommended $500,000 for the courts to begin implementation of the Integrated Justice Information System (IJIS). With the current funding level, how long will it take for the**

IJIS to become fully operational?

The $500,000 figure is in addition to $1,000,000 included in the President's budget and $1,200,000 in grant funding for the first year of the project. The Court has determined that with this funding, the Family Court module of the system can be installed as the first part of an overall system. The Court's plan is currently under review by the GAO, pursuant to a request from Congress. Once that review is completed and any issues are resolved, the Court anticipates it will be able to complete the Family Court system within fifteen months, including selection of a vendor. The Court anticipates a three-year implementation of the complete system, with each module becoming operational as it is installed.

3. You have stated that both the Senate and House versions of the legislation we are discussing today have little flexibility for court management administration. Could you please explain what situations may arise calling for the transfer of magistrates and judges and the strain that would be placed on the Court if such flexibility is not permitted?

The fundamental difficulty with regulating internal court operations by legislative mandates is that we do not know what specific problems may arise. As is true of any government entity, the Court must be ready to respond rapidly and effectively to changing circumstances.

Three types of problems are foreseeable at this time. First, caseloads change with changing social conditions. The District of Columbia could experience a resurgence of the crack epidemic of the eighties and early nineties. There could be an increase or a reduction in the number of abused and neglected children brought before the Court due to either a change in the occurrence of abuse and neglect in the community or a change in the procedures or effectiveness of CFSA interventions. Second, transfer of judicial officers may be necessary to meet short-term needs, resulting from such circumstances as mass arrests at demonstrations. For example, the IMF demonstrations that were expected this fall would likely have resulted in mass arrests. The Court, working with other criminal justice agencies, was able to plan the temporary assignment of extra judges to the Criminal Division to handle the hundreds of arraignments anticipated. Third, unplanned demands on judicial resources occur, requiring immediate, temporary response. Over the past several years, judges have been treated for cancer and other major illnesses. Judges and hearing commissioners have been absent on maternity or family leave or for extended training. These types of events can, and have, affected more than one judge at the same time, and when the Court has been at less than full strength due to retirements. When they occur, flexibility is needed to provide temporary coverage of the absent judges' caseloads. Lack of clear authority to respond to these different situations would impose severe difficulties on the Court's ability to manage its workload.

4. Going back to the issue of flexibility, my staff recently spoke with Judge Zeldon and Judge Satterfield about the use of magistrate judges in the

Family Court and hearing officers in the other divisions of the Superior Court. I understand that your hearing officers are excited about the new responsibilities that come with being a magistrate judge and are looking forward to it. Could you elaborate on the differing responsibilities of magistrate judges and hearing officers and whether hearing officers in other divisions of the Court should be given the same responsibilities as magistrate judges either out of necessity for performance of their duties or flexibility reasons?

Currently, the only limited jurisdiction judicial officers are hearing commissioners. Among the limitations on their authority, which are spelled out in § 1-1732 of the D.C. Code, the two most important are the consent requirement and the apparent lack of contempt power. As currently drafted, the bills remove these limitations on the authority only for magistrate judges sitting in Family Court. Absence of limited contempt power weakens the effectiveness of the court and the administration of justice if contemptuous conduct cannot be dealt with at the time it occurs. Requiring the parties' consent to trial by a judicial officer allows parties to delay resolution of cases while the matter is transferred to a judge.

Wet believe that sound management practice dictates that magistrate judges have the same authority wherever they sit. In order for the court to employ magistrate judges most effectively, they need to be able to handle all cases given to them by a judge, regardless of the consent of the parties and with at least limited contempt power to see that their orders are enforced. At the very least, the authority of magistrate judges must be made the same in the Domestic Violence Unit as in the Family Court. Differential limits on their authority would be especially troublesome there, where members of one family may be involved in cases of different types before one judicial officer. More generally, some of the concerns about flexibility in managing assignments of judges apply equally to assignment of magistrate-judges. Magistrate judges get ill, have medical and personal crises, or may need to be deployed to meet temporary changes in the work load, such as the IMF demonstrations. The drafts would appear to preclude a magistrate judge from temporarily covering criminal arraignments or new referrals in Family Court during emergencies. Uniform authority is needed to manage these predictable needs for temporary substitution.

The Court has serious concerns with the draft bills, and is grateful for the opportunity to discuss them at the hearing. We are also appreciative that much work has been ongoing in both the House and the Senate to address our concerns and improve the bills generally. I look forward to continuing to work with members of Congress and staff. If I may provide further information, please let me know.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION REFORM PLAN

RESOURCES
FOR CHILD ABUSE AND NEGLECT/PERMANENCY BRANCH REFORMS
(MAY 9, 2001)

Staffing (Recurring Costs)	
• Judges and Support Staff	
3 Judges (i.e., for additional calendars for: Neglect, Guardianships and Permanency in Neglect; TPR/Adoptions)	$ 539,772
3 Law Clerks	149,865
3 Judicial Secretaries	164,988
3 Courtroom Clerks	136,359
3 Calendar Clerks	111,474
Total (15):	$ 1,102,458
• Magistrate Judges and Case Management Teams (3 teams)	
9 Magistrate Judges	$ 1,489,770
3 Special Masters	326,853
3 Case Coordinators	164,988
2 Attorney Advisors	156,764
3 Law Clerks	149,865
6 Secretaries	272,718
9 Courtroom Clerks	409,077
9 Calendar Clerks	334,422
3 Calendar Coordinators	150,165
Total (47):	$ 3,454,622
• Family Court and ADR Support Staff	
2 Family ADR Case Managers	$ 99,910
2 File Clerks	53,626
1 Calendar Clerk	37,158
1 CCAN Reappointments Clerk	37,158
1 CCAN Eligibility Clerk	37,158
1 ADR Secretary	45,453
Total (8):	$ 310,463
• IT and Other Support Staff	
1 Database Administrator	$ 92,624 *
1 Applications Manager	78,382
1 Database Support/Programmer	78,382 *
1 Statistical Data Analyst	54,996
Total (4):	$ 304,384
Total Staffing (74) (Recurring)	**$ 5,171,927 ** **

Contractual and Other (Recurring Costs)	
• CCAN Rate Increase	$ 797,000 *
• IJIS Database Support and Maintenance	275,000 *
• Mediator Stipends ($100 per session; 2 sessions per case; 2,500 cases)	500,000 ***
• Mediator Training (Initial training for 30 new mediators per quarter)	50,000
• Training ($12,500 judicial and $3,500 staff per quarter)	60,000
• Rental Space for Staff Offices	6,074,000
• Security	284,000
• Supplies, Postage and Phone ($2,762 per employee per year)	204,388
Total Contractual and Other (Recurring)	**$ 8,244,388**
Subtotal, Recurring Costs	**$ 13,416,315**
Less $1,263,006 Recurring Costs included in D.C. Courts' FY 2002 Budget Request	**$12,153,309**
Space, Furnishings and Equipment (Non-Recurring Costs)	
• Construction of Courtrooms, chambers, in Building B	$ 14,450,000
• Capital Improvements in Buildings A & B	10,705,000 *
• Relocation Costs (e.g. furnishings, moving, cabling)	1,200,000
• Renovate space for Family Waiting Room ($23,750 financed with FY 2001 funds)	
• Chambers/Office Furnishings and Equipment ($3,000 per employee)	222,000
• Equipment	
5 Photocopiers at $10,000 each	50,000
5 Fax Machines at $750 each	3,750
• IJIS (Family Module: $2,600,000; Complete System: $7,100,000; minus $1,200,000 in grants)	5,900,000 ***
Total Space, Furnishings and Equipment (Non-Recurring)	**$ 32,530,750**
Less $15,305,000 Non-Recurring Costs included in D.C. Courts' FY 2002 Budget Request	**$17,225,750**
GRAND TOTAL	**$ 45,947,065**
Less $16,568,006 included in D.C. Courts' FY 2002 Budget Request	**$ 29,379,059**

* Included in D.C. Courts' FY 2002 Budget Request.
** Staffing costs reflect FY 2001 salary plus fringe benefits at 24% of salary.
*** Portion included in D.C. Courts' FY 2002 Budget Request: $20,000 for Mediator Stipends and $4,600,000 for IJIS (of which $1,500,000 plus grant funds are to be obligated in FY 2002 for the Family module).

Attachment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency

★ ★ ★

Office of the Director

December 4, 2001

The Honorable Daniel K. Akaka
c/o Ms. Julie Vincent Gunlock
Chief Clerk
Subcommittee on Oversight of Government Management,
Restructuring and the District of Columbia
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Akaka:

Please accept my apologies for this overdue response to your request for information about the District of Columbia's Child and Family Services Agency (CFSA). Thank you for your recent letter and for your interest in ensuring that reform efforts in the District of Columbia impacting children and families are coordinated across agencies. I too, share this concern and believe that Mayor Anthony A. Williams' leadership in ending CFSA court-ordered receivership, along with the District of Columbia's City Council's support, will help us achieve our mission to ensure safety, permanence and well-being for children in our care.

I believe we have a moment of opportunity today in the District to strengthen all facets of the child welfare system. This opportunity is due in large part to the work of Mayor Anthony A. Williams and the City Council to address a wide range of critical systemic deficits. For example:

- We were able to successfully transition out of Federal court receivership via a consent order agreed to by the Mayor and Plaintiffs.
- CFSA's budget increased by more than $30 million from FY2000 to FY2001.
- The District is currently implementing a major commitment to expansion and reform of the legal support provided to CFSA, with 40 new lawyers coming on board to support social workers.
- CFSA's enabling legislation required the unification of the child abuse and neglect systems, which we achieved on schedule on October 1, 2001, thus ending a fractured service delivery model identified as a barrier in providing effective services to families.

Olivia A. Golden, Director
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- The District has promulgated both foster and group home regulations which will make it possible to support and enforce high standards of quality.

Since my appointment as Director of CFSA on June 15, 2001, a number of significant steps have already been initiated in the process of overhauling the District's child welfare system. I have identified below the goals in our strategic plan that will guide our work in FY 2002 and some of the progress to date in reaching those goals. I believe this information will fulfill your request to determine what steps I feel must be taken to improve CFSA and what resources are needed to make this happen.

- **Recruit and Retain Social Workers**. The Agency must continue in its efforts to recruit and retain a sufficient number of social workers to keep caseloads at an acceptable level. Among the steps I have taken to get started in reaching this goal are: hired a management team to strategically plan and support the core case-carrying work of the Agency; developed a strategic plan that will guide our work in FY 2002; implemented a recruitment and retention plan; visited all of the local universities and colleges with MSW and BSW programs to seek partnerships in recruiting their graduates; hired part-time contract staff to assist with critically needed coverage, particularly in the evenings and on weekend; and secured concrete supports identified by staff as important to doing their job well and therefore to retention, including sufficient cars to make home visits as well as cell phones for case-carrying social workers.

- **Investigate Abuse and Neglect Reports.** A key part of our work over the summer in implementing the new legislation regarding the unification of abuse and neglect has been to work with the Metropolitan Police Department to develop policy and protocols for joint investigations and to provide extensive training on abuse investigations for our intake staff. We must continue to provide timely and high quality investigations of allegations of abuse and neglect in order to ensure children's safety. In addition, we will need to continue working on both training and policy development, as well as seeking to staff up further in the off-hours shifts to be able to ensure timely response.

- **Expedite Permanency for Children.** When children come into our system, we must continue to plan quickly for their future to ensure that they either return home or move to a permanent family if they cannot safely go home. We cannot leave children in the system for years without a permanent family, and we must fully involve family and community resources to make sure we are doing the best for our children.

- **Recruit and Retain Foster Homes**. We must increase the number of kinship, foster, and adoptive placements that meet the needs of our children, both by recruiting additional foster, adoptive and kinship homes and providing these parents with the supports they need to meet children's physical, mental health, educational and developmental needs. We have begun to work with Maryland with the goal of developing a border agreement that will make it easier and less bureaucratic for kinship and foster families to care for a child from the District if that is the

appropriate placement. We have also identified resources to assist families in the District with lead paint abatement, a critical issue for families who are able to provide foster care to a young child. In addition, we have published foster home regulations and the District's first-ever regulations governing group homes. On October 1, 2001, we began licensing and monitoring both foster and group home settings with the goal of supporting high quality services.

- **Promote Agency and Neighborhood-based Resources.** We are continuing to build on the strengths of the existing Healthy Families/ Thriving Communities Collaboratives to take the next step in linking CFSA's work to community supports for families. Now that we are part of the District government, we can work with communities and our agency partners to ensure that fragile families receive the early, preventive supports they need, and that families that have already entered the system are linked to supports, formal and informal, that complement what CFSA can provide.

- **Enhance the Agency Information System.** To accomplish all of these goals, we must focus on our agency information systems, so that we can make decisions based on accurate information and ensure that children never again fall through the cracks.

While these are ambitious goals, I believe that they are the right next steps to make a difference for children and families. The enactment of legislation to establish a Family Court in the District of Columbia is critical and the step needed as the District makes progress in reforming its child welfare system. We appreciate Congress' efforts to enact the Family Court legislation and hope we can count on your support.

Sincerely,

Olivia A. Golden

Olivia A. Golden, Director
Child and Family Services Agency

Cc: Senator Richard J. Durbin
Chairman, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia

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Carol Ann Cunningham
D.C. Bar Sections Manager

November 9, 2001

Question submitted to Family Law Section of the D.C. Bar:

In your previous testimony, you have asked that cases pending in the Domestic Violence Unit not be transferred to the Family Court we are considering today. However, this appears to be in opposition to the one judge/one family rule. Could you provide more explanation for your request?

Response of the Family Law Section of the D.C. Bar:

The Domestic Violence Unit (hereinafter "DVU") is a specialized system designed specifically to deal with "intra-family" cases on an emergency basis as well as to provide a safe environment from potentially volatile relationships. The DVU has been remarkably successful in stabilizing family situations and there is excellent collaboration between the DVU and Family Division judges. The DVU is a way to funnel cases into the one judge/one family system while still providing for the emergent needs of the parties. We believe it is important to maintain the integrity of this specialized unit because of the prevalence of domestic violence and the need for a system designed especially to handle such cases.

We do not believe maintaining the DVU is inconsistent with the one judge/one family rule. The most frequent overlap between the DVU and the Family Division is in the context of divorce and custody proceedings. A brief description of the process may be helpful to place the answer to the question in context.

A DVU case is started by filing a petition for Civil Protection Order (CPO) and often is accompanied by a request for a Temporary Protection Order (TPO). Temporary Protection Orders provide immediate emergency relief, *ex parte,* and may only be granted for 14 days duration. TPOs can be extended if the respondent is not served or if the respondent agrees to the extension. After the respondent is served, both parties may present evidence with respect to the issues. In most instances, however, an evidentiary hearing is unnecessary and the judge does not hear the facts of the case. That is because most cases are resolved by consent CPO, where the parties agree to the terms of the CPO, which is valid for one year (and may be extended upon motion for an additional year). In some of these cases a Domestic Relations case requesting visitation, custody or divorce is also pending. Sometimes those matters are resolved as part of the consent CPO and an uncontested divorce is granted. Other times, the parties want the CPO just to keep the *status quo* pending further litigation. In those cases, the Domestic Relations case will be heard by the judge in the Family Division who will have a copy of the consent CPO from

the DVU. Since the judge in the DVU does not have a fact-finding hearing, he or she does not have any specialized knowledge of the individuals and there is no reason to keep the case in the DVU.

In those cases where there is a contested CPO hearing which will involve fact finding hearings and there is a pending Domestic Relations case for visitation, custody or divorce, the Domestic Relations judge and the DVU judge confer to determine which judge should handle the case. If the judge assigned the Domestic Relations case has heard the matter and is familiar with the parties, or if the complexity and length of the proceedings is such that it is more properly handled by the Family Division, the DVU case will be consolidated with the other case and transferred to the judge handling the Domestic Relations case. Only one judge, the judge most familiar with the parties, will hear the matters. Transfers between the DVU and the Family Division are done after consultation between the Presiding Judges of the Family Division and the DVU. All judges in the DVU and Family Division are cross-trained on the issues that arise in these cases.

In rare circumstances there is a neglect or abuse case that is pending, or arises, involving a party or parties involved in a DV action. Where there is a neglect or abuse case and a contested CPO hearing that raises the issue of child custody, the DVU case is referred to the Family Division to be consolidated with the neglect or abuse case. On occasion, the DVU judge will contact the Child and Family Services Agency (CFSA) Hot Line to request that CFSA investigate a situation that has arisen in the context of a CPO request to ensure a child's safety. If an abuse and neglect proceeding is commenced, the cases are typically consolidated in the Family Division.

The DV Unit is an award-winning system, developed after intense study and collaboration, which serves the specialized needs of families traumatized by violence. It is an important piece of the Superior Court system and has greatly improved services to families in need of assistance. We believe it is extremely important to maintain the flexibility of the Court to move cases between the DV Unit and the new Family Court on a case-by-case basis according to which system best meets the needs of the family. Continued coordination between the DVU and the new Family Court will facilitate the one judge/one family rule, as it does now between the DVU and the Family Division.

