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Parental Conflict Prevention Programs and the Unified Family Court: A Public Health Perspective

ANDREW SCHEPARD*

I. The Challenge Facing Family Courts

Twenty-first century family courts need better ways to help divorcing and separating parents minimize the impact of conflict on their children. Social attitudes towards marriage, divorce, and separation have changed radically in the last half-century. What were once comparatively rare, fault-based events discouraged by convention are today predictable stages in the lifecycle of an American child. Family court caseloads arising from divorce and separation spiral ever upward with no stopping point in sight. Evidence continues to accumulate that a child's future welfare depends on her parents' ability to help her navigate the experience without lasting scars caused by parental bickering and instability.

Traditionally, family courts take the view that their responsibility is to decide specific disputes between parents after an adversary hearing. Evidence continues to accumulate, however, that this traditional adversarial approach to divorce and separation drives parents further apart, rather than encouraging them to work together for the benefit of their child. Overall, adversary procedure usually does children more harm than good.

The family court must reinvent its role to serve children of divorce

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and separation. In addition to thinking about divorcing and separating families as presenting cases to be decided, courts should think of them as having symptoms of a disease made worse by continuing parental conflict. The progression of the disease can be prevented and its effects mitigated through measures familiar to the public health community—preventive education programs carefully structured to match the level of family conflict.

The thesis of this article is that every unified family court should develop a prevention plan to help parents reduce conflict arising out of divorce and separation. A coherent prevention strategy should become a fundamental criteria for distinguishing high-quality family courts from those that do not serve their publics as well. Models of useful programs already exist and can be incorporated into a court's prevention plan. Judges, legislators, lawyers, mental health professionals, and child advocates should insist that they are.

Section Two of this article describes the problems facing courts, parents, and children resulting from divorce and separation in terms of a public health rather than a caseload model. Then, this article details the epidemic-like crisis facing family courts because of increased caseloads and troubled parents and children. The fourth section describes already existing preventive education programs that family courts can draw on and briefly summarizes the available research on their effectiveness. The fifth section describes the comprehensive prevention approach designed by Oregon's interdisciplinary Task Force on Family Law. Finally, this article discusses how a unified family court can incorporate a prevention strategy into its mission.

II. A Public Health Parable

Imagine that you are the Commissioner of Public Health of your state. Over the last decade, the mental health clinics of your major hospitals have reported a huge increase in the number of parents and children who exhibit a constellation of symptoms of emotional distress. These patients account for about 25 percent of your total patient population and the total number of patients in this population has increased 70 percent since 1984.

These parents and children present symptoms that share common themes of emotional distress and decreased capacity to function effectively. A majority of the parents experience mood swings and anger easily. Some exhibit paranoid tendencies and feel abandoned by former friends and neighbors. Sometimes, the parents are violent toward each other, violence witnessed by their frightened children. Many of the par-

ents are depressed and abuse drugs or alcohol. Some parents are unable to provide their children with consistent nurturing, support, and guidance. Many parents are not able to perform as effectively at work as they did before the symptoms began.

Many of the children are also depressed, frightened or anxious. Some constantly worry about their parents. Some are unable to function at school. Some, particularly the older ones, engage in high risk behavior like premature sexual activity, or drug and alcohol abuse. In some cases, their academic achievement takes a precipitous drop.

In many instances, the parents battle endlessly about finances for the children. Because of the parents' problems, there is less money around to finance the children's regular activities which raises the children's stress and anxiety levels.

While all of the patients who present themselves at the hospitals have some degree of emotional upset, the majority of adults and children seem to recover their equilibrium over a period of time and function relatively normally, albeit with painful memories. About one-fourth to one-third of the adults, however, need intensive intervention and supervision over a lengthy period of time to achieve the level of personal competence that they exhibited before the onset of their symptoms. Moreover, about 10 percent to 15 percent of the total parent and child population never recover. The parents in this category still take their anger out on each other and their children. They continually express verbal or physical aggression towards the other parent. Their children never recover a sense of optimism about life and its possibilities, engage in high risk behavior, and are at significantly higher risk of psychosocial problems than others in their age group.

The parents and children with these symptoms are overwhelming your mental health facilities. The treatments that are available at the hospital for them are very labor intensive, cost thousands of dollars, and require extensive commitments of time and energy from doctors and patients alike. In a significant number of cases, the treatment is likely to take several years with no guarantee of success. Indeed, in some cases, treatment seems to make symptoms worse, not better.

The delivery system for the necessary mental health services is tenuously financed and there are increasing signs that the patients who come into contact with it are very dissatisfied with its performance. There are simply not enough personnel to cope with the patient increase. There is no realistic prospect that your anti-tax increase legislature and governor will provide the necessary funding for the personnel necessary to cope with the avalanche of patients.

Parents generally pay for their own and their children's care out of their

own pockets because insurance does not cover treatment for that category of illness. The poor who cannot afford to pay for their own treatment are relegated to long waiting lines for public mental health services.

Surprisingly, however, recent surveys reveal that a large number of patients who could afford treatment reject it in favor of self-help books or self-medication. They apparently fear becoming enmeshed in endless treatment programs which they believe will cost them thousands of dollars and do them and their children no good. These alienated patients diagnose their own illness and establish their own course of treatment, often with disastrous results.

Faced with this situation you, as Commissioner of Public Health, might ask yourself whether you can create programs that might reduce the number of parents and children who exhibit these symptoms. You might also ask yourself whether you can help those who already have the symptoms manage themselves better to reduce the number of trips to the hospital that they require. Such prevention programs would, if effective, free scarce treatment resources for other important purposes and conserve the emotional and financial resources of parents and children.

Now, substitute the title "Chief Justice" or perhaps "Chief Court Administrator" for "Commissioner of Public Health" and "family court" for "hospital" in the above scenario. You then have a reasonably accurate picture of the situation with which family courts across the country have to cope—a tidal wave of cases and emotional and financial distress for parents and children created by conflict arising from divorce or separation.

III. Parental Divorce and Separation as a Public Health Crisis

This tidal wave of conflict which brings itself to family courts can usefully be thought of as a disease with predictable symptoms and courses of treatment. The symptoms of the disease are revealed in statistics reflecting both public and private consequences: (1) the increasing and more troubling caseloads of family courts attributable to parental divorce and separation; and (2) the adverse emotional impact that continuing conflict can have on parents and children.

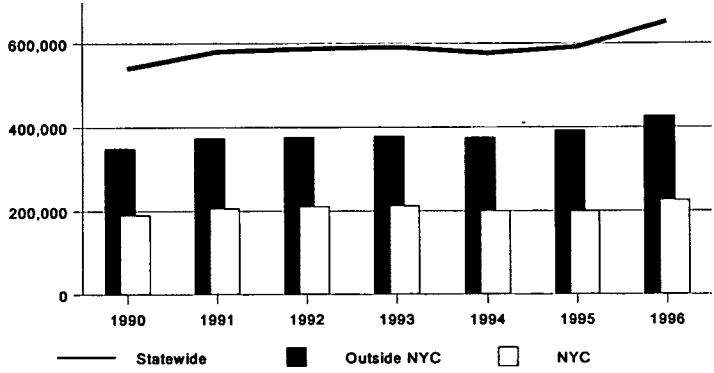
A. Increasing and More Difficult Domestic Relations Caseloads

According to the National Center for State Courts, "Domestic relations cases are the largest and fastest-growing of state court civil caseloads. In 1995, 25 percent of total civil filings, over 4.9 million, were domestic relations cases. The total number of domestic relations cases

increased 4.1 percent since 1994 and 70 percent since 1984."[1] Divorces registered an 8 percent increase since 1988 while custody cases increased 43 percent, domestic violence 99 percent, and paternity 58 percent.[2]

Graphs of caseload statistics with trend lines virtually straight up illustrate the increase in family court dockets throughout the United States. For example, a graph of the trend line for family related filings in the New York State Court system from 1990 to 1996 is as follows:

Figure 1



Source: JUDITH S. KAYE & JONATHAN LIPPMAN, NEW YORK STATE UNIFIED COURT SYSTEM FAMILY JUSTICE PROGRAM 1 (1997).

No end to the increase in domestic relations caseloads is in sight. The Oregon Future of the Courts Committee attributes it to megatrends in American society which include increasing social disintegration tied to poverty, violence, and crime and a general increase in alienation and mistrust.[3] If so, there is certainly no prospect for a rapid turnaround.

One reflection of this megatrend is a high rate of divorce involving children. The divorce rate recently declined slightly and is presently at the lowest annual rate in two decades (4.3 per 1,000 population).[4] This

1. BRIAN J. OSTROM & NEIL B. KAUDER, EXAMINING THE WORK OF STATE COURTS, 1995: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 39 (1996).

2. *Id.* at 40.

3. FUTURE OF THE COURTS COMMITTEE OF THE OREGON JUDICIAL DEPARTMENT, JUSTICE 2020: THE NEW OREGON TRAIL 13 (Jan. 1995) [hereinafter JUSTICE 2020].

4. Centers for Disease Control and Prevention/National Center for Health Statistics, *Births, Marriages, Divorces and Deaths for 1996*, 45 MONTHLY VITAL STAT. REP. NO.12, July 17, 1997.

recent decline, however, must be measured against a 67 percent increase in the divorce rate between 1970 and 1990.[5] At least 40 percent of today's young adult women are likely to divorce sometime in their lives.[6]

Sixty-five percent of divorcing couples have minor children. The number of children each year whose parents divorce increased by 16 percent from 870,000 in 1970 to 1,005,000 in 1990.[7] An increase in divorce rates during the early years of marriage has also resulted in a higher proportion of divorces occurring among parents with young children.[8]

Many parents who have conflict about their children, furthermore, never marry and, as a result, do not get divorced. The number of children born to unmarried parents has increased dramatically over the last decades. In 1970 one in ten babies was born to unmarried parents; by 1992 three out of ten babies were born to unmarried parents. In 1970 there were 399,000 births to unmarried parents; the number increased to over 1.2 million in 1992.[9] Small declines in the divorce rate are thus unlikely to affect the number of cases concerning children brought to family courts when divorce by married parents and separation by unmarried parents are considered together as possible conflict-generating events.

It is also unlikely that increases in state court budgets will keep pace with the increases in the domestic relations caseloads. The Oregon Future of the Courts Committee found that the total state court civil caseload increased at roughly four times the rate of the estimated increase in that state's population over the last decade. If no new judges are added, and caseloads increase as projected, the Committee projects that by the year 2020 a case's time to trial will increase from an average of seven months in 1995 to 113 months (nine years). If those trends continue for the next decade (something no one can predict with any degree of assurance), the Committee estimates that the Oregon state courts will need a more than 300 percent increase in the number of judges and a 225 percent increase in the number of court employees just to keep the ratio of judges and employees to current caseloads constant.[10]

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5. UNITED STATES COMMISSION ON CHILD AND FAMILY WELFARE, PARENTING OUR CHILDREN: IN THE BEST INTERESTS OF THE NATION; A REPORT TO THE PRESIDENT AND CONGRESS 12 (1996) [hereinafter UNITED STATES COMMISSION ON CHILD AND FAMILY WELFARE].

6. Richard E. Behrman & Linda Sandham Quinn, *Children and Divorce: Overview and Analysis,* in 4 THE FUTURE OF CHILDREN: CHILDREN AND DIVORCE 5 (Center for the Future of Children of the Packard Foundation ed. 1994).

7. UNITED STATES COMMISSION ON CHILD AND FAMILY WELFARE, *supra* note 5, at 12.

8. *Children and Divorce, supra* note 6, at 5.

9. UNITED STATES COMMISSION ON CHILD AND FAMILY WELFARE, *supra* note 5, at 12.

10. JUSTICE 2020, *supra* note 3 at 14.

It is hard to imagine that any state will be willing to pay that kind of price in increased taxes for the judges and support personnel needed to keep family court backlogs to a tolerable minimum. While personnel and resource increases for the judicial system can help relieve crisis conditions, they will not be enough to handle the number of new cases with reasonable dispatch or to respond adequately to difficulties families and children bring to the attention of the judicial system.

One essential strategy for coping with rising caseloads is, of course, to make the family court as efficient and humane as possible by creating unified family courts that address the problems of the family rather than discrete legal issues.[11] But an equally essential strategy is to prevent unnecessary cases from reaching court in the first place and to reduce the amount of judicial resources required to manage the cases that do.

Changes in the nature of the increased divorce and separation caseload also call for a prevention strategy. Two particularly salient features are the percentage of high conflict, repeat litigants and the number of litigants who are not represented by counsel.

Research suggests that a relatively small, but significant, number of parents continue in very high conflict over family reorganization for a number of years. Even many years after the divorce or separation, high-conflict parents are unable to come to agreement on the day-to-day issues of parenting and obsessively criticize everything the other parent does. The battle with the other parent becomes their reason for existence even years after the marriage ends. They re-litigate endlessly. These obsessive litigants take an enormous amount of time and energy from judges who recognize they cannot effectively regulate the daily life of parents and children. Their children are the casualties of parental trench warfare, forced to spend more energy worrying about what the court order says or whose side to take rather than schoolwork or their friends. Meanwhile, the parents spend money that could be used for the children's college fund in a never ending quest for vindication.[12]

No one knows exactly how many obsessive parent litigants there are. Constance Ahrons found such parents (whom she labeled "Angry Associates") to be 25 percent of her sample of the divorcing popula-

11. *See* Andrew Schepard, *Law and Children: Introduction to Unified Family Courts*, N.Y.L.J., Apr. 16, 1997, at 3 (describing history and rationale of unified family court's movement).

12. Michael E. Lamb et al., *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 FAM. & CONCILIATION CTS. REV. 393, 396 (1997) (consensus statement by experts in psychology, law, and social welfare convened under the auspices of the National Institute of Child Health and Human Development) [hereinafter Lamb, *Effects of Divorce*].

tion. [13] A recent empirical study of five court systems found that 16 percent of divorcing families who had children had been to court for another family-related matter during the previous five years.[14] Other estimates are that 5 to 10 percent of the total population of divorcing and separating parents are chronic litigants.[15]

The family court caseload also contains a significant number of pro se parties, including many who can afford counsel. An ABA study of Maricopa County (Phoenix), Arizona, in 1990 found that no lawyer was involved in 52 percent of the divorce cases. In 88 percent of the cases, one party had no lawyer or defaulted.[16] In Oregon, the percentage of pro se divorce filings is estimated at 40 percent.[17]

Obviously, many pro se cases are uncontested and involve parties with little or no assets. The ABA study revealed that those with annual incomes of less than $50,000 were substantially more likely to proceed pro se and that nearly one-third of the pro se litigants could not afford a lawyer. Pro se representation is, however, unmistakably on the rise and increasingly becoming the norm in family matters rather than the exception. "[M]ore than 20 percent of the pro se litigants studied said they *could* afford a lawyer. Self-help litigants are younger than those represented by lawyers and are reasonably well-educated, with most having some college education."[18]

The increase in pro se representation poses special challenges to the family court system. Court processing of pro se cases can be more time consuming and inefficient than if lawyers are involved. Often, the self-represented do not know how to behave or what is expected of them or express themselves through outbursts of intense emotion unmediated by the influence of counsel. Often, they feel like outsiders in the judicial process and have less respect for a system they feel does not address their needs.

Most importantly, however, the increase in pro se litigants is an

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13. CONSTANCE AHRONS, THE GOOD DIVORCE 56 (1994).

14. H. Ted Rubin, *The Nature of the Court Today,* in 6 THE FUTURE OF CHILDREN: THE JUVENILE COURT 43 (Center for the Future of Children of the Packard Foundation ed. 1996).

15. Lamb, *Effects of Divorce, supra* note 12, at 396; Janet R. Johnston, *Developing and Testing a Group Intervention for Families at Impasse,* in CONGRESS PROCEEDINGS OF THE THIRD INTERNATIONAL CONGRESS ON PARENT EDUCATION PROGRAMS 5 (Association of Family and Conciliation Courts ed. 1997) (Executive summary of a forthcoming Report to the California Judicial Conference) [hereinafter cited as AFCC CONGRESS PROCEEDINGS].

16. Robert B. Yegge, *Divorce Litigation Without Lawyers,* 28 FAM. L. Q. 407 (1994).

17. WILLIAM J. HOWE III, OREGON TASK FORCE ON FAMILY LAW: A STATUS REPORT 6-7 (1996).

18. Yegge, *supra* note 16, at 409 (emphasis added).

increasing vote of "no confidence" in the current legal system for resolving disputes arising from divorce or separation. As the Oregon Task Force on Family Law, a legislatively authorized interdisciplinary reform group,[19] recently wrote:

> The public is disgusted with the adversarial model of managing divorce. They are voting with their feet. The increasing trend of pro se filings is accelerating. . . . Many pro se litigants can afford lawyers. They do not seek the legal representation they need because they fear that to consult a lawyer would be to "shake hands with the tar baby." They fear getting sucked into a vortex of conflict..
>
> Lawyers, judges, mental health professionals and others involved in the divorce process are also frustrated. Lawyers and judges see the messes created as ill-informed pro se litigants attempt to perform their own legal surgery. All professionals recognize the need for a process to manage and control the raw emotions triggered by a divorce.[20]

Both the chronic litigant and the pro se litigant place special demands on the family court's resources and the emotional well-being of their children. As will be discussed later, a prevention strategy aimed at them could help courts serve them better.

B. The Emotional and Financial Problems of Family Conflict

A recent consensus statement of experts in psychology, law and social welfare created under the auspices of the National Institute of Child Health and Human Development summarizes the emotional problems for parents and children associated with family dissolution:

> Most family members experience substantial psychological and emotional disturbance around the time of divorce, although this is sometimes mixed with more positive feelings, especially when there is relief regarding the resolution of the problems leading to divorce. Whatever the antecedents, family dissolution is clearly disruptive for mothers, fathers and children, most of whom experience varying degrees of distress, depression, loneliness, regret, lack of control, helplessness and anger. These psychological symptoms are simply acute responses to immediate stress. For many families, symptoms are still at peak levels a year or two after the separation, and there is wide variability in the length of time most individuals take to achieve a new equilibrium. Preoccupation with their own emotional turmoil clearly limits parents' abilities to support their children emotionally and enforce consistent expectation and demands.[21]

19. See *infra* at 123-24.
20. HOWE, *supra* note 17, at 6–7.
21. Lamb, *Effects of Divorce, supra* note 12, at 394–95.

The roots of the emotional turmoil associated with divorce and separation are probably, in part, the result of the complex neurochemical reactions of the human nervous system. Anger, a common and chronic emotion associated with divorce, for example, increases blood flow to the hands, making it easier to hold a weapon or strike out. Anger also results in heart rate increases and increasing adrenaline pumping into the nervous system. The physiological changes associated with anger increase a human being's capacity for vigorous responsive action. These changes can be triggered by a threat to self-esteem or dignity, being treated rudely or unjustly, or being insulted and demeaned,[22] common occurrences in arguments between intimate partners whose relationship is deteriorating.

Psychologists refer to the effects of continuing conflict between intimate partners associated with divorce and separation as an emotional "flooding." Conflict between such partners generates intense emotional reactions and hormonal flows.

> Flooded husbands and wives are so overwhelmed by their partner's negativity and their own reactions to it that they are swamped by dreadful, out-of-control feelings. People who are flooded cannot hear without distortion or respond with clear-headedness; they find it hard to organize their thinking, and fall back on primitive reactions.[23]

Children often are the victims of their parents' emotional overload. Some children benefit when their parents divorce or separate because it enables the children to escape intensely conflict-ridden households. But many children are worse off when their parents divorce or separate as far as the "three e's" of their existence—economics, emotions, and education.

Children of divorce experience an almost immediate 30 percent decline in their standard of living. Almost half have not seen their fathers in the previous twelve months; they are less confident and optimistic about the future. They do significantly worse in school, are in trouble with the law more often, and have more emotional and health problems than their peers. They also tend to become single parents themselves.[24]

Statistics alone simply do not convey the anguish many children feel when their parents divorce or separate. Many describe the date of their

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22. DANIEL GOLDMAN, EMOTIONAL INTELLIGENCE 60–61 (1997) [hereinafter GOLDMAN].

23. *Id.* at 139.

24. The data is described in more detail in Andrew Schepard, *War and P.E.A.C.E.: A Preliminary Report and a Model Statute on an Interdisciplinary Educational Program for Divorcing and Separating Parents,* 27 U. MICH. J. L. REF. 155, 139–49 (1993) [hereinafter *War and P.E.A.C.E.*].

parents' physical separation as the saddest of their lives. Parental divorce or separation can generate simultaneous feelings of grief, guilt, uncertainty, rage, and hopelessness, powerful emotions that forever shape a child's view of the world.

Hundreds of thousands of parents make the difficult decision to divorce or separate weighing the pain that they will cause their children against the important personal reasons driving them apart. Many of these parents raise their children effectively after divorce or separation, against odds ranging from serious to overwhelming. The problems that children experience as a result of their parents' actions do not inevitably create a class of victims; children can, and do, work through their parents' divorce or separation and emerge stronger and wiser. Thinking about conflict arising from parental divorce and separation as a disease rather than simply a case, however, causes us to ask what the family court system can do to maximize children's chances of successful adaptation. One obvious goal is to reduce, rather than promote parental, conflict.

Contrary to popular belief in the legal community, all divorcing and separating parents are not locked in perpetual mortal combat. Rather, empirical research establishes that such parents are neither completely cooperative nor hopelessly conflicted; they fall along a complex conflict continuum, and their place on the continuum changes as their family reorganizes and their emotional reactions subside.[25]

Parents who reduce their conflict help their children. Resolving disputes over children through traditional adversary courtroom procedures, however, often moves parents in the other direction. The adversary process is expensive and time-consuming, draining desperately needed parental financial and emotional resources away from children. It puts a premium on parents finding fault with each other, driving them further apart when the child needs them to work together. Adversary procedures often ask the child to choose between parents, when in reality the child usually needs both. Above all, parents who participate in adversary procedures focus on the weaknesses of the other parent, rather than focusing on how to reconstruct their post-divorce or separation relationship for their children's benefit.

The data should make us recognize that parental separation and divorce can put children at risk. The key to how well the children will fare is how well parents manage their conflict. In most cases, children are better served if parents divorce or separate in a restrained, civilized manner that ends their relationship with some dignity while giving children the freedom to have meaningful relationships with both.

25. *See generally* AHRONS, *supra* note 13.

IV. Public Health Theory and Family Conflict Prevention Programs

Overall, the situation facing courts overseeing disputes arising out of separation and divorce is roughly like the public health crisis facing the Commissioner of Public Health with which we began:

- Parents and children suffer serious emotional distress because of conflict resulting from family reorganization;
- Many of those affected recover, but a significant portion do not and they require a disproportionate share of scarce judicial resources for the care and management of their chronic litigation;
- An increasing number of parents handle their and their children's problems arising out of divorce and separation without legal advice because of lack of funds or lack of belief legal advice will help them;
- There are too many cases for the judicial system to handle;
- There is no realistic prospect that the necessary resources will be made available to the judicial system to cope with the projected caseload increase; and
- Parental conflict management through the adversarial process is likely to take a long time, and increase conflict rather than reduce it, to the children's detriment.

Analogizing family conflict resulting from divorce and separation to a disease allows prevention of family conflict to be discussed in terms of a "public health" concept. The medical community has adapted this concept as a measure of its effectiveness in coping with disease. A standard textbook defines public health as "the organization and application of public resources to prevent dependency which would otherwise result from disease or injury"[26] and states that "[p]revention is the purpose of public health."[27]

Public education is a primary public health prevention tool. Over the years, the medical community has increasingly incorporated preventive education programs into its strategies for reducing the spread of such diseases as skin cancer, heart disease, drug abuse, low birth weight, rubella, and infectious diseases with positive results.[28] For example,

26. GEORGE PICKETT & JOHN J. HANLON, PUBLIC HEALTH: ADMINISTRATION AND PRACTICE 6 (9th ed. 1990) [hereinafter PICKETT & HANLON].

27. *Id.* at 81.

28. *See, e.g.*, Stewart I. Donaldson et al., *Drug Abuse Prevention Programming*, 39 AM. BEHAV. SCI. 868 (1996) (drug abuse); Caroline Thorton & Daniel J. Piacquadio, *Promoting Sun Awareness: Evaluation of an Educational Children's Book*, 98 PEDIATRICS 52 (1996) (skin cancer); Marianne Haenlein Alciati & Karen Glanz, *Using Data to Plan Public Health Programs: Experience from State Cancer Prevention and Control Programs*, 111 PUB. HEALTH REP. 165 (1996) (cancer).

pre-natal care for mothers reduces low-birth weight babies, which in turn reduces infant mortality and developmental disabilities. Expectant mothers who receive comprehensive preventive education which emphasizes specific behaviors that reduce the risk of low birth weight babies (e.g., reducing or eliminating alcohol and tobacco use and eating appropriately) are less likely to deliver low-birth weight babies than those who do not.[29] Education which combines information with essential emotional and social skills also shows promise in helping prevent the incidence of teen pregnancy and suicide.[30] Because of their usefulness in promoting well-being and efficient use of medical resources, the organized medical community generally advocates strongly for the expansion of preventive public health programs.

A. Primary, Secondary, and Tertiary Prevention Programs

Public health theory postulates that education can take place at "any point along the spectrum from the prevention of disease or injury to the prevention of impairment, disability or dependency."[31] It distinguishes between different types of prevention, depending on the stage of a disease which a patient is experiencing.

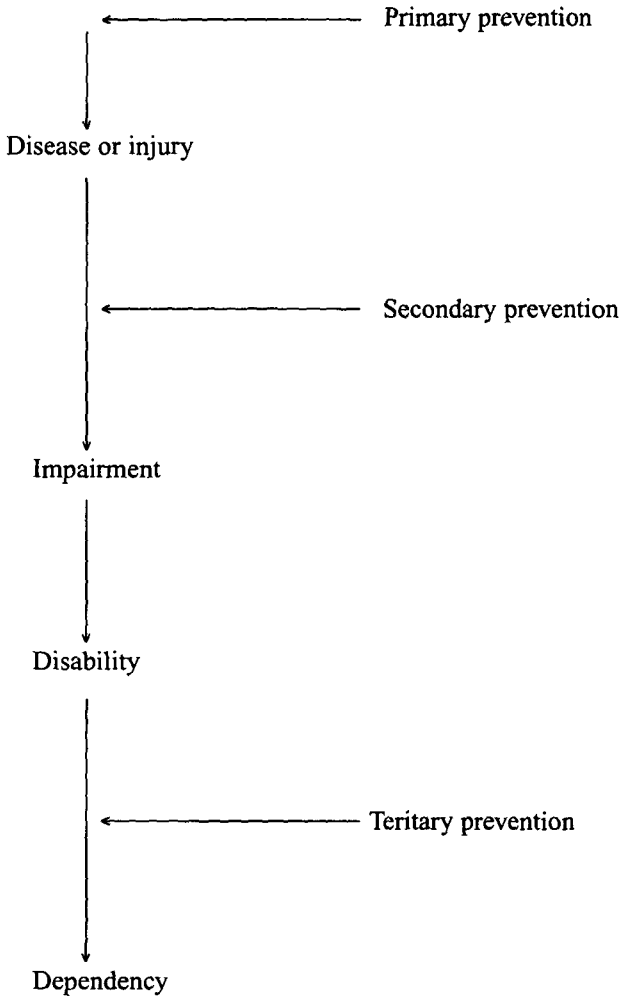
Primary prevention programs seek to prevent the disease or injury itself (e.g., school education programs that seek to reduce smoking or immunization programs). Secondary prevention efforts seek to block the progression of an injury or disease from an impairment to a disability (e.g., early detection of high blood pressure can reduce the probability of a heart attack or stroke through changes in diet and exercise patterns). Tertiary prevention blocks or retards the progression of a disability to a state of dependency (e.g., prompt medical care and rehabilitation can limit the damage that a stroke or heart attack does to a patient). Graphically, the stages of public health prevention can be illustrated as follows:

29. Marjorie R. Sable & Allen A. Herman, *The Relationship Between Prenatal Health Behavioral Advice and Low Birth Weight,* 112 PUB. HEALTH REP. 332 (1997).

30. GOLDMAN, *supra* note 22, at 256–60, 301–02.

31. The discussion and illustrative graph are adopted from PICKETT & HANLON, *supra* note 26, at 83.

Figure 2
Stages of Prevention



Adapted from GEORGE PICKETT & JOHN J. HANLON, PUBLIC HEALTH: ADMINISTRATION AND PRACTICE 83 (9th ed. 1990).

Preventive education programs for family conflict management can be classified along similar lines if the filing of an action in court by one of the parents is analogized to a symptom of a disease—parental conflict which cannot be resolved without court intervention. This

analogy is not, of course, perfect and must be made with great caution. Parents file actions in court for many reasons. Some are not in conflict at all, having reached an agreement between themselves. Nonconflicted parents file an action in court largely for ministerial purposes, such as securing an uncontested divorce decree. Other parents, such as victims of domestic violence, file a complaint in court because they need protection from violence that only the legal system can provide.[32] Nonetheless, many parents file an action with the court because they are unable to resolve their conflict about their children themselves and need court intervention. The filing of the action is the first time the court becomes aware of the parents' dispute and is thus a logical point around which to focus classification of family court involvement in prevention programs for parental conflict.

Primary prevention programs operate before filing and seek to reduce conflict by educating children or parents in conflict management techniques and emotional literacy. These programs may be organized by schools or community agencies with active support from the courts.

Secondary prevention programs are, in contrast, organized under the auspices of the court system. Parents and children participate in them after filing, but before perpetual relitigation (the chronic and dependent stage of family conflict) sets in. Most of the growth of prevention programs in family courts around the country, to date, has been secondary prevention in the form of court-affiliated education programs for parents and children.[33]

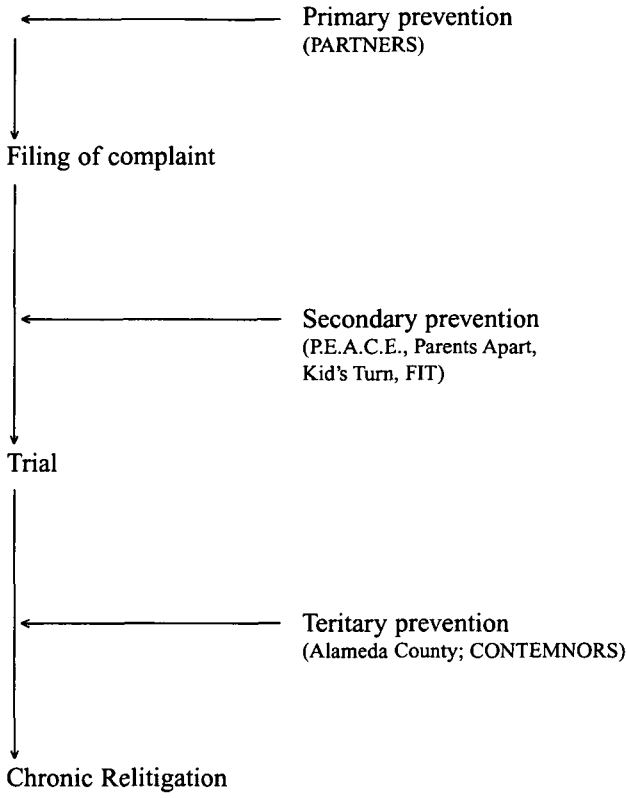
Tertiary prevention programs aim to reduce the dependency of chronic relitigants on the adversarial process to manage their family life. Some court-affiliated prevention programs have been designed to focus specifically on this population which, while comparatively small in numbers, takes up a disproportionate share of judicial resources.

Graphically, application of the concept of the stages of prevention to filing in court looks like:

32. A detailed discussion of the use of prevention programs in cases involving family violence is beyond the scope of this article. *See War and P.E.A.C.E., supra* note 24, at 170-71 for a discussion of how court mandated educational programs can respond to the problems of domestic violence and child abuse. *See also* Deborah A. Daro, *Prevention of Child Sexual Abuse, in Sexual Abuse of Children,* 4 THE FUTURE OF CHILDREN 198 (Center for the Future of Children of the Packard Foundation ed. 1994), for a useful summary of child sexual abuse prevention programs.

33. *See War and P.E.A.C.E., supra* note 24, at 186–88.

Figure 3
Prevention Programs for Parental Conflict



B. Program Descriptions and Evaluations

This section provides examples of primary, secondary, and tertiary programs designed to reduce or eliminate parental conflict arising from separation and divorce. The programs chosen are among those that the author is familiar with from personal knowledge.[34] Many others share similar aims. The descriptions are brief. They summarize the program's philosophy, structure, and important administrative elements. Footnote references for each program identify where to obtain more information about it.

Following the program descriptions, this section summarizes what is

34. The Association of Family and Conciliation Courts published a *Directory of Parent Education Programs* in 1997 containing program names, addresses and basic organizational information. The *Directory* is available from AFCC at 329 W. Wilson Street, Madison, Wisconsin 53703.

known about the effectiveness of primary, secondary, and tertiary prevention programs. Readers should be aware, however, that research on the efficacy of prevention programs aimed at reducing conflict around family reorganization is in its infancy. There is no single study which summarizes all available data or compares and contrasts different kinds of programs or different stages of intervention. Evaluating intervention programs presents substantial methodological challenges.[35] Nonetheless, there are promising suggestions in existing research, briefly summarized here, that prevention programs can make a difference in reducing family conflict.

C. Primary Prevention: Preparation for Marriage

Parents who are motivated to and skilled in resolving disputes with each other are less likely to need court intervention. School-based primary prevention programs aim at instilling those motivations and skills before young people get married. These programs aim at preventing: (1) weak marital commitments by helping future parents understand their obligations to each other, and (2) poor communication and conflict resolution skills between marital partners.

1. PARTNERS

An example of a primary prevention program is PARTNERS, an interdisciplinary educational program on family law and communication skills for high school students created by the Family Law Section of the American Bar Association.[36] PARTNERS offers teenagers information about the legal obligations created by marriage and parenthood. It also teaches communication and conflict management skills that can keep marriages together. The PARTNERS curriculum has been enthusiastically received in numerous high schools throughout the United States.

The model curriculum lasts ten weeks, divided into five units. Each PARTNERS unit consists of a fifty-minute videotape-based lesson combined with classroom activities and one activity-based classroom hour the following week. The PARTNERS videotape dramatizes a

35. *See* Sanford L. Braver et al., *Methodological Considerations in Evaluating Family Court Programs: A Primer Using Divorced Parent Education Programs as a Case Example,* 35 FAM. & CONCILIATION CTS. REV. 9 (1997), for a discussion of the complexities of creating a meaningful program evaluation.

36. *See* AMERICAN BAR ASSOCIATION SECTION OF FAMILY LAW, PARTNERS FOR STUDENTS: CURRICULUM MANUAL FOR TEACHERS (1996). I worked closely with Lynne Gold-Bikin, then Chair of the Family Law Section, in developing the PARTNERS curriculum. Additional information about PARTNERS can be obtained from the website of Family Law Section of the American Bar Association which can be accessed at <http://www.abanet.org/family/partners/curriculum.html>.

young married couple with a baby going through typical marital difficulties. A family lawyer presents basic family law concepts; a communications expert from the PAIRS FOUNDATION (an organization devoted to helping develop positive communication methods between couples) analyzes and seeks to improve their communication.[37]

2. EVALUATION OF PRIMARY PREVENTION

A significant amount of evaluation research has focused on primary prevention programs in school systems. Daniel Goldman, in his landmark book *Emotional Intelligence*,[38] concludes that the available data suggests that primary prevention programs for children are a valuable long-term investment in the capacity of children to control and manage conflict of all kinds. He reports on comprehensive research over a five-year period designed to identify the characteristics of effective prevention programs for children and youth.[39] The researchers distilled the active ingredients of successful programs and the key skills that should be covered no matter what specific problem the prevention program is designed to prevent:

> The emotional skills include self-awareness; identifying, expressing and managing feelings, impulse control and delayed gratification and handling stress and anxiety. A key ability in impulse control is knowing the difference between feelings and actions, and learning to make better emotional decisions by first controlling the impulse to act, then identifying alternative actions and their consequences before acting. Many competencies are interpersonal: reading social and emotional cues, listening, being able to resist negative influences, taking others perspectives, and understanding what behavior is acceptable in a situation.[40]

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37. Some states are considering requiring preventive education before a couple is issued a marriage license, proposals which are controversial among researchers. For background and discussion consult the package of materials assembled at AABT Couples Special Interest Group, *Should Premarital Counseling Be Legally Mandated?* (visited Nov. 9, 1997) <http://www.psy.sunysb.edu/aabt/mandated.htm>. Besides effectiveness issues, there are also constitutional questions (e.g., the relationship between religiously sponsored marriage preparation courses which are a requirement for marriage by clergy of particular faiths and secular requirements) and philosophical and practical concerns which are beyond the scope of this article.

38. GOLDMAN, *supra* note 22.

39. *Id.* at 257. To be sure, there are many ineffective prevention programs as well. Goldman reports:

> Educational programs to prevent one or another specific problem such as drug use and violence have proliferated wildly in the last decade or so, creating a mini-industry within the educational marketplace. But many of them—including many of the most slickly marketed and widely used—have proven to be ineffective. A few, to the chagrin of educators, even seemed to increase the likelihood of the problems they were meant to head off. . . .

Id. at 257. The key to the future of effective primary prevention is continuing research and development.

40. *Id.* at 259.

Goldman then goes on to describe a number of school programs that teach children these skills. Their evaluation provides grounds for cautious optimism that primary prevention can improve students' future emotional competencies:

> The data suggest that although such courses do not change anyone overnight, as children advance through the curriculum from grade to grade, there are discernable improvements in the tone of a school and the outlook—and level of emotional competence—of the boys and girls who take them.
>
> [T]he courses seem to help children better fulfill their roles in life, becoming better friends, students, sons and daughters—and in the future are more likely to be better husbands and wives, workers and bosses, parents and citizens. While not every boy and girl will acquire these skills with equal sureness, to the degree they do we are all the better for it.[41]

D. Secondary Prevention: After a Case is Filed in Court

1. Maricopa County (Phoenix) Arizona: Information Resources for Pro Se Litigants

As previously discussed, courts can no longer assume that parents are represented by counsel. The Maricopa County courts have developed a comprehensive program of information for pro se litigants to make their experience in court more "user friendly."[42] Mechanisms used include:

- Court staff facilitators to help pro se litigants;
- Telephone audiotapes explaining court procedures and offering tips on self-representation;
- Automated information kiosks with court forms and schedules; and
- A seminar program called "Litigants Without Lawyers."

2. Court Affiliated Education for Parents and Children

In addition, like many other jurisdictions, Maricopa County requires that parents attend a court-mandated educational program before their divorce.[43] Arizona (along with Connecticut, Utah, and Iowa[44]) mandate that all divorcing and separating parents attend a court-affiliated

41. *Id.* at 283, 285.

42. The discussion which follows is adopted from Forrest S. Mosten, The Complete Guide to Mediation 376–80 (1997) [hereinafter Mosten, Mediation]. More information about the Maricopa County program can be obtained from the Conciliation Services of the Superior Court of the State of Arizona, Maricopa County, 201 West Jefferson Street, Third Floor, Phoenix, Arizona 85003-2205.

43. Ariz. Rev. Stat. § 25-352 (1996).

44. *See* Eileen Biondi, *Legal Implementation of Parent Education Programs for Divorcing and Separating Parents*, 34 Fam. & Conciliation Cts. Rev. 82 (1996).

education program. Legislation in at least eleven other states authorizes courts to implement parent education programs.[45] In many other states, court rules implement parent education programs without legislation.[46] Courts in more than forty states now offer separated and divorcing parents, and in some cases their children, the opportunity to attend educational programs to help them with the difficult life transitions they face when their family reorganizes. Two recent national surveys conducted by the Association of Family and Conciliation Courts (AFCC) and researchers at Western Michigan University combined to identify programs in more than 541 counties, 80 percent of which were created since 1990.[47] The United States Commission on Child and Family Welfare just commended this trend and recommended all states create such programs.[48]

These court-affiliated programs are, in effect, secondary public health prevention programs.[49] They offer parents a valuable commodity—information, perspective, and skills on how to help their children at a time when the parents themselves are in the throes of stress and conflict. Education programs help parents recognize that others have been in similar situations and coped effectively. They also help participants begin to understand the emotional, social and legal complexities of divorce and separation.

Some jurisdictions take secondary preventive education a step further and mandate educational programs for the children of divorcing or separating parents. While some schools offer programs to support children of divorce and separation, many do not. Court programs for children are a promising approach to fill a very important gap in needed services.

There is no typical parent education program. They are presented in a wide variety of formats including lecture, interactive role play, group discussion, demonstration, and video. Presenters include lawyers, judges, psychiatrists, psychologists, educators, and others. Programs vary in length from thirty minutes to twelve hours; the most popular

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45. *Id.* at 84, IOWA CODE § 598.19A (1997) (requiring course within forty-five days of service of notice of petition or application for modification of a custody or visitation order).

46. Biondi, *supra* note 44, at 87.

47. Karen R. Blaisure & Margie J. Geasler, *Results of a Survey of Court-Connected Parent Education Programs in U.S. Counties,* 34 FAM. & CONCILIATION CTS. REV. 23 (1996); Sanford Braver et al., *The Content of Divorce Education Programs: Results of a Survey,* 34 FAM. & CONCILIATION CTS. REV. 41 (1996).

48. UNITED STATES COMMISSION ON CHILD AND FAMILY WELFARE, *supra* note 5, at 32-33.

49. The description of court-affiliated educational programs which follows is adopted from Andrew Schepard et al., *The Push for Parent Education,* 19 FAM. ADVOC. 53 (1997).

length is four to six hours over two or three sessions. Classes may have as few as ten participants or as many as 150. In some jurisdictions parents do not attend the same session; in others, they are expected to attend together. Most states offer spouses the option of attending separately. Some programs include information on the legal process, while others focus solely on emotional issues for parents and children. The courthouse is the meeting place for some programs, while other programs meet in community centers, universities or houses of worship.

While content varies, the core of most programs is the same. Generally, court-mandated educational programs emphasize that parents should solve problems rather than find fault with each other. AFCC's recent survey found that the most intensively covered topic is the benefits of parental cooperation versus the costs of parental conflict.[50]

Several basic distinctions help to frame the role of these secondary prevention programs. The first is between them and programs of alternative dispute resolution such as mandatory child custody mediation.[51] Both types of programs are aimed at managing family conflict, are created under the auspices or with the cooperation of the court system, and the court system compels participation by family members. The goal of preventive programs, however, is education. Education, in turn, aims at preventing court intervention in the lives of the family by promoting better communication and conflict reduction skills and to promote better parent-child relationships. The aim of mediation programs, in contrast, is to facilitate the resolution of a particular dispute or develop a parenting plan for particular children. The distinction is, in other words, between providing parents with generally applicable information and skills (education) and trying to develop an agreement to resolve their specific dispute through third party intervention (mediation). Education can, and often is, usefully combined with mediation, but the two are conceptually distinct.

Preventive education programs can also be distinguished on the basis of who is providing the educational services. All of the programs described below are court-mandated, meaning that parents are compelled to attend by court order. A court-mandated program, however, can be either court-affiliated or court-based or some combination thereof. A court-affiliated program is organized by private service providers, usually a nonprofit agency. A court-based program, in contrast, is organized by court employees.

50. Braver et al., *supra* note 47, at 51.
51. See *War and P.E.A.C.E.*, *supra* note 24, at 186–88.

a. P.E.A.C.E. (Parent Education and Custody Effectiveness)

P.E.A.C.E. is a court-affiliated educational program for parents with a particularly strong legal content offered in a number of judicial districts throughout New York State.[52] P.E.A.C.E. educates parents about three topics related to divorce and separation: the legal process, typical adult reactions, and, most importantly, the child's experience and how parents can make it better.

Founded by attorneys, P.E.A.C.E. is a joint project of the Hofstra University School of Law and the Hofstra University School of Education's Graduate Programs in Marriage & Family Counseling. P.E.A.C.E. is co-sponsored by the Interdisciplinary Forum on Mental Health and Family Law, an umbrella organization of leading mental health and family law groups in New York. P.E.A.C.E.'s development has been guided by the advice and support of a Statewide Interdisciplinary Advisory Committee. Local programs are organized by volunteer Local Advisory Committees of judges, court administrators, lawyers, and mental health professionals.

Local programs have significant flexibility which results in the P.E.A.C.E. curriculum being presented in a variety of formats. In Nassau County, for example, P.E.A.C.E. is presented in three two-hour sessions over a three-week period. In contrast, Erie County (Buffalo) presents its P.E.A.C.E. program in a five-hour Saturday session.

Most P.E.A.C.E. pilot programs combine large group presentations with small group discussions following a standard curriculum. Some, however, use a small group format throughout.

b. Parents Apart

Parents Apart, in Massachusetts, is a five-hour, court-affiliated program offered at seven sites designed to be taught by mental health professionals with expertise in children's issues related to divorce. It is a collaborative effort between the University of Massachusetts Medical Center Department of Psychiatry and Family Services of Central Massachusetts.[53]

Parents Apart takes a different approach from most parent education programs which emphasize the importance of parental cooperation and teach "cooperative" parenting strategies. Instead, Parents Apart sug-

52. *See generally id.* More information about P.E.A.C.E. can be obtained from The P.E.A.C.E. Project, Hofstra University School of Law, 121 Hofstra University, Hempstead, New York 11550–1090.

53. More information about Parents Apart can be obtained from Geri Fuhrmann, University of Massachusetts Medical Center, Department of Psychiatry, 55 Lake Avenue North, Worcester, Massachusetts 01655.

gests that post-divorce parenting relationships can progress from "parallel" to "cooperative" parenting. In parallel parenting, each parent assumes total responsibility for the children during the time they are in his or her care without expectation of flexibility from the other parent. Like many programs, Parents Apart teaches that the parental relationship must be good for the children and manageable for the adults. While communication, flexibility and respectful behavior are an ideal, Parents Apart points out that high interpersonal conflict may result from efforts to communicate by parents who are simply not ready to cooperate.

Therefore, Parents Apart recommends parallel parenting for those unable to cooperate successfully. While Parents Apart acknowledges that parallel parenting may not be an ideal for children, the program considers it far superior to exposing children to ongoing parental conflict and a useful bridge as parents adjust to separation and divorce.

c. Kid's Turn

Also founded by attorneys, Kid's Turn is a child-oriented court-affiliated educational program for San Francisco Bay Area families in the process of reorganization.[54] It focuses on children ages four to fourteen and is offered at four different sites. Parents are charged a sliding scale fee for participation. The course is taught by professionals with backgrounds in education or psychology.

The focus of Kid's Turn's six, ninety-minute educational workshops spread over a six-week period is to teach the children skills that help them cope with the changes in their family that occur when parents divorce or separate. The workshops incorporate age-appropriate games and activities to help children learn most effectively. Children learn (1) to identify and communicate their feelings about their parents' separation or divorce; (2) ways to talk about these changes with other children and adults at home and at school; (3) some basic concepts about the legal process of divorce and child custody decision-making; and (4) problem-solving methods for dealing with conflict-laden situations that children of divorce frequently encounter.

Kid's Turn also provides information to parents to help them help their children adjust to family reorganization and implement what they learn in the classroom.

54. More information about Kid's Turn can be obtained from Kid's Turn, 1242 Market Street, 4th Floor, San Francisco, California 94102.

d. Families in Transition

Families in Transition (FIT) is a court mandated and affiliated divorce adjustment program in Jefferson County (Louisville), Kentucky.[55] It is one of the few programs to mandate that both parents and children (ages eight to sixteen) attend. FIT is six hours long and is offered in weekly two-hour sessions over a three week period. One parent and the child(ren) attend concurrent but separate sessions while the other parent attends the program at a separate time. A "parents together" program is available if both parents independently select this option.

The FIT curriculum has five major objectives: (1) to increase children's competence by teaching specific skills to identify divorce-related feelings in the self and others; (2) reduce feelings of isolation and misperception about divorce; (3) increase children's awareness of how divorce affects their parents; (4) increase awareness of appropriate ways children respond to anger; and (5) develop parental competence by teaching skills to handle life adjustment issues, children's divorce-related concerns, the parental relationship, and the parent-child relationship. Children's programs are primarily activity-based while parent programs use open discussion, role-play, and small group exercises.

FIT enjoys the strong support of Jefferson County Family Court judges, the Family Law Section of the Louisville Bar Association, and the University of Louisville, all of whom have representatives on the FIT Advisory Board.

3. Evaluation of Secondary Prevention

Available research on court-affiliated secondary prevention programs provides grounds for optimism that parents can learn to help their children cope with the difficulties that result from separation and divorce. It tentatively supports several important propositions for courts organizing prevention programs:

- Most parents do not willingly attend prevention programs and will only do so if compelled by the court;
- Most importantly, parents who are compelled to attend report an overwhelmingly positive feeling that they learn important new information, skills, and attitudes that will help their children adjust to divorce and separation;
- Many parents who attend report a greater degree of cooperation with the other parent and greater willingness to accept helping services;

55. More information about Families in Transition can be obtained from Families in Transition, c/o Family Court Administrator, Hall of Justice, 600 West Jefferson, 2nd Floor, Louisville, Kentucky 40202.

- By overwhelming numbers, parents who attend court-affiliated educational programs feel that such programs should be required for all divorcing and separating parents;
- Relitigation and conflict rates for parents who attend court affiliated programs seem to be lower than comparable rates for those who do not; and
- Parents should attend prevention programs as soon as possible after a complaint is filed with the court;
- The judges who refer parents to court mandated educational programs overwhelmingly believe that parents have benefitted from the referral.

Several thousand parents in different areas of New York State, for example, have participated in P.E.A.C.E. since the pilot programs funded by a State Justice Institute grant began in 1993.[56] Those closely monitored pilot programs have resulted in much valuable experience about the reactions of parents to court-affiliated education programs.

Parent evaluations of participation in court-mandated educational programs must be put in the context of mandated participation. Every attempt to organize a purely voluntary P.E.A.C.E. program which parents can choose to attend or not has resulted in negligible attendance. Many parents, apparently, do not recognize their own emotional turmoil and want to blame the problems the family is experiencing solely on the other parent.

Most parents attend P.E.A.C.E. only because they are "strongly encouraged" to do so by individual judges supportive of the program, encouragement parents interpret as an order to attend. After such judicial referrals, parental attendance increases sharply.

Many parents initially resent being "required" to attend P.E.A.C.E. by the court's referral. Nonetheless, on confidential post-program evaluation sheets designed by an independent evaluator:

- Eighty percent of a mostly initially unwilling parent audience felt that the courts should require all divorcing and separating parents to attend P.E.A.C.E. as a condition of getting a divorce, results identical to the reactions of parents compelled to attend parent education programs elsewhere[57];
- Eighty percent of participating parents said that participation in

56. A fuller description of P.E.A.C.E., and its pilot programs and evaluation results can be found in *War and P.E.A.C.E., supra* note 24.

57. Jack Arbuthnot & Donald A. Gordon, *Does Mandatory Divorce Education for Parents Work? A Six Month Outcome Evaluation,* 34 FAM. & CONCILIATION CTS. REV. 60, 79 (1996) (summarizing study of Ohio program).

P.E.A.C.E. increased their knowledge about families, divorce, and separation; and

- Over 95 percent said that they would use what they learned at the program.

More subjective statements on P.E.A.C.E. evaluation forms indicate that divorcing and separating parents deeply appreciate the premise of parent education programs once they are exposed to them—that even though their relationship is ending, they are still responsible parents going through a difficult transition who want to do what is best for their children. Similar statements indicate that participants have a more favorable view of the court system because of the program. Many also seem to be more willing to accept helping services for themselves and their children than they were before participation in P.E.A.C.E.

Evidence from small control group studies of other mandated programs also suggests that they improve the attitudes of parents and the emotional climate for children. Six months after participation in such a program, parents self-reported that they became more aware of their children's needs. They also reported greater tolerance for the parenting role of the other parent.[58] A recent control group evaluation study of two Florida programs concluded: "Parents with greater divorce knowledge experienced better communication, decreased conflict, and decreased violence. Parents who were better skilled in what to say and do exposed their children to less conflict." [59]

Relitigation rates may also be reduced by mandated education programs. A recent study tracked two demographically similar groups of parents for two years following a divorce. One group attended a mandatory court-affiliated divorce education program while the other did not. At the time of the follow-up assessment, the parents who did not attend class returned to court more than twice as often as those who did.[60]

The optimism generated by these tentative findings is reinforced by the general finding of psychological research that anger at moderate levels can be controlled by interventions which challenge the thoughts that trigger the surges of anger. Essentially, court-mandated educational programs provide a parent with information that mitigates anger at the other spouse for the sake of the children. Research suggests that such

58. Cathleen Grey et al., *Making It Work: An Evaluation of Court-Mandated Parenting Workshops for Divorcing Families,* 35 FAM. & CONCILIATION CTS. REV. 280 (1997) (evaluation of Montgomery County, Maryland program); Arbuthnot & Gordon, *supra* note 57 (evaluation of Athens County, Ohio program).

59. Kevin M. Kramer et al., *Effects of Skills-Based Versus Information-Based Divorce Education Programs on Domestic Violence and Parental Communication,* 36 FAM. & CONCILIATION CTS. REV. 7, 23 (1998).

60. Jack Arbuthnot et al., *Patterns of Relitigation Following Divorce Education,* 35 FAM. & CONCILIATION CTS. REV. 269 (1997).

mitigating information can be very helpful in anger management, although timing is very important to the effectiveness of the intervention. The earlier in the anger cycle that the mitigating information is introduced, the more likely it is to reduce anger provoked actions.[61] Intervention through provision of mitigating information is nowhere near as effective if anger is long-term and the hormones generated by anger come to dominate a person's emotional life. This finding strongly suggests that parents should attend educational programs as soon as possible after a complaint is filed with the court.

The judiciary also recognizes the value of parent education programs. A national provider of curricula for court-affiliated educational services conducted a survey of judges who referred parents to its programs over a six month period and concluded:

> Nearly 80% of the judges [who responded] believed that the [parent education] seminar contributes to a quicker resolution of custody arrangements. On the issue of relitigation, 79% of respondents believed the seminar lessened court action regarding the child, while 73% believed it lessened court action generally. In regard to the benefits of the seminar, 96% believe it lessens the negative effects on children and fully 98% believed it benefits the families who participate.[62]

E. Tertiary Prevention for High Conflict Families and Chronic Litigants

Tertiary prevention programs serve a chronically litigious and conflicted parent population. Because of the nature of the participants, tertiary prevention programs are necessarily more labor intensive than programs for less conflicted parents. The aim of tertiary programs is to teach the parents how to live without litigation through better conflict management skills and to help the children cope until the parents do.

1. Group Mediation Model of Family Court Services of Alameda County

Alameda County California Family Court Services, for example, has designed a court-based program specifically addressed to parents and children endlessly enmeshed in custody and visitation disputes.[63] The

61. Goldman, *supra* note 22, at 62.

62. Robert L. Fisher, *The Impact of an Educational Seminar for Divorcing Parents: Results From a National Survey of Judges*, in AFCC Congress Proceedings, *supra* note 15, at 65 (246 of the 625 judges in the survey sample responded to the survey instrument).

63. The description of the Alameda County program that follows is adapted from Johnston, *supra* note 15, at 10–11. More information about the program can be obtained from Larry Lehner, Alameda County Superior Court, 1221 Oak Street, # 260, Oakland, California 94612.

goal of the program is to reduce relitigation and continuous conflict by encouraging compliance with court orders and parenting plans. It also aims to provide peer support for children caught in the middle of their parents' disputes.

While called a mediation model, many elements of the Alameda program are also educational in function, emphasizing insight and skill building for parents. The Alameda program is, however, far more intensive than the typical secondary prevention program, and the number of participants is much lower.

Screening for program participation is conducted by court employees; families are eligible to participate if two attempts at mediation fail and there is evidence that the children are suffering. About one-half the participating parents agree to attend the program voluntarily while the other half are court-ordered to attend.

Eight families participate together in the group intervention in ninety-minute sessions over an eight-week period. Sessions are led by mixed gender group counselors. Parents are separated for some of the sessions and separate sessions are held for their children at the same time. For the first four sessions, parents are expected to describe their children, identify their own contribution to the impasse, consider how the children are affected by the parents' battles, and set personal goals for the last four sessions. The fifth session is a joint one for parents and children with counselors. The final three sessions are for parental conflict management skill building within the group framework.

2. CONTEMNORS

Los Angeles County Family Court Services has developed a PRE-CONTEMPT/CONTEMNORS Group Diversion Program designed to deal with the problems of parents who have high levels of conflict, are chronically in violation of custody and visitation court orders, and seek frequent court intervention. While also more labor intensive than the typical secondary prevention program, CONTEMNORS serves more parents than the Alameda County program. It does not, however, include children in the educational process.

CONTEMNORS was created because of the lack of enforcement remedies for noncustodial parents denied access to their children. As the program creators note: "The program model is designed similarly to diversion programs created to address driving under the influence and drug abuse defendants."[64]

64. Sherrie Kibler et al., *PRE-CONTEMPT/CONTEMNORS Group Diversion Counseling Program,* 32 FAM. & CONCILIATION CTS. REV. 62-63 (1994). More information about CONTEMNORS can be obtained from the Family Mediation and

Referrals to CONTEMNORS are made by judges, and the court orders parents to attend. "Many come unwillingly and resentfully, others with more grace and interest. Some are ordered back a second time or required to write a class paper on what they learned. The size of the group varies widely, depending on the number of referrals (twenty-five to seventy-five at any one time)."[65]

CONTEMNORS' goal is to provide parents with information about the effects of their behavior on their children and its legal consequences. It also seeks to improve parents' communication and conflict resolution skills. The program consists of six sessions, each with a different educational theme. During the first five sessions, parents practice conflict-resolution skills on nondivorce-related conflicts. In the last session, the parents focus on common custody and visitation disputes.

3. Evaluation of Tertiary Prevention Programs

Research on tertiary prevention programs for chronic family conflict is even less developed than research on primary and secondary programs. Few such programs exist and even fewer have been studied by careful researchers.

Professor Janet Johnston has, however, undertaken an evaluation of the Alameda County program which suggests that even chronic litigants can benefit from carefully structured educational interventions. When compared to a control group of similarly litigious parents nine months later, Professor Johnston reports "strong and consistent statistical findings that both men and women who received the group mediation model were substantially more cooperative, expressed less disagreement with each other, and were more likely to resolve the disputed custody issues with their ex-partner. . . . Furthermore, domestic violence between parents diminished to a negligible amount."[66] She further reports a substantial drop in new client-initiated filings in the group intervention families. Professor Johnston does, however, note the comparatively high expense of the program (although she does not

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Conciliation Court Services of the Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012. The Division of Family Court Services of the Fourth Judicial District of the Circuit Court of Oregon in Portland operates a similar program called Parents Beyond Conflict. More information about that Program can be obtained from them at Room 350, Multnomah County Courthouse, 1021 S.W. 4th Avenue, Portland, Oregon 97204–1154.

65. Janet R. Johnston & Vivienne Roseby, In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce 228–29 (1997).

66. Johnston, *supra* note 15, at 12. Professor Johnston is also presently undertaking an evaluation of Los Angeles County's CONTEMNORS Program. *See* Johnston & Roseby, *supra* note 65, at 229.

compare its cost to those of further litigation between the parents) and that her study is a small preliminary sample of a developing model from which global conclusions are unjustified.

V. A Comprehensive Family Conflict Management System: Oregon's Task Force on Family Law

The prevention programs just described were implemented by individual courts working with strong community resources. More comprehensive prevention planning can also occur at the state level. Oregon, for example, has taken great strides toward integrating primary, secondary, and tertiary prevention programs into a coherent pre- and post-conflict prevention program. Working in tandem with the Future of the Courts Committee, the Oregon Legislature established a bipartisan interdisciplinary Task Force on Family Law that developed a guiding vision for a comprehensive family conflict management system.[67]

The Oregon Task Force translated its vision statement, graphically illustrated in Figure 4 (p. 125), into a proposed comprehensive family conflict management program. Although the Task Force did not use public health terminology in describing the proposed system, its emphasis is on primary, secondary and tertiary conflict prevention programs, as seen in Figure 5 (p. 126).

VI. Incorporating Prevention into the Mission of the Unified Family Court

The overall picture that emerges from review of existing prevention programs and the emerging evaluation data, while certainly not definitive, suggests that families and court dockets both have much to gain from integrated preventive programs. Every unified family court should develop a coherent prevention strategy to reduce conflict resulting from divorce and separation for two reasons: self-preservation and potentially better outcomes for parents and children. The investment in prevention, however, must be long-term and not be viewed as a "quick fix" for rising family court caseloads. Over time prevention should pay off in improved parental conflict management attitudes and skills and less damaged and alienated parents and children.

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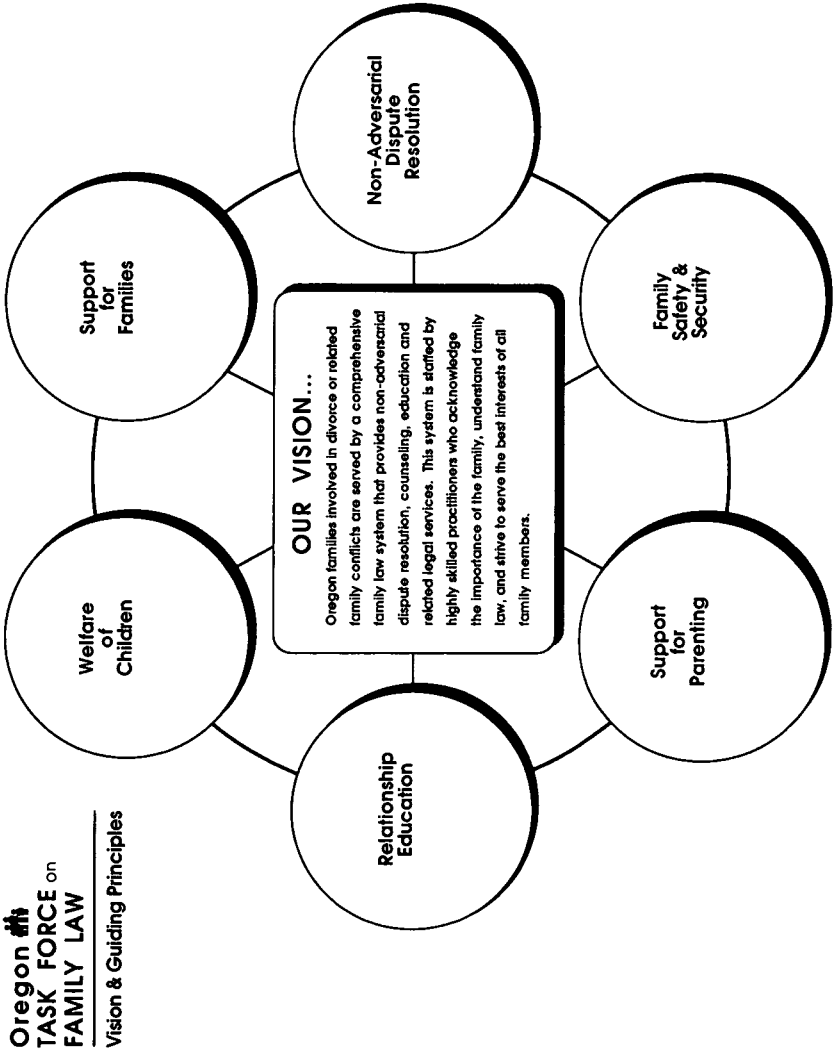
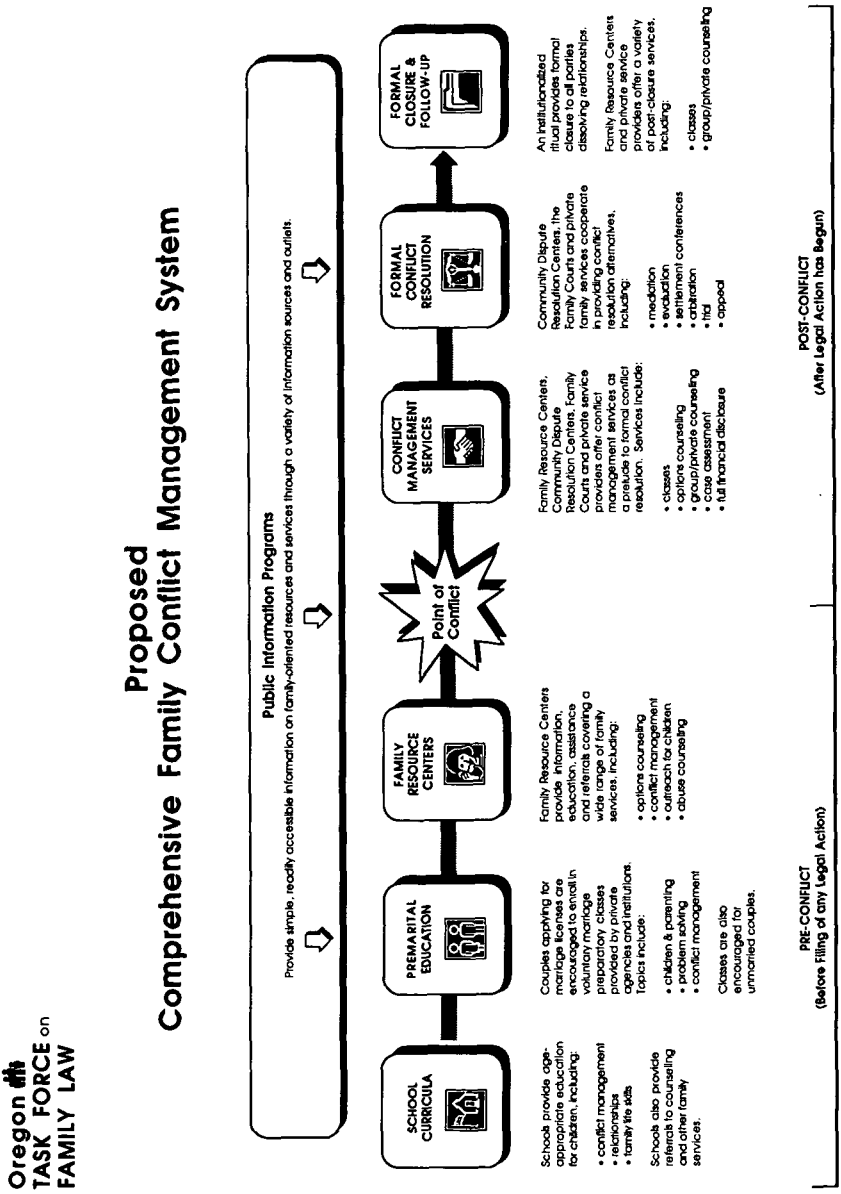
67. *See* William Howe III & Maureen McNight, *Oregon Task Force on Family Law: A New System to Resolve Family Law Conflicts,* 33 FAM. & CONCILIATION CTS. REV. 173 (1995).


Oregon
TASK FORCE on
FAMILY LAW
Vision & Guiding Principles
Welfare of Children
Support for Families
Relationship Education
Non-Adversarial Dispute Resolution
Support for Parenting
Family Safety & Security
OUR VISION...
Oregon families involved in divorce or related family conflicts are served by a comprehensive family law system that provides non-adversarial dispute resolution, counseling, education and related legal services. This system is staffed by highly skilled practitioners who acknowledge the importance of the family, understand family law, and strive to serve the best interests of all family members.


Oregon TASK FORCE on FAMILY LAW
Proposed
Comprehensive Family Conflict Management System
Public Information Programs
Provide simple, readily accessible information on family-oriented resources and services through a variety of information sources and outlets.
SCHOOL CURRICULA
Schools provide age-appropriate education for children, including:
• conflict management
• relationships
• family life skills
Schools also provide referrals to counseling and other family services.
PREMARITAL EDUCATION
Couples applying for marriage licenses are encouraged to enroll in voluntary marriage preparatory classes provided by private agencies and institutions. Topics include:
• children & parenting
• problem solving
• conflict management
Classes are also encouraged for unmarried couples.
FAMILY RESOURCE CENTERS
Family Resource Centers provide information, education, assistance and referrals covering a wide range of family services, including:
• options counseling
• conflict management
• outreach for children
• abuse counseling
Point of Conflict
CONFLICT MANAGEMENT SERVICES
Family Resource Centers, Community Dispute Resolution Centers, Family Courts and private service providers offer conflict management services as a prelude to formal conflict resolution. Services include:
• classes
• options counseling
• group/private counseling
• case assessment
• full financial disclosure
FORMAL CONFLICT RESOLUTION
Community Dispute Resolution Centers, the Family Courts and private family services cooperate in providing conflict resolution alternatives, including:
• mediation
• evaluation
• settlement conferences
• arbitration
• trial
• appeal
FORMAL CLOSURE & FOLLOW-UP
An institutionalized ritual provides formal closure to all parties dissolving relationships.
Family Resource Centers and private service providers offer a variety of post-closure services, including:
• classes
• group/private counseling
PRE-CONFLICT
(Before Filing of any Legal Action)
POST-CONFLICT
(After Legal Action has Begun)

The Oregon Judicial Department's Future of the Courts Committee, for example, explicitly stated in its mission statement for its state courts in the twenty-first century that: "Outreach and education are the cornerstone of the multi-option justice system. The state courts actively support efforts to help people understand and exercise their options for resolving disputes."[68]

Other state court systems should follow suit and develop appropriate measures of effectiveness for prevention programs and incentives to create them. Around the country "[c]ourts are becoming community resources for legal information and resources to encourage citizens to make better choices."[69] Chief judges, court administrators, governors, legislators, and the bar should actively work to support this trend.

A prevention mission statement should be implemented by a court's concrete plan to develop programs appropriate to the needs of the community the court serves.[70] There are many choices to be made and options to be explored. For example, it would be entirely rational for family courts to concentrate their own resources on a secondary or tertiary prevention program, as the population for those programs are clients of the court. The court could also provide inspirational support to school-based programs by asking judges to serve on the advisory committees or as periodic classroom teachers.[71] The target population for the prevention program needs to be carefully defined and measures of effectiveness realistically created and assessed. A research and evaluation plan should be incorporated into program design to build better programs and support for them.

Whatever the prevention plan, the critical point is for family courts to have one, and to involve the community in creating and supporting it. A unified family court is the logical community institution to organize and support a preventive program to help families cope with conflict due to divorce and separation and reduce the need for court intervention in their lives. Experience around the nation demonstrates that family courts are capable of developing and sustaining such programs.

For a unified family court to develop and implement a successful prevention strategy, it must overcome two sources of resistance—inter-

68. JUSTICE 2020, *supra* note 3, at 12.

69. MOSTEN, MEDIATION, *supra* note 42, at 385.

70. *See War and P.E.A.C.E., supra* note 24, at 165–83 for a discussion of the constitutional issues of compulsory attendance at court-mandated parent education programs and for discussion of practical issues in organizing a preventive education program under court auspices such as funding, staffing patterns, and confidentiality.

71. *See* JUSTICE 2020, *supra* note 3, at 10 (describing a future scenario in Oregon where retired judges coordinated by the state court office of public education and outreach teach conflict management classes for fourth and fifth graders).

nal and external. Internal resistance can come from judges and support staff who simply do not see prevention as part of their mission. External resistance can come from the organized bar, related agencies and social service deliverers, and organized interest groups who have concerns about how court-mandated prevention programs will affect their clients and existing operations.

Such resistance is usually not focused on "technical change but social change—the change in human relationships that generally accompanies technical change."[72] One effective method for dealing with resistance to social change is to create social proof that prevention is necessary and desirable. Successful prevention pilot programs, for example, can build on the human tendency to see change as more appropriate if others are doing it. Site visits to successful prevention programs in other states can also make a contribution to reducing resistance to their implementation.

Including relevant stakeholders in the construction of prevention programs can also increase commitment to prevention and reduce fear of the unknown. The Oregon Task Force on Family Law, for example, "sought out a diverse membership with conflicting interests and points of view. . . . Rather than start out with a fixed agenda, the task force set out to learn. They studied success in other jurisdictions. . . . They developed a consensual mission statement and then worked collaboratively to implement it."[73]

A special word is required about the importance of including the bar in the planning and implementation of prevention programs. The adversarial outlook held by some percentage of family lawyers will gradually evolve to incorporate prevention ideals if those ideals and programs are supported by the courts. Some lawyers support them already; all lawyers want to play an meaningful role in the rapid evolution of the family law dispute system.

> Family law practice and family courts are joined at the hip. . . . A key link in the symbiosis between lawyering and the courts is the reality that courts are shifting from being primarily institutions devoted to making decisions for people to being public forums for choosing appropriate methods of dispute resolution.[74]

Evidence suggests, for example, that family lawyers who participate in mediation programs develop more settlement-oriented attitudes and

72. Paul R. Lawrence, *How to Deal With Resistance to Change*, 47 HARV. BUS. REV. 4, 12 (1969).
73. MOSTEN, MEDIATION, *supra* note 42, at 380.
74. Id. at 384.

file less motions than their counterparts who do not.[75] Court-mandated prevention programs will also gradually help shift the paradigm of the family lawyer from gladiator to problem solver.[76] Local bar associations, with the encouragement of their court systems, can support prevention programs, for example, by sponsoring pledges in which its members state they will advise family law clients of the need for conflict reduction for the benefit of their children and refer them to useful community resources.[77] The growth of prevention programs will eventually require reexamination of family law practice and law school family law training.

Overall, family courts creating a plan for prevention programs should remember Chief Judge Vanderbilt's admonition that "judicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat."[78] Change may take a generation but it will occur. It has to.

VII. The Future

A long-term investment in preventive education has improved public health and has proven to be well worth the costs. Despite disparities between social groups, "[t]he health status of entire population groups has improved dramatically during the past century or two."[79] While not the only cause of this improvement (standards of living have improved, as has the educational level of the population), the increased emphasis on prevention through public education is certainly a contributing factor to the progress that has been made.

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75. See Craig Mcewen et al., *Bring in the Lawyers: Challenging the Dominant Approaches to Insuring Fairness in Divorce Mediation,* 79 MINN. L. REV. 1317, 1367-68 (1995) (comparative survey of Maine lawyers who participate in that state's mandatory mediation program with New Hampshire lawyers which does not mandate lawyer participation in mediation).

76. *See* JUSTICE 2020, *supra* note 3, at 9 (describing a future day in the life of a "problem-solving" lawyer emphasizing preparation for and participation in non-adversarial dispute resolution techniques). *Cf.* Abraham Lincoln, *Notes for a Law Lecture,* in THE LIFE AND WRITINGS OF ABRAHAM LINCOLN 328, 329 (Philip V.D. Stern ed., 1940) ("As a peace- maker, the lawyer has a superior opportunity of being a good man. There will still be business enough.").

77. *See* Andrew Schepard, *Law and Children: A Divorce Lawyer's Pledge for Children,* N.Y.L.J., July 6, 1996 at 3.

78. Arthur T. Vanderbilt, *Introduction, to* MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION xix (Arthur T. Vanderbilt ed. 1949). Vanderbilt continued: "Rather, we must recall the sound advice given by General Jan Smuts to the students at Oxford, 'When enlisted in a good cause, never surrender, for you can never tell what morning reinforcements in flashing armor will come marching over the hilltop.'" *Id.*

79. PICKETT & HANLON, *supra* note 26, at 84.

Prevention programs supported and planned by a unified family court should, over the long term, achieve similar results. Prevention programs will help family courts seem more accessible and less authoritarian to an increasingly alienated population. They will encourage a positive reorientation of the role of the family lawyer. They will help litigants in the process of divorce and separation to make better informed decisions about how they want to resolve their conflicts. And, above all, prevention programs will help parents manage the difficult process of reorganizing their families with the welfare of their children their foremost consideration.