



Vermont Judicial Commission on Family Treatment Dockets

Final Report

**Questions May Be Directed To
Hon. Karen R. Carroll, Associate Justice
Vermont Supreme Court**

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I. Problem Statement

Opioid addiction and abuse in the state of Vermont drive drug trafficking and other criminal offenses, endangering Vermonters and eroding our way of life; harm children by afflicting their parents and undermining families; and cause tragic overdose deaths, particularly among young Vermonters.

The opioid epidemic in Vermont has contributed to exploding caseloads in the abuse and neglect (CHINS) docket in the Family Division. Abuse and neglect case filings increased 68% between FY 2013 and 2018.

The use of family treatment docket techniques to promote rehabilitation by parents in the child welfare system has proven to be a successful intervention and leads to increased reunifications and positive permanency outcomes when best practices are followed. Family treatment dockets continue to spread nationally -- In 1999 there were 10 family treatment dockets in the nation, and by 2018 there are 495.¹ Vermont experimented with family treatment dockets in Chittenden County from 2002 - 2008 but that practice was suspended. Currently there are no family treatment dockets in Vermont, although a Chittenden County team has submitted a proposal to the Vermont Court Administrator's Office which is being reviewed according to the treatment docket proposal protocol. A Rutland County team is currently developing a family treatment docket proposal.

II. Commission Charge

The Vermont Judicial Commission on Family Treatment Dockets was established on January 8, 2018 and charged with the following:

1. The Commission shall identify evidence-based best practices and shared commitments of Judicial Branch partners regarding operation of family division treatment dockets. This should include consideration of risk and need screening and clinical eligibility for treatment docket services; the respective roles and obligations of the court, the Department of Children and Families, States' Attorneys', Attorney General, Defense Attorneys and Guardians ad Litem in the treatment docket process; ADR processes; the relationship between different treatment docket practices and the ultimate goal of promoting the best interests of children; and the goal of timely permanency for children in child protection cases.
2. The Commission shall explore the structures, operations and costs of family treatment dockets in courts across the country, their data regarding best practices, and recommend proposals for pilot family treatment dockets in Vermont to the Supreme Court and methods for affording statewide access to family treatment dockets, if warranted and consistent with the policies of the Court.

¹ Children and Family Futures, June 14, 2018 presentation to the Commission by Nancy Young, Executive Director.

III. Commission Members

The Vermont Supreme Court appointed the following people to the Commission:

Hon. Paul L. Reiber, Chief Justice of the Vermont Supreme Court, Chair
Hon. Karen R. Carroll, Associate Justice, Co-chair
Hon. Brian Grearson, Chief Superior Judge
Patricia Gabel, State Court Administrator
Theresa Scott, Chief of Trial Court Operations
T.J. Donovan, Attorney General
Mathew Valerio, Defender General
John Campbell, Executive Director, Vermont Association of States Attorneys
Tracy Shriver, Windham County State's Attorney
Ken Schatz, Commissioner Department of Children and Families
Karen Shea, Deputy Commissioner Department of Children and Families
Alice R. George, RN
Dr. Frederick Holmes, MD, Fairfax, Vermont
Senator Jane Kitchel, Chair of the Senate Committee on Appropriations
Representative Maxine Grad, Chair of the House Committee on the Judiciary

IV. Work and Findings of the Commission

- A. Commission Meetings.** The Commission met in person four times in 2018 between February and October. The meetings were open to the public and meeting minutes and all meeting materials and presentations are available on the Commission's website.²
- B. Technical Assistance and Presentations to the Commission.** The Commission was assisted in its work by the National Center for State Courts, and informed by numerous subject matter experts in addition to Commission Members, including:
- Nancy K. Young, PhD, MSW, Director, Children and Family Futures
 - Joelle van Lent, Psy.D., Licensed Psychologist, Vermont
 - Danielle Lindley, Director of Children, Youth, and Family Services at Northwestern Counseling and Support Services, Vermont

² <https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/commission-on-family-treatment-dockets>

C. Development of Commission Principles. In early 2018, the Commission developed a set of principles to guide its work and recommendations, taking into account the role of the courts in the CHINS process. The Commission developed the following principles:

1. **Safety.** Every child protection case must focus on the safety of the child(ren). When a petition is filed, there must be immediate screening of both parents and children for substance abuse, mental health, and trauma with a goal of early intervention and identification of appropriate services. The window between intervention and service delivery must be shortened in all areas of the State. Services to families should be tailored to their needs and specific safety threats and be evidence-based. Children should be removed from their homes only when there is an imminent risk to the well-being of the child. Services should be offered to families, when safety allows, prior to initiating court involvement.
2. **Timeliness.** Attention to and emphasis on the quality of the initial affidavit with focus on consistency of State's Attorneys' review of risk to the child(ren) is most important. Timely access to justice and to services serves both parents and children. Timelines are important in all stages of the court proceeding and must take into account the effect of delay on children.
3. **Due Process.** All participants in the court process are burdened by the increased number of CHINS proceedings. Attorneys representing parents and children have difficulty protecting the rights of their clients when challenged with excessive caseloads and inadequate resources. Further disruptions in these cases occur from changing judicial assignments and transfer of cases between SA and AG offices. Local customs create unhelpful pressures and inconsistent administration of caseflow. We must emphasize quality, training and consistency in judicial assignments and attorney representation especially when treatment docket principles are being considered. We must increase the amount of time allocated for hearings and schedule hearings from the bench. Vermont children and families are best served by a collaborative, non-adversarial process, and we must consider mediation and other ADR processes outside court time. We must improve training and opportunity for collaboration. All participants, and justice partners in their professional roles, should commit to collaborate in the best interests of the child.
4. **Permanency.** We must increase the opportunity for parent-child contact as a support toward reunification and to help identify when reunification is not likely to occur. The focus in a CHINS Proceeding should be permanency for the child with a focus on whether reunification is attainable.
5. **Well-being.** Availability, consistency, manageable caseloads, outcome-oriented practices, and maintaining a focus by all branches of government on the safety and welfare of children are our priorities for improving the well-being of children and families in Vermont's child protection judicial system.

D. Review of Relevant Information and Research

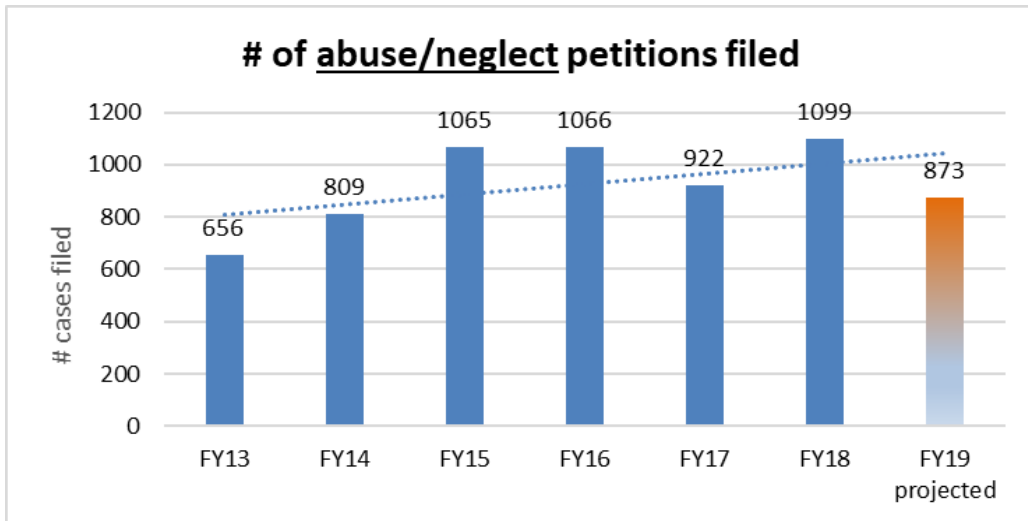
The Commission received and reviewed information and research on family treatment docket philosophy, structure, best practices, and implementation guidance from organizations including Children and Family Futures, the Office of Juvenile Justice and Delinquency Prevention, the Children's Bureau at the U.S. Department of Health and Human Services' Administration for Children and Families, and the National Center for State Courts. Among the topics addressed in this information and research include:

- (1) The extent of the opioid epidemic and its impact on the child welfare system nationally and within Vermont
- (2) Family treatment court models
- (3) Elements of successful family treatment docket models
- (4) Challenges to implementing a family treatment docket model
- (5) Approaches to funding family treatment dockets
- (6) The role of courts in prevention
- (7) Establishing family treatment docket models in rural jurisdictions
- (8) Adverse Childhood Experiences (ACEs)
- (9) Trauma responsive court practices
- (10) The prevalence of co-occurring disorders among parents in the child welfare system
- (11) The sequential intercept model
- (12) The Vermont Prevention Model

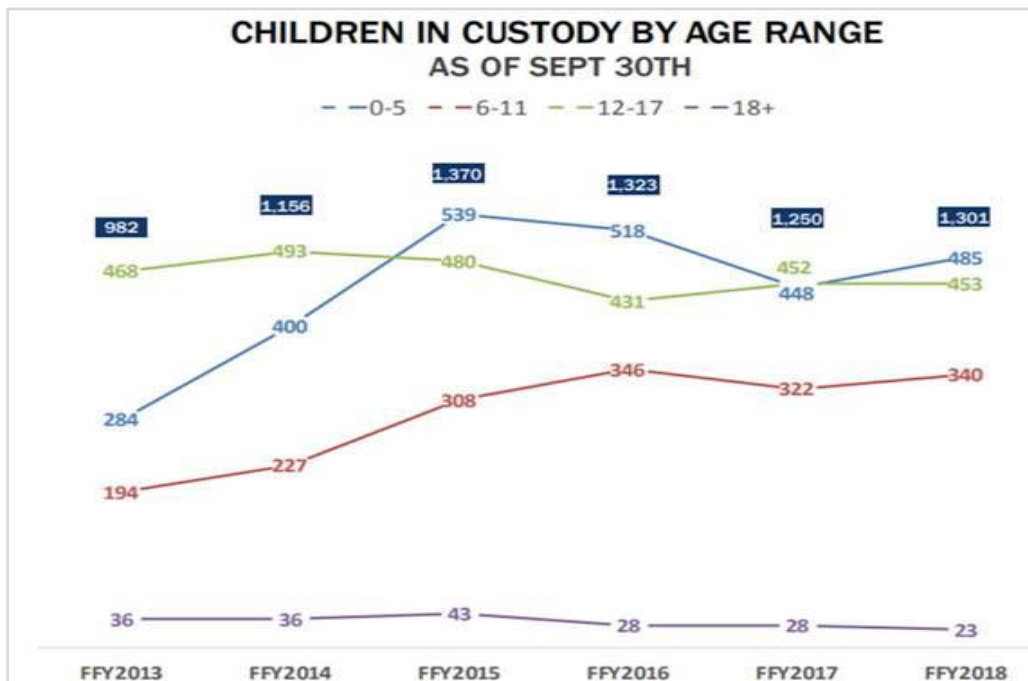
E. Commission Findings

Through its meetings, presentations, and review of relevant literature, the Commission has made the following findings:

(1) The CHINS docket has grown exponentially, in caseload and case complexity, due to, in part, the opioid epidemic. There has been a steady rise in the number of abuse and neglect petitions filed with a minor fluctuation in 2017. Abuse and neglect case filings increased by 68% between 2013 and 2018. Projections for FY19 indicate that abuse and neglect filings will drop approximately 18%.



Children between the ages of 0 and 5 represent the highest number of children in DCF custody.



More than half of the children between the ages of 0 and 5 who were in DCF custody in 2016 were in custody as a result of opiate abuse issues.

5

Family Services Division Children in Custody Ages 0 - 5

Number and Percent of Children Ages 0-5 in Custody due to Opiate Abuse Issues

Child's Age	Nov. 2016 # of children	% of 0-5 children in custody
0	46	55%
1	44	44%
2	45	54%
3	53	56%
4	46	62%
5	32	50%
Total	266	53%

(2) Family Treatment Dockets can be a successful tool to help create better outcomes for children when implemented and operated in accordance with best practices. As with other potential collaborative approaches to the CHINS docket, a Family Treatment Docket would provide, among other things, (1) earlier access to assessment and treatment services;³ (2) increased management of recovery services and compliance; (3) improved family-centered services and parent-child relationships; (4) increased judicial or administrative oversight; (5) systemic response for participants; (6) a consistent system in identifying likely to benefit from a recovery model; and (7) non-adversarial approaches across service systems and courts.⁴

(3) There are four primary family treatment docket models:

- a. Integrated Model: One judge oversees recovery and all other aspects of the pending case.
- b. Parallel Model: A specialized judicial officer oversees participant recovery through compliance reviews while the family division judge manages the underlying case,

³ There is no statutory framework pertaining to the CHINS docket that mandates early assessment of either parents or children for mental health or substance use disorders once a CHINS case is initiated.

⁴ From the paper "Collaborative Practice and Policy Improves Outcomes for Families," presented to the Commission by Nancy K. Young, Ph.D., Executive Director of Children and Family Futures.

including all contested hearings. Non-compliant participants are referred out of the treatment docket and back to the family division judge.

- c. Dual Track/Hybrid Model: The family division judge presides over all aspects of the case, including participant recovery, and non-compliant parties are referred to a specialized court officer.⁵
- d. Infusion Model: The seven key ingredients of a family treatment docket, outlined in (2) above, are infused into the already-existing CHINS docket presided over by the family division judge.

(4) As with all specialty dockets, a Family Treatment Docket requires buy-in from all parties to the proceedings, including prosecutors, attorneys for parents and children, the courts and treatment providers. The success of a Family Treatment Docket depends upon the willing collaboration of all stakeholders. When parties to a CHINS proceeding collaborate with shared goals in mind and in a non-adversarial manner, better and more timely outcomes are achieved.⁶

(5) A majority of children and parents who participate in court proceedings, including family treatment dockets, are affected by trauma experiences that impact their physical and mental health and their ability to respond successfully to treatment and other interventions. Those who interact with participants in the court process must understand the impact of trauma and employ strategies to create a safe environment. Trauma-informed approaches acknowledge the prevalence and impact of trauma and attempt to create a sense of safety for all participants. Trauma-informed principals assist in engaging participants by minimizing perceived threats, avoiding re-traumatization, and supporting recovery.⁷

V. Recommendations

In developing its recommendations, the Commission maintained a focus on:

- Maximizing impact with limited resources, while at the same time considering access to treatment dockets and services by as many parents as possible across counties throughout the state, including through improved technology and transportation responses;
- Ensuring that the judicial officers presiding over the treatment docket(s) are properly trained in treatment docket best practices which is problematic with the

⁵ Chittenden County has filed an application to the Office of the Court Administrator proposing an integrated model and Rutland County is currently working on a “track” model which would place parents in the current Adult Drug Treatment Docket on a separate track.

⁶ See “Lean Analysis Summary Report,” State of Vermont Court Administrator’s Office, November 2016. In 2015, the Vermont Judiciary convened a group to conduct a “Lean” analysis of how the Family Division processes child/abuse and neglect cases with a particular focus on why it was taking longer to move these cases through the system. The summary report recommended, in part, that a pilot program using a more collaborative model be created. This action plan also recommended the use of a judicial master.

⁷ Essential Components of Trauma-Informed Judicial Practice. Substance Abuse and Mental Health Services Administration (2013).

https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

current rotation requirements, and also ensuring that attorneys, GALs and other participants are similarly trained on best practices;

- Focusing on the needs of parents while not losing sight of the best interests of the children; and
- Considering statutory and/or rule changes as necessary to support the Commission's recommendations.

The Commission presents the following recommendations:

(1) There are some services that should be routinely offered when a CHINS case is initiated, in the absence of a formal treatment docket, including screening of parents for substance use disorder and screening of children and parents for mental health disorders and trauma. The court should monitor the outcomes and progress.

- a. Although the court is authorized, at the initial temporary care hearing, to order DCF to provide services to parents and children, the court may or may not do so and seldom participates in monitoring actual treatment progress until after the merits and disposition stages of the case.⁸
- b. Initiating these services as early as possible, with oversight from the court, would increase the likelihood of more successful rehabilitative outcomes for both parents and children.
- c. The Commission recommends that the Legislature consider statutory changes to provide for early screening of parents and children when a CHINS case is initiated.

(2) A lack of resources both in the courthouse environment and in smaller communities support the creation of regional Family Treatment Dockets, beginning with a pilot docket.

- a. Judge rotation and lack of available courtroom space, security personnel, judge time and attorney availability are obstacles to adding another full docket to existing court calendars.
- b. Many of the smaller counties do not have available treatment or transportation options to support a county-based Family Treatment Docket and the numbers of families involved in the CHINS docket may not sustain a Family Treatment Docket.
- c. A regional approach would ensure that specially-assigned judges and judicial masters, attorneys, and DCF representatives are all adequately trained on treatment court best practices which must be followed to achieve benefits to families.

(3) The Family Treatment Docket model most adaptable to current resources and needs is the Parallel Model [see (E)(2)(b) above] combined with the use of regional judicial masters.

⁸ Title 33 V.S.A. § 5308(e)(2)(B) and (C) allow the court to order DCF to “provide the child with services” and to “refer a parent for appropriate assessments and services...” when issuing a temporary care order placing a child in DCF custody.

- a. After screening, parents who meet eligibility requirements would be referred from the family division CHINS docket to a regional judicial master who would conduct regularly-scheduled hearings for the purpose of monitoring case plan requirements and treatment progress. The judicial master would continue to oversee the case unless a participant fails to maintain case plan or treatment expectations. In this event, a referral back to the family division may be made.
- b. In addition to presiding over the treatment docket, the judicial master would also have the authority to preside over other routine hearings in the region, such as modifications to parent/child contact, uncontested disposition and permanency hearings, and initial uncontested emergency care hearings within the region.⁹
- c. The primary responsibility of the family division judge would be to focus on the contested cases, including conducting merits and termination of parental rights (TPR) hearings. This would allow the court to move cases through the CHINS docket in a timely manner.

(4) Participants involved in a CHINS proceeding should be referred to a regional Family Treatment Docket, where available, when eligibility requirements are met with buy-in from all parties to the proceeding. A more collaborative approach is needed.

- a. As the Lean analysis recognizes, collaboration to reach shared goals results in better and more timely outcomes for parents and children.
- b. A specially trained judicial master in a pilot, regionally-based Family Treatment Docket will use more problem-solving and collaborative strategies. Stakeholders will likely realize and appreciate the benefits of these strategies, resulting in statewide acceptance of the model.
- c. Special attention should be paid to transportation issues faced by participants who must travel to a Regional Treatment Docket.
- d. Flexibility of court hours, in light of participant commitments, should be considered, along with the use of technology for remote court appearances.

(5) The Commission recognizes the importance of trauma-informed courts and will refer the issue to the Justice for Children’s Task Force.

- a. The Justice for Children’s Task Force (JFCTF) should examine the current CHINS docket courtroom environment, including its physical setting, processes and procedures, in an effort to determine how to ensure that they are trauma-informed.
- b. The JFCTF should recommend policies and procedures to be employed in the CHINS docket court setting so that a safe and conflict-free environment is created for both parents and children.
- c. The JFCTF should identify appropriate educational needs for judges, judicial masters and court staff and make recommendations on how to address them.

⁹ The CHINS Reform Work Group has concluded that use of judicial masters would be a helpful and valuable tool in relieving the pressures in the juvenile docket by providing timely hearings in the CHINS process that do not require a judge. Report to Legislature, CHINS Reform Work Group, December 1, 2018.

Appendix A: Commission Charge and Designation

VERMONT JUDICIAL COMMISSION ON FAMILY TREATMENT DOCKETS

Charge and Designation

A. Background

1. Opioid addiction and abuse in the State of Vermont drive drug trafficking and other criminal offenses, endangering Vermonters and eroding our way of life; harm children by afflicting their parents and undermining families; and cause needless overdose deaths, particularly among young Vermonters.
2. Substance abuse treatment dockets are specialized problem-solving court dockets that focus on the subset of individuals with substance use disorders who, due to identifiable criminal risk factors and clinical need factors, are identified as “high-risk and high-need.” These individuals are less likely to successfully complete treatment and rehabilitate in a traditional court docket, even if intensive treatment opportunities and other services are provided to them. Through frequent court hearings, the court provides close supervision over a period of time to participants in a treatment docket, holding them accountable for meeting their rehabilitation obligations using rewards and sanctions. Data have shown that despite their high costs, if all of the relevant stakeholders follow best practices, treatment dockets can reduce recidivism, thereby reducing costs to the justice system, corrections system, families, communities, and the State. However, when the treatment dockets are not run pursuant to best practices by all stakeholders, they can be cost-ineffective and in some cases affirmatively counterproductive or even harmful to participants
3. The opioid epidemic in Vermont has contributed to exploding caseloads in the abuse and neglect (CHINS) docket in the Family Division. CHINS filings increased 63% between FY 13 and FY 16. The increase in CHINS filings represents more struggling and broken families, and gives rise to higher short term and long run costs to the State.
4. The use of treatment docket techniques to promote rehabilitation by parents in the abuse and neglect docket who suffer from substance use disorder is a relatively new phenomenon. However, national data suggest that if best practices are followed, these techniques can effectively promote reunification and timely permanency.
5. Vermont currently has no treatment dockets in the Family Division abuse and neglect cases, although stakeholders across branches in at least two counties are developing proposals for pilots.

B. Charge

The Vermont Judicial Commission on Family Treatment Dockets is hereby established to explore the use of treatment docket techniques in the abuse and neglect docket and to make recommendations to the Supreme Court. By July 1, 2018 the Commission shall issue its interim report to the Court and by December 1, 2018 a final report addressing the following areas:

1. The Commission shall identify evidence-based best practices and shared commitments of Judicial Branch partners regarding operation of family division treatment dockets. This should include consideration of risk and need screening and clinical eligibility for treatment docket services; the respective roles and obligations of the court, the Department of Children and Families, States Attorneys', Attorney General, Defense Attorneys and Guardians Ad Litem in the treatment docket process; ADR processes; the relationship between different treatment docket practices and the ultimate goal of promoting the best interests of children; and the goal of timely permanency for children in child protection cases.
2. The Commission shall explore the structures, operations and costs of family treatment dockets in courts around the country, their data regarding best practices, and recommend proposals for pilot family treatment dockets in Vermont to the Supreme Court and methods for affording statewide access to family treatment dockets, if warranted and consistent with the policies of the Court.

C. Designation:

The Supreme Court hereby appoints the following people to the Vermont Judicial Commission on Family Treatment Dockets:

Hon. Paul L. Reiber, Chief Justice of the Vermont Supreme Court, Chair
Hon. Karen R. Carroll, Associate Justice, Co-Chair
Hon. Brian Grearson, Chief Superior Judge
Patricia Gabel, State Court Administrator
Theresa Scott, Chief of Trial Court Operations
T.J. Donovan, Attorney General
Mathew Valerio, Defender General
John Campbell, Executive Director Vermont Association of States Attorneys
Tracy Shriver, Windham County State's Attorney
Ken Schatz, Commissioner Department of Children and Families
Karen Shea, Deputy Commissioner Department of Children and Families
Alice R. George, RN, Assistant Judge Addison County
Dr. Frederick C. Holmes, MD, Fairfax, Vermont
Senator Jane Kitchel, Chair of the Senate Committee on Appropriations
Representative Maxine Grad, Chair of the House Committee on the Judiciary

Mary Alice McKenzie, Colchester, VT
Lisa Ventriss, South Burlington, VT

D. Expenses

In the performance of their duties, members who are state employees will be reimbursed by their state employer at the normal state employee expenses. Members of the Commission who are not state employees will be reimbursed for reasonable and necessary expenses. The Court Administrator's Office will pay from the judicial appropriation all reasonable expenses of the Commission when claims are submitted on proper vouchers approved by the Court Administrator or designee.

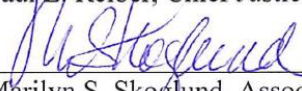
E. Duration of Charge and Designation.

This Charge and Designation shall be effective immediately and shall cease when the Supreme Court accepts or rejects its work product.

Signed in Chambers at Montpelier, Vermont this 8 day of January, 2018.



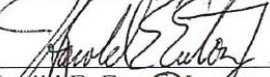
Paul L. Reiber, Chief Justice



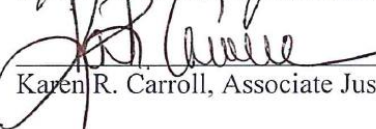
Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice