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William M. Kephart

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THE FAMILY COURT: SOME SOCIO-LEGAL IMPLICATIONS

WILLIAM M. KEPHART†

In 1899 the first juvenile court was established in Chicago, Illinois. Less than a half-century later, juvenile courts had been launched in every state of the union, and today these courts have become an integral part of American jurisprudence. The wholesale acceptance of the juvenile court system within a time span of two generations is somewhat surprising in view of the fact that: (a) changes in judicial philosophy and legislative machinery, especially on a state-wide basis, ordinarily are gradual, time-tested processes; and (b) it has never been demonstrated that the juvenile court system is particularly successful, in spite of its humanitarian base.

In 1914 the first family court was established in Cincinnati, Ohio. Most of the other large cities followed suit, and in the last forty years family court procedures have also been adopted in Omaha, St. Louis, Detroit, Portland, Milwaukee, Los Angeles, Seattle, Dallas, and other cities. However, the impetus for the family court was not so strong as that for the juvenile court, and the former has not, as yet, received the widespread acceptance accorded the latter. One reason for this is because the evils which the juvenile court was designed to correct were of a more flagrant nature than those generally correctable through family court procedures. Nevertheless, the family court movement is accelerating. More and more, law journals, social science publications, and even daily newspapers are carrying articles describing family court functions.¹ Perhaps "advocating" would be a more appropriate word as I do not recall reading an article *attacking* the family court. In any case, the purpose of the present paper is to subject the family court to a critical analysis and to bring into clearer focus some of its socio-legal inferences. While the family court movement is relatively new compared to that of the juvenile court, there are both operational and, more important, conceptual similarities between the two courts. As a matter of fact, the jurisdiction of juvenile courts in some areas has been extended to include parents as well as children, and it was this extension of jurisdictional authority which was one of the factors

† Assistant Professor of Sociology, University of Pennsylvania.

1. See, e.g., Alexander, *What is a Family Court, Anyway?*, 26 CONN. B.J. 243 (1952); Chute, *Divorce and the Family Court*, 13 LAW & CONTEMP. PROB. 49 (1953); Edwards, *Toward a Family Court for Wayne County*, 16 U. DETROIT L.J. 169 (1953); Johnstone, *Family Courts*, 22 KAN. CITY L. REV. 18 (1953); Ogburn, *The Role of Legal Services in Family Stability*, 272 ANNALS 127 (1950); Samuels, *Courts for the Family Go on Trial*, N. Y. Times Dec. 20, 1953, Mag. Sec. pp. 16-43.

leading to the development of the integrated family court. In the following analysis the implications of this philosophical parallelism between the two courts will, I hope, become apparent.

FUNCTIONS OF THE FAMILY COURT

While the juvenile courts in the United States vary widely in operational procedures, there is, theoretically at least, a more or less agreed upon set of principles. These principles are embodied in a part of the legal philosophy of *parens patriae*, *i.e.*, the state, through the juvenile court, assumes the necessary parental responsibilities for delinquent children, who, presumably, are being neglected by their real parents. Thus, delinquent children are accorded the same protection and guidance as neglected children, and the relationship becomes that of parent-and-child rather than that of the "Commonwealth v. _____."

"Family" courts vary even more widely than do juvenile courts, both in function and in name. Most courts which are designated as Family Courts or Domestic Relations Courts are not integrated family courts. For the most part, such courts deal with segmental aspects of family problems, *i.e.*, some handle desertion cases and cases involving non-support of indigent parents, others have only juvenile jurisdiction, etc. The true family court, on the other hand, is a court which is empowered and staffed to handle all family problems of a justiciable nature. As thus conceived, the family court would handle annulment, divorce, alimony, desertion and nonsupport, custody, adoption, neglect, bastardy, intra-family conduct problems, juvenile delinquency, etc. The Ohio courts referred to are true family courts and, in effect, often serve as models for courts in other areas.

Since they operate in a multi-function capacity, family courts employ a wider range of personnel than do other courts. These may include probation officers and supervisors, psychiatric social workers, clinical psychologists and psychometrists, nurses, pediatricians, investigators, psychiatrists, administrative officers, referees, and marriage counselors.

Philosophically, the family court is to the family what the juvenile court is to the child. Operating more or less on the assumption that intra-family conflicts result from personality factors, environmental conditions or a combination of both, the court tries to resolve family difficulties, to get at the roots of inter-personal conflicts, to offer guidance and professional help, and in general to preserve family ties.

There are a variety of perspectives regarding the family court—so many, in fact, that any detailed classification would be arbitrary. For the sake of convenience the various viewpoints can be summarized under three broad headings: (1) Administrative, (2) Statistical, and (3) Socio-legal.

I. ADMINISTRATIVE PERSPECTIVE

One of the most frequently heard arguments favoring a family court is that involving administration and record keeping. In an integrated family court all family cases are heard under one jurisdiction and under one roof. Without such a court there is bound to be jurisdictional overlapping and some loss of efficiency due to compartmental record keeping. In New York City, for example, no fewer than six courts handle family matters: The Supreme Court (divorce, annulment, custody); Special Sessions (illegitimate children); Family Court (support claims); Children's Court (delinquency and neglect); Surrogate's Court (adoptions); and Home Term (disorderly conduct within the family). In most of our large cities three or more separate courts have jurisdiction over marriage and the family, and in nearly all instances no liaison or cross-reference procedures are utilized.

However, there is more to this administrative argument than meets the eye, especially in the area of divorce. What is too often minimized is the fact that our present divorce system aims at protecting the interests of the state as well as the rights of the individual, that is:

While an action to dissolve a marital relationship is nominally between two parties, the state, because of its concern in maintaining the marriage relation, unless good cause is shown for its dissolution, is an interested party. It has been recognized . . . that it is really a triangular proceeding, in which the husband, the wife, and the state are involved. While the state does not necessarily oppose, it is the duty of a court to see that when an attempt is made to sever the relation it shall not prevail without sufficient and lawful cause shown by the real facts on which the state permits a divorce to be granted, and to discover and defeat any attempted collusion and fraud. There is a liberal legal discretion vested in the courts to accomplish this purpose.²

It follows that the interests of the state can best be maintained, theoretically at least, under a procedure which utilizes all the available material relevant to a divorce suit. In practice, however, divorce actions—the occasional contested cases excepted—have tended more and more to become cut-and-dried affairs aimed at fulfilling the letter rather than the spirit of the law. No serious attempt at investigation is made since “no one seems to want it that way.”³ In view of the loose socio-legal attitude toward divorce existing today, it is difficult to see how the interests of the state would be furthered simply by having all relevant family records centralized. In all likelihood, the divorce mill would grind on in a family court as it does under divorce procedures where a family court has not been established. Of course, there are other arguments favoring a family court that can be raised,

2. *Hall v. Hall*, 122 Pa. Super. 242, 246, 186 Atl. 318, 320 (1936).

3. See, e.g., *The Administration of Divorce: A Philadelphia Study*, 101 U. OF PA. L. REV. 1204 (1953).

e.g., the process of marriage counseling, the treatment of juvenile delinquents, etc., but these functions must be judged solely on their effectiveness, and I shall attempt an evaluation of this kind in a later section of this paper.

It can be argued that the centralization of administration and records that would obtain in a family court would result in a lower overall court budget. This argument is true as far as it goes, but such financial savings would be insignificant when compared to the other costs involved in operating an integrated family court. For instance, full-scale services alone would include increased probation and psychiatric staffs, referees, investigators, marriage counselors, and others, and the cost for such services comes high.

Administrative centralization as found in a family court would be a convenience to lawyers, judges, and others who upon occasion must divide their time in different buildings. Centralization would also tend to eliminate conflicts of jurisdiction. The importance of this latter argument depends, of course, upon the prevalence of jurisdictional disputes in the state wherein a family court is being proposed.

II. STATISTICAL INFORMATION

A second argument favoring a family court is one which, to the best of my knowledge, has not been presented heretofore. I refer to the gathering of statistical information, with special reference to the kinds of data from which "causal" inferences can be drawn relative to marital disruption. It is recognized that "solutions" to problems of crime, delinquency, divorce, mental illness, alcoholism, etc., hinge on the isolation of the cause or causes which produce these problems, and social scientists devote a staggering amount of time in a quest for the causative and associative factors involved. Our job, as social scientists, is made most difficult because of the general apathy which exists with respect to the recording and reporting of relevant statistical information. For example, it would be desirable to know to what extent divorce is associated with such factors as youthful marriages, or mixed-religious marriages, or marriages wherein the parties come from different socio-economic backgrounds or different educational levels. Statistical analysis of a sufficient number of these factors would provide for a clearer understanding of the whole divorce problem. Unfortunately we do not have satisfactory data on *any* of the foregoing factors which would permit us to draw valid generalizations.

Aside from numerical totals, there are no national marriage and divorce statistics along the lines mentioned above. The National Office of Vital Statistics publishes a wealth of material on births, deaths, and morbidity factors, but little or nothing which would aid in an understanding of the divorce problem. Similarly, the United States Bureau

of the Census gathers and publishes detailed information about the characteristics of the population—even including an item on whether or not there is a flush toilet on the premises—but virtually nothing dealing with divorce. A family court, on the other hand, would provide an ideal statistical laboratory for the collection and analysis of information pertaining to marital failure.

Recognizing the need for statistical information on divorce, the Philadelphia Bar Association Committee on Marriage and Divorce Laws and Family Court arranged, in 1951, for a study of Philadelphia divorce records. The study was made possible through the thoughtfulness of the Honorable Curtis Bok, President Judge of Common Pleas Court No. 6, who granted permission to examine the divorce records of that court. Because of my own interests in the field of marriage and family life, I was asked to make the statistical analysis of the records. Our study was based on a sample of some 1500 divorce records. Despite the more or less exploratory nature of the project, a wealth of valuable information was collected and analyzed—information relating divorce to such factors as age-at-marriage and age differences, children, religion, socio-economic status, race, nativity, and the remarriage factor. A good bit of this material has already been published in various professional journals.⁴

One thing we learned from the study was the impracticality of transcribing statistical information from divorce records. Despite the smallness of our sample, it took many months of unrolling thick wads of divorce testimony before the necessary data were transcribed on statistical cards. Under a family court, divorce records—as well as family files—would contain, ideally, a summary or face sheet from which the necessary statistical transcription to I.B.M. cards becomes a routine matter. Desired information could then be obtained by making the pertinent runs on an I.B.M. machine. Of course, a divorce-reporting system of this kind would not require a family court. Such a system could be established in any court. Clearly, however, a family court wherein data on *all* family matters are recorded provides the most effective statistical laboratory for the study of family-related problems.

There is one serious flaw in the “statistical” argument; namely, the integrated family courts already in existence do not, in general, utilize the statistical method. Despite the reams of material that have been

4. Kephart, *Drinking and Marital Disruption*, 15 Q.J. OF STUDIES ON ALCOHOL 63 (1954); Kephart and Monahan, *Desertion and Divorce in Philadelphia*, 17 AM. SOCIOLOGICAL REV. 719 (1952); Kephart and Monahan, *Some Variables in Cases of Reported Sexual Maladjustment*, 16 MARRIAGE & FAMILY LIVING 241 (1954); Monahan and Kephart, *Divorce and Desertion by Religious and Mixed-Religious Groups*, 59 AM. J. OF SOCIOLOGY 454 (1954); Kephart and Strohm, *The Stability of Gretna Green Marriages*, 36 SOCIOLOGY & SOCIAL RESEARCH 291 (1953).

written about the Ohio courts, for example, so far as I am aware no divorce statistics have emanated from these social experiments. Apparently family courts are making no attempt to build a solidified, factual body of knowledge which could be utilized as an aid to understanding and solving the very problems for which the courts were created! The fact that the extant family courts have not yielded any substantive information relative to such problems as divorce and family conflicts stands as a serious omission in the organization of the family court system. This fact-finding failure should be assessed by bar association groups who are considering the advisability of creating family courts in areas where such courts do not now exist.

III. SOCIO-LEGAL ASPECTS

The ultimate test of family courts—indeed, the test of all socio-legal experiments—is “Do They Work?” The two criterion-questions might be phrased somewhat as follows: (1) Do family courts actually solve justiciable family problems? (2) Do these courts safeguard the interests of the state? Let us examine each of these questions separately.

1. Do family courts solve justiciable family problems?

This is a difficult question to answer inasmuch as the courts do not provide us with figures whereby their effectiveness can be measured. For example, we know little or nothing about the value of marriage counseling as it is practiced in family courts. We are not told what per cent of the couples coming to court are reconciled or what per cent of those reconciled remain reconciled. I am familiar with statements to the effect that under a family court system thirty per cent of the divorce suits are withdrawn, but so far as I can discover this is about the same per cent withdrawn in a regular court.

In the absence of statistical and research information which might substantiate some of the otherwise extravagant claims made by proponents of the family court, there has arisen a fairly extensive body of verbally eloquent, albeit non-documented, literature. Extolling the alleged virtues of the family court, this material abounds in legal journals and is usually, though not always, written by members of the judiciary or legal personnel connected with such a court, or by social workers directly or potentially involved in family court procedures. There is nothing wrong with salesmanship of this kind; in fact, the pleading of one's case in the absence of supportable facts is an old human custom and privilege. Some lawyers make a practice of it, and so do some social “scientists.” When it comes to reading articles pertaining to social problems, however, lawyers are at somewhat of a disadvantage in trying to distinguish between scientific and pseudo-scientific content since, unlike social scientists, they have not been trained to evaluate the validity of modern research methods. For

example, in reading law review articles advocating the extension of the juvenile court or the establishment of a family court, I am struck by the prevalence of the case-history method. To use a fictional illustration:

Johnny Brown, age 14, and his sister Barbara, age 12, were caught breaking into a local grocery store. They admitted having broken into a variety of neighborhood stores, stealing both money and merchandise. At the Delinquent Study Center of the Family Court both children stated that the reason they had been robbing stores was that their mother told them they were not wanted around the house. The mother, upon being interviewed by the psychiatric social worker, denied this, but admitted that occasionally she would ask the children to leave the house—but this was only when she saw that her husband was getting drunk. The psychiatric social worker then called on the husband, who denied getting drunk, although he admitted that once or twice a week he "would take a drink or two"; however, he stated that he had "never laid a finger on either the wife or the children." It was explained to him that his drinking was creating feelings of anxiety on the part of his wife, and that this feeling was being transmitted to the children, who then took to robbing stores to allay their anxiety feelings. The husband stopped drinking, the wife lost her anxiety, and Johnny and Barbara have taken an active interest in clay modeling.

No matter how heart-rending the story, the case-history approach has little research value unless it provides hypotheses which can then be tested statistically on large numbers of cases. If the number is large enough—thousands of cases for instance, important variables such as sex, age, I.Q., race, neighborhood, type of offense, etc., can be controlled so as to yield vital information about the factor being studied, *e.g.*, anxiety feelings. Taken by itself, a given case-history has little research value since there is no way of controlling the necessary variables; to put it another way, an individual case-history can be chosen so as to "prove" most any point. Despite the almost self-evident limitations involved, the I-know-a-case approach continues to be the stock-in-trade of marriage counselors, psychiatrists, social workers, and others engaged in remedial family-problem work. Judging from the frequency with which this approach appears in law journals, and judging from the zeal of some bar association groups in supporting the family court movement in spite of the lack of positive statistical evidence, it is apparent that the legal profession has been greatly influenced by the family-life "experts."

Exactly how important this "influence" is can be seen from the fact that juvenile and family court work has been largely taken over by social workers—despite their lack of demonstrated success. As Johnstone points out:

Juvenile courts have become social workers' courts. Probation and parole, when not dominated by politics, are dominated by

social workers . . . [and] [e]xcept for lawyers, social workers are the most important professional group in the operation of the legal process today.⁵

I am not contending that social work groups have failed in their court endeavors, but I do maintain that on the basis of existing data their success cannot be demonstrated. As a matter of fact, any one who is familiar with the work of psychiatrists, social workers, probation officers, marriage counselors, and similar groups, must be aware by now that those are not scientific pursuits; nor is any integrated effort being made in this direction, except at the verbal level. By and large, these groups are not building a verifiable body of knowledge which can be applied to the solving of behavior problems of the type they routinely handle. In the case of psychiatry or marriage counseling, it is likely that some of the individuals dealt with are helped; it is quite possible that some are hurt; for the bulk of cases, however, no one knows what the results are since large-scale follow-up studies are not undertaken. In the absence of publishable findings in the form of rigidly controlled research efforts, marriage counseling, social work, and psychiatric journals, for the most part, are devoted to run-downs based on the I-know-a-case method. A professional phraseology or jargon is developed, and slogans and verbal clichés are then passed on from one annual meeting to the next.

There are exceptions, of course, in all of the above-mentioned fields. The Philadelphia Marriage Council, under the direction of Dr. Emily Mudd, has made serious efforts to compile a body of empirical findings with the hope that they can ultimately be utilized to solve marital case-problems that are faced by the counseling staff. John Reinemann, Director of Probation for the Philadelphia Municipal Court, also has been a staunch advocate of the statistical-research approach. Furthermore, it cannot be emphasized too strongly that the kinds of court problems faced by marriage counselors, psychiatrists, and social work groups are immensely complex.

When all is said and done, however, the original question, "*Do family courts solve justiciable family problems?*", when faced squarely, cannot at the present time be answered in the affirmative. *Statistical and other research evidence* from sources best able to supply the evidence—the existing family courts—is lacking. Similarly, in regard to the juvenile court, the question cannot be answered in the affirmative, for here too, statistical confirmation is lacking. The hope that was held out by the Chicago group which established the first juvenile court fifty-five years ago has as yet failed to materialize. While a more detailed analysis will be given in the next section, it might be mentioned

5. Johnstone, *supra* note 1, at 21, 22.

in passing that a large percentage of all juvenile delinquents continue to be "repeaters." And in recent years delinquency rates have risen.

I am not suggesting that recidivism and delinquency-increases are to be blamed on social work groups, nor do I wish to be overly critical of these groups. For the most part these are sincere, hard-working, often harried people, working under much-less-than-ideal conditions. And it should be kept in mind, in this connection, that delinquency and family disruption are so complex that no one has yet pinned down specific causes. But I do think that the burden of proof should be borne by these groups. I do not think it is up to me—or you—to demonstrate the failings of the family court. I think it is up to the proponents of family courts to demonstrate their success.

2. Do family courts safeguard the interests of the state?

The assumption here is that it is in the interests of the state to foster and maintain a strong family system, and that when *individual* family ties are weakened, the state, and therefore *all* the citizens thereof, is also weakened. Let us take two examples, presumably, of family breakdown—divorce and delinquency—and explore the role of the family court in each.

(a) With respect to divorce, family courts, through the marriage counseling service, could, in theory, serve the interests of the state by "saving" a certain percentage of marriages which might otherwise have terminated. In practice, since these courts conduct no follow-up studies relative to the effectiveness of the marriage counseling or conciliation service, and since no statistics are published relative to other phases of counseling, it is impossible to determine whether the state's interests are actually being served. In this respect the goal is without a doubt a very worthy one, and it can be argued that no matter how small the percentage of saved marriages, the state would benefit. Of course, if this percentage were quite small, the question would resolve itself into one of expense: Can the state afford the vast expenditures involved in a family court in view of the negligible return in the form of a few preserved marriages? If the percentage of saved marriages were large, the cost of the court would be money well spent. It is most unfortunate that we have no actual figures to guide us in making a decision; in fact, my own views on the family court have been dimmed in recent years as I have searched in vain for figures.

One further socio-legal point is involved in connection with the state's interest in divorce. There is no common law regulating divorce. Divorce proceedings are products of statutes. Therefore, what would happen in the event the marriage counselor, after hearing both sides of a deep-seated marital rift, recommended to the family court judge

that it would be to the best interests of all concerned if a divorce were granted—even though the legal ground (adultery in the state of New York, for example) did not exist? Since the judge would be powerless in this instance, the action of the marriage counselor might well represent an “official” invitation to collusion or to an out-of-state divorce!

(b) With regard to the problem of delinquency, the philosophy of the family court is more or less identical with that of the juvenile court; namely, that the interests of the state are most effectively safeguarded if delinquent children are considered to be the misguided products of adverse social conditions rather than as criminals. The state (through the family court) thus protects itself through the doctrine of *parens patriae*—guiding the child, parent-wise, into avenues of proper citizenship and social adjustment. As it relates to delinquency, then, the question (“Do family courts safeguard the interests of the state?”) can best be answered in light of the fifty-five year old record of the juvenile court.

It cannot be demonstrated that the juvenile court has safeguarded the interests of the state, and there are some who would consider this a severe understatement. There is no question in my own mind but that the juvenile court has failed, although some doubt remains as to *why* it has failed. In general, there are two kinds of arguments, and, for the sake of convenience, they can be labelled *Not Enough* and *Too Much*.

Not Enough. According to this argument the philosophy of the juvenile court—*parens patriae*—is quite sound; in fact, it is the only philosophy which is compatible with democratic concepts of human rights. The trouble lies in the fact that the philosophy has never really been put into practice. In many states the authority over juvenile offenders resides in courts that primarily serve other functions. The “juvenile” operation, therefore, is often peripheral. Even in courts technically designated as “juvenile courts” the philosophy and treatment are strikingly similar to that of the conventional criminal court, *i.e.*, the juvenile is considered to be a “criminal” and is treated as such, with probation, supervisory treatment, and guidance at a minimum. In many states the upper age limits for juveniles—15, 16, or 17—are thought to be too low, with youth in their late teens and early twenties being deprived of juvenile jurisdiction at a time in life they are most in need of it. Finally, even in the most progressive and best equipped juvenile courts, there is a serious shortage of personnel. Probation officers, counselors, and social workers are forced to operate under a work-load so heavy that individual treatment must be sacrificed for assembly-line expediency.

Too Much. Proponents of this point of view, who, I would judge, comprise a rather small minority among both lawyers and social scientists, also advocate humane treatment for juvenile and youthful offenders. They object strongly, however, to the blanket assumption that youth, because they are youth, are in no way responsible for criminal conduct. The argument is that once the doctrine of individual responsibility is buried the best interests of the state cannot possibly be safeguarded. Increases in juvenile delinquency are but one symptom of the permissive, coddling attitude of the courts. The price that society has to pay for the rehabilitation of only *some* delinquents is, in over-all effect, too high. Knowing of the court's feathery approach, knowing that they will be "treated" or "studied" in a juvenile or youth center, knowing that the threat of imprisonment is indeed remote, young offenders are thus encouraged to feed criminally from the societal hand that caresses them. The job of the court then becomes that of fixing blame—on parents, on teachers, on slum conditions, on society itself—any place but on the individual. Instead of dealing with the youthful offender in court, where he can perhaps be made to realize the gravity of his offense, he is indulged informally by the judge in the latter's chambers, or, more likely, never sees the judge but, together with his parents, is interviewed by a social worker, a psychiatrist, or both. Nowhere is any real effort made to look out for society's interests; in fact, delinquents often cannot be fingerprinted nor, except under extreme circumstances, can they be jailed. Thus, the job of the police becomes largely that of re-apprehending the released products of "rehabilitation."

IS THE FAMILY COURT A WORTHWHILE VENTURE?

On the basis of the available evidence, to summarize, it cannot be demonstrated that the family court is doing much in the way of solving family problems, nor can it be shown that the interests of the state are being safeguarded. In these respects I have a final comment or two to make. Proponents of the "Not Enough" school maintain that one of the main reasons the juvenile and family courts are failing is because these courts are seriously understaffed. So far as I can discover there is not a single juvenile or family court in the United States that is adequately staffed, nor is there much likelihood, in the foreseeable future, that any will be. It appears that financially the cost is too high. If this is so, then the argument between the "Not Enough" and "Too Much" schools of thought becomes at least partly academic, since, in practice, the courts fail in both instances.

Another question I should like to raise deals with the underlying assumption of the group of men who inaugurated the first juvenile court at the close of the last century: delinquent children should be

treated like dependent or neglected children. The implication is that the youthful offender violates the law because of adverse social conditions, *e.g.*, parental abuse, economic poverty, and the like. There was apparently no recognition of the possibility that some youthful offenders, by virtue of their inherent makeup, may have become deviants for reasons that cannot be attributed predominantly to adverse "social" conditions. Moreover, while it would be less than humane to apply the same standards of culpability to both adults and children, I cannot but wonder whether the categorical assumption of nonresponsibility has perhaps encouraged irresponsibility. Clearly, there must be a balance between the interests of any one group—children or otherwise—and the interest of society as a whole, and I would question whether this balance has been struck. Inasmuch as the family court is more or less a jurisdictional *extension* of the juvenile court, this question of balance becomes quite important.

With regard to the marriage counseling or conciliation service that the family court utilizes in divorce and potential-divorce cases, the goal is laudatory in that it aims at furthering the interests of the individual as well as the state. The only question to be answered pertains to results: Does marriage counseling actually prevent divorces, and if so, is this percentage significant enough to warrant the financial expenditures inherent in the operation of a family court?

As a sociologist, I believe that, *in the long run*, there is much to be recommended in the establishment of family courts. Eventually, when more is known about human behavioral problems, especially as they relate to family conflict, family courts should have little difficulty in justifying their own existence. In the immediate future, and for the present, *family courts also serve a useful experimental purpose*, and it is on this basis that they must be assessed. In this respect I would suggest that the state and local bar associations which are interested in the establishment of family courts in their areas appoint committees to study *objectively* the results of the already existing juvenile and family courts. I include "juvenile" here because many of these courts, in practice, are fairly similar to family courts. Irrespective of the name they go by, courts which handle family problems are sufficiently diverse both conceptually and procedurally, to provide objective examining groups with relevant information. To such examining groups I would suggest the following type of check-questions: (1) What kind of statistics does the court publish? (2) Are there any figures to indicate the effects of the marriage counseling service: Have divorce and desertion rates decreased as the marriage counseling service has expanded? Are these rates lower than those in comparable areas that do not maintain a family court? (3) What percentage of the juvenile offenders coming before the court are repeaters? (4) Is

the juvenile "guidance" or "educational" program producing tangible results? How do the results of these programs compare with those of courts which do not operate a "guidance" program? (5) Is there a balance between the legal and "social" aspects of the court: Are the interests of the state as well as those of the individual being safeguarded? (6) What is the estimated cost of the court to the taxpayer? (7) Is the cost commensurate with the results?

There is no need to extend the list. In general, an examining group should endeavor to compare or contrast *demonstrated results* of various aspects of a family court against those in a comparable area which does not maintain a court of this kind, with the degree of difference balanced against the financial outlay as the criterion. It is not an easy task. I am fully aware of the difficulties involved in temporal and regional comparisons. At the same time, before supporting an expensive social experiment like the family court, bar associations should require some tangible proof of success. To repeat, it is not up to you or me to demonstrate failure; it is up to the proponents of family courts to demonstrate their success.

CONTRIBUTORS TO THIS ISSUE

GRAY L. DORSEY—Assistant Professor of Law, Washington University School of Law. A.B. 1941, University of Kansas; LL.B. 1948, Yale Law School; Fellow 1948-50, American Council of Learned Societies; J.S.D. 1950, Yale Law School. Former Editor and Publisher, *The Cameron (Mo.) Sun*. Visiting Professor of Law 1952-53, National Taiwan University and Soochow University, Taipei, Formosa, for the Committee for Free Asia (now The Asia Foundation). Participant, Eleventh, Twelfth, and Thirteenth Conferences on Sciences, Philosophy and Religion.

BERTRAM W. TREMAYNE, JR.—Member of the Missouri Bar. A.B. 1935, Washington University; LL.B. 1938, Washington University School of Law. District Rationing Attorney, Office of Price Administration, 1942-43. Major, Judge Advocate General Corps, 1943-46. Partner in the firm of Tremayne & Joaquin.

WILLIAM M. KEPHART—Assistant Professor of Sociology, University of Pennsylvania. A.B. 1941, Franklin & Marshall College; M.A. 1948, University of Pennsylvania; Ph.D. 1950, University of Pennsylvania. Research Consultant, Philadelphia Bar Association Committee on Marriage and Divorce; Research Adviser, University of Pennsylvania Center for Human Relations; Adviser, Philadelphia Marriage Council; Member, American Sociological Society.

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