THE COURTS AND FAMILY LAW

In any field of study, it is always advisable to first define terms so that any matters raised remain relevant to the issues under discussion. Unfortunately, it is impossible to define the term "family law" with any degree of exactness.

Indeed, it is almost impossible to define the word "family". In some historical periods and in some quarters the term may extend to all persons in a household, including servants. In some religious sects, the order may be treated as a branch of the family of the leader, just as the Israelites were a branch of the family of Abraham. Do we, then, attempt to offer definition in terms of blood relationships? Not only does the law, through adoption legislation, defy such definition, but modern social thinkers would resist any such suggestion. Perhaps another thought which readily comes to mind in attempting to define family is to relate family to marriage. But here again the definition would hardly qualify in the mind of our society: Section 186 of the Criminal Code makes it an offence for a head of a family to fail to provide necessaries of life to the family, but the person responsible for supplying necessaries need not be a head by virtue of marriage vows. As well, the growing concern for the welfare of the illegitimate child is reflected in the provisions of the Family Court Act and Child Welfare Act where the term "child" is used without distinquishing between illegitimate or legitimate children.

While recognizing the importance of the family to our society, it is almost impossible to offer a definition of "family" fully acceptable to all. Perhaps the best one can do is to suggest that the family is a basic social unit which the government recognizes through certain laws and with which the government is concerned from the social aspect since the well-being of the unit ultimately reflect in the well-being of society.

The public may confuse law directed at the family unit with that of law dealing with a portion of that family unit. For example, when a juvenile is being processed under the provisions of the Juvenile Delinquents Act the public, realizing that the process may somehow have an impact on the entire family unit, may refer to the process as being that of a "family court" matter. The confusion is furthered because in some states, the family court exercises jurisdiction over juveniles who have committed delinquencies. According to the provisions of the Juvenile Delinquents Act, it is clear that the state is primarily concerned with the individual who has violated the laws of the nation, province or municipality and not with the rest of the family unit to which the offender belongs. Although it is common knowledge in Alberta that juvenile court judges are concerned with the family unit and its role in the treatment of the offender, the Alberta Juvenile Court Act specifies that the judge exercising jurisdiction is a Juvenile Court Judge and is silent as to any reference to a family court judge. Accordingly, it must be recognized that in Alberta, juvenile delinquency by law does not lie in the field of family law.

The Child Welfare Act, 1966 is wide-ranging in its concern for children and in its concern with parent-child relationships. In legislating with regard to such matters as apprehension of neglected children, return of children to parents, temporary wardship, permanent wardship, and adoptions, one would naturally expect such an Act to be within the scope of "family law". Oddly enough, in law such is not the case. In some instances the judge presiding over the particular matter may be a judge of the juvenile court : section 14(d); while in other instances he may be a District Court Judge: sections 14(d), 45(b), 17(b). In all probability juvenile court judges were given such jurisdiction rather than family court judges because juvenile court judges are so prevalent. (In Alberta, magistrates are

usually given the jurisdiction of juvenile court judges). In the event Alberta Family Courts expand into circuits which completely cover the provinces, it would not be unexpected to see reference to "family court judge" rather than "juvenile court judge" appearing in child welfare legislation.

There are other laws which do concern the family unit, but which legally should not be considered as family law. For example, certain sections of the Criminal Code may involve husband and wife or children: sections 231, 236, 189, 243, 275, 717. Because these offences are contained in the Criminal Code, and because the offence may involve an act jeopardizing the well-being of society, the government has created the criminal courts to deal with the nature, presentation and punishment of crime. The criminal courts are part of that system designed to prevent further criminal acts by the offenders of the act as a deterrent and to prevent other members of the society from committing an offence.

Consequently, although the family unit may be affected by the operation of criminal law because the legal issue is in "pith and substance" criminal, generally it would not be correct to include offences in the term "family law".

There are exceptions to the application of such a pith and substance rule. In the past, wives and other members of the family unit whose welfare was being jeopardized by common assault (section 231 c.c.) lack of support (section 186 c.c.) or threats (section 717c.c.) were compelled to process their problems through criminal courts. True, in pith and substance the complaints are still "criminal", but the complainant may now invoke the jurisdiction of family court because ~~in~~ family court proceedings minimize embarrassment to the complainant and accused, purports to offer the parties

solution to their problems, but is still concerned with deterring the accused from committing further injurious acts against the remaining family unit.

On the other hand, the social scientist may forcibly argue that it is a family matter where the wife pledges her husband's credit in order to obtain a mink coat. However, when the creditor takes legal proceedings to recover the value of the coat, the matter is in pith and substance contract law, not family law.

Consequently, because there is no satisfactory test to specifically define what is, or what is not, or what should be, or what should not be family law, it is probably necessary to examine family law both in the historical context and in the modern context as reflected by legislation. By taking this approach, and although it will bring us no closer to a definition, it will enable us to better understand what is involved in family law.

Much of the source of our present law is derived from the canon law. A consequence of the fall of Romewas the assumption by the bishops of great spiritual and temporal powers. One of the practices developed by the bishops to exert influence over the common person involved the use of canons -- real or invented -- which was passed from bishop to bishop and which evolved into a body of canon law. Among other things, the canon law touched upon baptism, marriage and funerals. Although the church acknowledged the theory of indissolubility of marriage, in fact it never <u>really</u> put the theory into practice, for the church granted a decree of nullity on such grounds as consanguinity, affinity, mental incapacity,

error, and a prior subsisting marriage. Interestingly enough, the church held that impotence rendered a marriage voidable.

As well, the church could also grant a decree of divorce a mensa et thoro on such grounds as adultery or cruelty. Such a decree would not entitle the recipient to remarry. At times, such a decree was used as a device to eventually effect reconciliation, since it was not a decree of divorce in the ultimate or final sense. Eventually, of course, the decree of divorce a mensa et thoro developed into what we now refer to as a judicial separation.

Attempts to reform the ecclesiastical law -- especially in the recognition of divorce a vinculo matrimonii -- were unsuccessful largely because the government was wary of further religious influence. Parliament itself would grant a divorce a vinculo matrimonii, but the process was unwieldy and expensive.

This highly unsatisfactory state of affairs pertaining to matrimonial matters persisted until the Divorce and Matrimonial Causes Act of 1857 came into force in England in 1858. By the Act of 1857, the jurisdiction of the ecclesiastical courts in actions dealing with divorce a mensa et thoro, nullity of marriage, restitution of conjugal rights, jactitation of marriage and in matrimonial causes and suits in fact and in law, ceased. Jurisdiction was vested in a new court -- the Court for Divorce and Matrimonial Causes. Not only was the new Divorce Court given jurisdiction over matrimonial causes previously decided in the ecclesiastical courts, it was also given jurisdiction to grant a degree of divorce a vinculo matrimonii, the dissolution of the marriage tie. Aside from this important

provision and in addition to these actions mentioned above, other sections of the Act spelled out areas of jurisdiction of the Divorce Court which ultimately found its way into law as it concerns matrimonial causes in Alberta: Judicial separation, protection orders respecting the wife's property, damages from adulterers, custody, maintenance and education of children, costs, evidence, and enforcement of the court's orders and decrees.

Although the Act of 1857 was amended from time to time up to 1870, basically the English law of divorce up to 1870 was contained in the Divorce and Matrimonial Causes Act of 1857. If one wonders why there should be such emphasis on such a nineteenth century English statute, there are two explanations. Firstly, the 1857 Act does spell out areas of matrimonial causes which, by and large, are still of concern in our society. Secondly, legislation pertaining to the Canadian scene insisted on such an emphasis.

By the British North American Act, 1867, section 91: "the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, -

.....26. Marriage and Divorce."

However, by section 92: "In each Province the Legislature may exclusively make Laws in relation to matters coming within the classes of Subjects next hereinafter enumerated; that is to say, -

.....14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts".

By section 96 of the same Act: "The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province....."

The Rupert's Land Act, 1868, made provision for the Crown taking over Rupert's Land and the Northwest Territories from the Hudson's Bay Company. Upon those lands being united with Canada, the Canadian Parliament passed the Northwest Territories Act. By the amending act of 1886 (49 Vict. C.25) "....the laws of England relating to civil and criminal matters, as the same existed in the fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy, shall be in force in the Territories...." When Alberta was being established by being carved out of the Territories by the Alberta Act, 1905, section 16 of the same Act provided that the laws previously in force in that part of the Territories included in the new province would continue in force until such time as they were repealed or altered by competent legislation.

It is to be noted that The Divorce and Matrimonial Causes Act, 1857, not only enacted substantive law, but also provided for relief to be given by a specially constituted court. The Northwest Territories Act and The Alberta Act omitted reference to this specially constituted court. In Board v. Board (1918) 2 WWR 633) the question arose as to whether the law of England respecting the right to divorce is in Alberta, and whether the Supreme Court of Alberta has jurisdiction to enforce it. After reviewing English law and legislation of England, Canada, and the provinces - including Alberta - the Court held that the substantive law relating to divorce and other matrimonial causes enacted by the Act of 1857 is in force

in Alberta. The Court further held that although there was no specially constituted court to grant the relief asked for, the Supreme Court of Alberta, being a superior court of record, has the necessary jurisdiction to administer the law of divorce.

Of course, it goes without saying that the Courts in the Board case were looking at existing legislation and recognized the principle that the laws would continue in force until repealed or altered by competent legislation.

Over the years, Parliament has enacted various laws dealing with divorce jurisdiction, but these laws are of little import in offering a sketchy historical review of laws pertaining to matrimonial causes since the introduction of the Divorce Act of 1968.

At this point, it may be well to recall the fundamental nature of marriage and divorce. At law, marriage creates a new legal status between the parties to the marriage. There are new rights and obligations. For example, on the one hand there is the right to consortium, and on the other hand the responsibility to support, as well as the obligation to care for, and educate, children of the marriage. Divorce alters the rights and obligations arising by virtue of the marriage contract, but may continue certain obligations (maintenance of spouse and children; custody of children). These continuing obligations may be referred to as matters ancillary to divorce.

But before going on to discuss specific jurisdiction of the Family, District or Supreme Courts, it may be desirable to emphasize the proper difference between a court established by the province which is

presided over by provincially-appointed judges and those established by the province which is presided over by provincially-appointed judges and those established courts presided over by federally appointed judges. The first type of court is commonly referred to as "inferior courts". The second type may be referred to as federal courts. Family Court is an inferior court; Supreme and District Courts are federal.

By section 92(14) of the B.N.A. Act, the province has authority to establish courts and it set out the procedure to be used in the civil courts it establishes. If, however, the court established by the province comes within the intendment of section 96 of the B.N.A. Act, the judges would be required to be federally appointed. If the provincial legislation is truly concerning the administration of justice and the constitution of provincial courts, and is not repugnant to the B.N.A. Act as a whole, the powers of the inferior court will be proper (Re: Adoption Act (1938) S.C.R. 398). But when the legislation is of such a class of subject as marriage and divorce, that legislation is a matter of federal jurisdiction and any provincial legislation invading such a field would be ultra vires. At this point, it goes without saying that if the province wished to extend the jurisdiction of Family Court to such an extent that the court came within the intendment of section 96, the federal government would have the sole authority to appoint the judges of the court under section 96.

Because until recently Parliament has refrained from legislating on matters ancillary to divorce, provincial legislation has occupied the field. As a result, the province has legislated with respect to alimony, maintenance for children, custody of children, property rights of spouses as well as some civil rights. It is hardly necessary to deal here with the question as to whether such legislation, especially that relating to custody, is ultra vires.

Rather, one must look at the legislation as an existing law, and to deal with it as such.

The Family Court Act (R.S.A. 1955, c 108 and amendments) confers on a duly appointed judge of a Family Court jurisdiction with respect to:

a) maintenance orders for deserted wives and families under Section 27 of the Domestic Relations Act;

b) maintenance orders under the Reciprocal Enforcement of Maintenance Orders Act;

c) certain charges against adults under Part XIV of the School Act;

d) certain charges against adult persons under the Child Welfare Act;

e) charges triable on summary conviction under Section 186 (2) (a) of the Criminal Code. (non-support charges).

f) common assault charges under Section 231 (1) (b) of the Criminal Code where a husband assaults a wife, a wife assaults a husband, or a parent assaults a child.

g) charges triable on summary conviction under any other Act or section where, in the opinion of the Lieutenant Governor in Council, it is appropriate for the judge of a Family Court to deal with them.

h) enforcement of Supreme Court alimony or maintenance orders, but without the jurisdiction to vary the Supreme Court Orders;

i) custody of children whose parents are living apart from one another;

j) right of access to such children.

As has been noted, the duly appointed Family Court Judge deals with the areas mentioned immediately above. Upon his appointment the Family Court Judge is also appointed to the office of Magistrate in and for

the Province of Alberta. Acting in his magisterial capacity, the judge hears cases under Section 717 of the Criminal Code where a person fears that a member of his family will cause personal injury to him or his wife or child or will damage his property), as well as complaints under Section 100 of the Liquor Control Act, 1958 (asking that a member of the family be put on "the Interdict list"). Although the Lieutenant Governor in Council has not designated that it is appropriate for the judge of a Family Court to deal with these two areas, the judge has recognized their importance in relieving family problems and consequently has adopted jurisdiction through his office as magistrate.

Of course, there are provisions under The Family Court Act permitting enforcement of orders made by the Family Court Judge. As well, the judge has jurisdiction to review an order and upon review may confirm, vary or discharge the order.

There is also provision under The Family Court Act whereby the judge may order the husband to pay interim maintenance for the wife and children during any adjournment the husband seeks. It is to be noted that this type of "interim maintenance" differs to some extent to that obtained in Supreme Court. In Family Court, the Judge does not have jurisdiction to adjourn a matter for an indefinite period of time, but rather must adjourn the next hearing of the case to a specific date. Hence each side knows by the interim maintenance order what payments are to be made and for what length of time. In Supreme Court, on the other hand, the justice is not concerned with setting any dates for a trial -- that matter is decided upon by the litigants -- and consequently payments for maintenance are for an indefinite time. Indeed, it is not uncommon for a wife to have obtained several years ago an interim order for maintenance against her husband and to file the

order in Family Court for enforcement. Such interim orders are usually part of an action for divorce or judicial separation, so it would appear that as long as maintenance is being provided, the wife may not seek her final remedy in divorce or judicial separation: rather than pursuing the matter in the same court, she then in effect commences her action of enforcement in another court; Family Court.

Another point of interest is that in Family Court, for each relief asked for in actions for maintenance, custody, access or enforcement of Supreme Court Orders, there must be a special application. For example, if a wife is asking for maintenance from her husband, she must specifically apply for it. If she is asking for custody, here too she must apply for it. There is no lumping together of the applications. Of course, once the applications are taken, the date for the court hearing of the various applications may be set at the same time. The advantage to having specific and individual applications and hearings is that it clarifies in everyone's mind what the relevant issue to be decided is. The disadvantage is evident at the hearing: where there is more than one application, there must of necessity be more than one hearing. In many cases, the evidence brought out in the first hearing is duplicated and repeated in the following hearing or hearings.

In Supreme Court proceedings, usually all issues are pleaded in the same document and evidence in all issues is raised in the one trial. The disadvantage is that often the real issues are obscured by irrevelant issues which tend to not only waste time but may also mislead litigants as to their position. One example of this, of course, has already been indicated: some wives who obtain an interim order of maintenance do not then proceed further in the action, leaving all issues hanging in the air, so to speak.

The advantage to the system is that, if properly pursued, all evidence is heard at one trial, thereby eliminating duplication or repitition.

The word "proceedings" has been mentioned. Such a word emphazises differences between Family Court and Supreme Court actions. In Family Court the commencement of actions is based on simplicity. The applicant starts the action by swearing to an affidavit containing basic facts relevant to the particular application. The court staff then arranges - by way of a summons - for the respondent to appear at Court on a given date. The applicant is also advised of the court date. Upon the parties appearing - and when there is no consent order involved - a hearing is held before the Family Court Judge and the Judge then grants an order. It is to be noted that the proceedings leading up to the hearing are by no means complex. The basic purpose is to avoid complicated entanglements so that the parties to the action understand and appreciate the nature of the proceedings.

There are two underlying and compelling reasons why Family Court has developed simplified proceedings.

In the first place, the highly formal type of legal process associated with "federal" courts pretty well demanded that a person involved in a court action be represented by a lawyer. Such representation would involve an expense that many a person could ill afford. Consequently, such a person who so badly needed a remedy for family conflicts in such areas as maintenance, custody and access was in effect being denied solutions to family problems. One example may suffice. Not too many years ago, when enforcement of Supreme Court maintenance orders was solely under the jurisdiction of the Supreme Court, it was not uncommon for a dependant (usually a mother seeking to remain off welfare) to recover say one hundred

dollars in an enforcement action on the arrears and yet receive less than fifty dollars - the legal fees accounted for the other fifty.

Of course, there were ways to supply such persons with legal representation. And this brings us to the second of the two reasons mentioned above. The Bar, through its Needy Litigants Committees, offered representation to the impoverished person. Such an offering, while valid in intent and theory, was impractical. Because family problems are primarily social, rather than legal, in nature, many lawyers take an intensive dislike to domestic disputes and, naturally enough, would give priority to their other cases over the assigned domestic cases. Then too, when one recalls that law is basically a profession concerned with economics, it would be unfair to expect the lawyer to ignore a tort action worth to him perhaps several hundred dollars in favour of a domestic relations case almost void of economic returns.

Although it was not recognized at the time of legislating on informal procedures in family court, it has been found that not only does the family court offer relief to family conflicts, and not only does it offer relief to the overburdened civil aid programs, but it is a saving to the taxpayer as reflected in the Department of Welfare.

Schedule I of this submission shows the monthly sums forwarded to the Welfare Department (the graph does not show amounts paid to those dependents not on welfare) from the various family courts. Such sums in effect recoup some of those welfare monies paid to dependents. Because of the close co-operation between family courts and the Department of Welfare, the Welfare Department is better able to assess individual welfare payments and has some instrument whereby it can insist on enforcement actions

against deserting spouses. (Because the federal courts do not have the organization of fa ily courts, the Welfare Department is unable to keep proper statistics as to payments made by virtue of Supreme Court Orders. Accordingly, it must be more difficult for the Welfare Department to detect fraud on the part of some welfare recipients).

Another important difference between the Supreme Court and the Family Court is at the trial level. By legal definition, a trial is a hearing and a hearing is a trial. But in actual practise, a trial in Supreme or District Courts is regarded as a formal judicial process where the rules of evidence and procedures are strictly adhered to, whereas a "hearing" held in an inferior court seems to permit a greater degree of discretion through the application of informal procedures and in the manner of taking evidence, according to the intent of the act under which the hearing is held. Whereas the federal courts have evolved deliberate and formal procedures, family courts follow trial procedures which, while following the principles of natural justice, are primarily concerned with resolving issues involving human relationships and which seek to accomplish generally the purpose of family courts and its philosophy. (As to those who advocate a system of family courts and their reasons for so doing, see for example Schedules II, III and IV).

From what has been said above, it can be seen that the purposes and functions of the Family Court are quite different from those of Supreme Court. The inflexible procedures involved in the Supreme Court (and District Court) would, to some extent, frustrate the social purposes of the Family Court. It may be said that the Family Court has as its aim the preservation of the original family unit whenever possible and, failing that, the protection

as much as possible of positive influences in what remains of the family unit. This is not to say that the adversary system is ignored in Family Court, for such a procedure in itself is a safeguard against the violation of civil rights. It may be said that Family Court attempts to offer a proper balance between formality and informality, between legal concerns and social concerns and to retain flexibility all in an effort to decide human relations and human values without negating civil rights.

While much attention must of necessity be focused on the Family Court Judge, equal attention must be given to the organization and staff of Family Court. Without staff and organization, the entire Family Court system would revert to that of an ordinary Court.

By section 5 of The Family Court Act, probation officers and other employees of the Juvenile Court are appointed pursuant to The Juvenile Court Act shall act as far as possible in the same capacity and have the same powers and duties in relation to the Family Court under The Family Court Act as they have in relation to the Juvenile Court under The Juvenile Court Act. The probation officers are under the direction of the judge of the Family Court and perform such duties as are assigned to him by the judge.

To escape the stigma of a wrong-doing association so often related to the term "probation officer", Family Court has adopted for probation officers the term "court counsellors".

In the Edmonton Family Court system (a similar system exists in Calgary) the Chief Court Counsellor primarily oversees the legal and administration functions of the court staff. The staff is organized into several sections.

The Court Reporter section at the present time has provision for 6 court reporters whose duties consist of transcribing in court, preparing transcripts, court orders, summonses and warrants.

The court services section presently consists of a stenographer, the receiptionist and a filing clerk. This section is primarily responsible for arranging the court calendars for the three judges, preparing informations and complaints and attending to correspondence.

The Accounts and Office Service section is responsible for the receipt and payment out of monies under maintenance orders. Here it might be noted that as a general rule, maintenance orders contain provisions that monies are to be paid to Family Court, unlike the usual Supreme Court Order which directs these payments be made directly to the wife. The Family Court system thus ensures that payments under the order are properly recorded and hence easily enforceable when there are arrears under the order. This section is also responsible for the recording of fines, departmental financial returns, statistics, the preparation of court dockets and the telephone switchboard operations.

The enforcement Section consists of one Senior Court Counsellor and four Court Counsellors. Once the Court orders payment of maintenance, the Enforcement Section has the responsibility of re-diarizing the files for the time payments under the orders fall due. In the event payments fail to be paid according to the terms of the Order, the counsellor then contacts the person required to pay and seeks an explanation. If a reasonable explanation respecting lack of payment is not forthcoming, the Enforcement Counsellor then sets a court date, causes to be issued a show cause summons and serves it upon the person required to pay, and otherwise arranges for

for an enforcement action. If, on the other hand, circumstances of either party to the order changes, the enforcement counsellor not only advises the parties as to their right to apply to vary the original order, but in the appropriate case may assist the party in preparing the application to vary. Not only is the counsellor responsible to see that the terms of the order are followed, but he also has the task of encouraging parties to live up to their responsibilities and may refer either party to the governmental or private agencies for assistance: the alcoholic to the Alcoholism Division of the Department of Public Health, or the debtor to the Debtor's Assistance Board, for example.

The Intake Section has provision for three Court Counsellors. When a person seeking assistance goes to Family Court, the Court Counsellor reviews as thoroughly as possible the marital or family situation with the person in order to suggest to the client the best solution available. If it appears to the Counsellor that there is a reasonable chance for the dispute to be settled through negotiations, the Counsellor either offers suggestions or contacts the other party to the dispute in an effort to have the matter settled through negotiations, the Counsellor either offers suggestions or contacts the other party to the dispute in an effort to have the matter settled. In the case where the matter appears to be more social than legal, the parties may be referred to the proper qualified agency which handle such matters - such as, for example, the Edmonton Family Service Association, the Catholic Social Services (Family counselling), or a governmental agency. In the event court action is the only alternative, the Counsellor prepares the affidavit in the case where an application is required to commence the proceedings, has the applicant swear to the affidavit and arranges to have the applicant and respondent appear in court

on a given date. If the action involves a complaint under a federal or provincial act, the Counsellor prepares the complaint and takes the party before the Chief Court Counsellor or Senior Court Counsellor - who are both Justices of the Peace - who "takes" the information.

The Court Counsellors of the Intake Section have another function. When the matter in issue before the court is one of custody of children, the Judge adjourns the hearing for three weeks and assigns one of the Counsellors to investigate the circumstances of the parties seeking custody of the children. At the hearing, the Counsellor is called as witness by the Judge to give evidence as to his findings. Both parties then have the opportunity to examine the Counsellor. The contribution by the Counsellor is an invaluable one since he is a neutral person and has at his concern the best interests of the children.

One office within the structure of the Family Court has not yet been mentioned. That is the function of Solicitor. The Solicitor acts as legal advisor not only to the Court Counsellors, but also to those persons who are referred to the Solicitor for legal advice in family matters. Where the person needs the services of a lawyer, but are unable to afford them, the Solicitor may act on behalf of that person. Too, the Solicitor prosecutes charges being processed in court as well as preparing cases for presentation under the Reciprocal Enforcement of Orders hearings.

There are full time Family Courts in Edmonton, Red Deer and Calgary. Part time Family Courts operate in Lethbridge and Grande Prairie. Fort McMurray, because of its geographic isolation, has a full time magistrate upon whom family court jurisdiction has been conferred.

Whereas the jurisdiction of Family Court was originally limited to a particular municipality or area, recent legislation purports to

confer in Family Courts province-wide jurisdiction. Accordingly, Family Courts are presently expanding into circuit system. The Lethbridge Family Court has by far the most extensive circuit, covering Blairmore, Fort Macleod, Lethbridge and Medicine Hat. The Grande Prairie Court now covers Peace River, High Prairie and, of course, Grande Prairie. The Red Deer Court visits Rocky Mountain House and Ponoka, Stettler, while the Calgary Court journeys to Drumheller. The Edmonton Court goes to Vegreville, Vermilion and Camrose. Since the circuit system is relatively new to Family Court, the development of circuits has been cautious, depending upon the requests of the various areas. Should the Family Court system be shown to be of value to the province, it would seem that circuits could be set up to serve nearly all areas. Such extensions would necessarily have to take into account population, major points in each area, access to and from other points in the area, and the existence of agencies (welfare, probation services, schools, ministers and priests, etc.) serving the area generally.

Before dealing with specific legislation which calls into play the jurisdiction of Supreme Court Judges, several general observations may be of value. The Supreme Court of Alberta is the superior court in civil and criminal matters. Its wide ranging powers are set out in the Judicature Act. The Court consists of two divisions: the Appellate Division and the Trial Division. We are here not concerned so much with the Appellate Division except to note that it is the highest court of appeal in the province and may hear appeals which originated in inferior courts, District Courts, or the Trial Division.

The Trial Division presently consists of the Chief Justice and nine Justices of the Court. As a general rule, the Justices preside over sittings at Calgary and Edmonton. However, the Justices do circuit the

province. Appended to this brief is Schedule showing other locations where the Justices preside. It is to be noted that there is a lack of continuity of an individual justice sitting in any particular local. For example, one justice may preside over sittings at Wetaskiwin at one time and yet may not return to that center for the next sittings. This aspect is pointed out here to indicate that the delay in the return of the same justice implies a delay in the dispensation of justice.

Another feature of the trial division is that it would appear that cases (or sittings) are scheduled according to date and places, not according to the type of case. Consequently, under this present type of organization it is almost impossible for a Justice to specialize in one area of law such as matrimonial law.

The Judicature Act also provides in general terms for the duties of the Court staff. Suffice to say that in law and in practice the function of the staff deals mainly with the filing and recording of documents.

In noting the above observations, it is clear the system tends to eliminate any social approach which may be desirable in dealing with the domestic problems of people.

When the question of matrimonial causes arises in relation to the jurisdiction of the Trial Division of the Supreme Court, two major Acts come to mind: The Divorce Act and The Domestic Relations Act.

By The Divorce Act, "court" in Alberta means the trial division of the Supreme Court. By virtue of such a narrow definition, it would seem that only a judge of the trial division has jurisdiction to entertain a petition for divorce and to grant relief in respect thereof. The relief asked for is, of course, divorce. By the Alberta Divorce Rules no cause of action except for corollary relief under sections 10 and 11 of The Divorce

Act shall be joined with a divorce action. Under section 10 of The Divorce Act, the court may make interim orders for the maintenance of either spouse pending the hearing of the petition according to the means and needs of each spouse, for the maintenance custody care and upbringing of the children of the marriage and in relieve either spouse of any subsisting obligation to cohabit with the other. Upon granting a decree of divorce, the court under section 11 may make an order of maintenance for both, or either, the spouse and children of the marriage and may make an order providing for the custody, care and upbringing of the children of the marriage. The court that makes the order may rescind or vary the order from time to time, depending upon circumstances. Strangely enough, by rule 13 of the Alberta Divorce Rules an application to vary or rescind an order made for corollary relief shall be by notice of motion to the court sitting at a place where the proceedings were commenced. Unless this particular rule is amended, parties to the divorce who have moved might find it a hardship to return to such a place.

The term "children of the marriage" has been used. The expression means each child of a husband and wife who at the material time is under 16 years of age, or 16 years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw himself from their charge or to provide himself with necessaries of life. "Child" of a husband and wife includes any person to whom the husband and wife stand in loco parentis and any person of whom either of the husband or the wife is a parent and to whom the other of them stands in loco parentis. Such a definition is so broad as to include the illegitimate children of either spouse, where such children have been accepted as members of the family at relevant times.

Section 3 of The Divorce Act sets out the following grounds for divorce: a) adultery; b) sodomy, bestiality, rape or a homosexual act; c) bigamy; d) physical or mental cruelty of such a kind as to render intolerable continued cohabitation. Additional grounds are set out in section 4 which may be outlined as follows: permanent marriage breakdown by reason of imprisonment, alcohol or drug addiction; disappearance and desertion for three years; failure to consumate the marriage for one year; separation under certain circumstances or desertion for five years.

Perhaps a few more observations are in order. Many lay people may be under the impression that divorce proceedings are of such a nature that it will enable them to "clean everything up". Such an impression is totally unfounded. If the husband wishes to seek a claim for damages for loss of consortium, he will have to do so by a separate action. Because of the uncertainty of the interpretation of Section 2 (a) (b) (ii) of The Divorce Act, a parent concerned with the education of children over 16 years may be advised to consider an action separate from the divorce action. Continuing along these lines upon the possible necessity of a separate action from divorce, if the petition fails, the divorce court has not jurisdiction under the Divorce Act to grant corollary relief, since the granting of such relief is dependent "upon granting a decree nisi of divorce". (see section 11 (1)).

Just as the ecclesiastical law recognized the possibility of reconciliation, so The Divorce Act recognizes the desirability of reconciliation. By section 7 of The Divorce Act the lawyer of either party has the duty to advise his client of the reconciliation provisions under the Act, to advise him of marriage counselling facilities available, and to discuss the

possibility of reconciliation. The solicitor also must certify on the divorce petition that he has carried out his duty in that respect.

By section 8 of The Divorce Act, the Court has what amounts to a discretionary duty before actually proceeding to the hearing, to inquire into the possibility of reconciliation of the parties to the divorce action. If, during the proceedings, it appears to the court that there is a possibility of reconciliation the Court shall adjourn the proceedings to afford to the parties the opportunity of reconciliation and may nominate a qualified person, or a suitable person, to endeavour to assist the parties with a view to their possible reconciliation. After a fourteen day adjournment, either party may apply to the Court to resume the divorce proceedings, and the Court shall resume the proceedings.

In all probability the reconciliation provisions will be of little value and effect and will be treated largely as technical requirements to be satisfied. Because marriage counselling or guidance facilities are not defined by provincial law or regulations, and because the Court does not have a domestic relations counselling staff under its direction, lawyers and judges are in the unenviable position of really now knowing what facility or person could be used effectively to explore, or assist in, reconciliation. Hence, unless and until marriage counselling facilities are created and used effectively, divorce proceedings will continue to be equated with a legal approach to the exclusion of a social approach.

The Divorce Act provides for enforcement of orders granting corollary relief (maintenance and custody). Section 14 of the Act states that a decree granted or an order made under section 10 or 11 has legal effect throughout Canada. Under section 15, an order may be registered in any other superior court in Canada and may be enforced in like manner as an

order of that superior court or in such other manner as is provided for by rules of court or regulations under section 19. This latter section permits the court to make rules of court respecting enforcement proceedings but provides for continuance of those procedural laws that were in force that are not inconsistant with the Divorce Act. By sub-section 2, the Governor in Council may make regulations to assure uniformity in the rules of court.

Such provisions mentioned immediately above will probably limit the use of the Reciprocal Enforcement of Maintenance Orders Act, section 6 of the Family Court Act, and the consequent reliance on Family Court by divorced dependents who are unable to meet the expense of seeking relief in superior courts. This aspect will be discussed later.

Aside from the field of divorce as reflected in the Divorce Act, and bearing in mind that Alberta adopted the laws of England as of 1870 and the defined areas of matrimonial law as contained in the Matrimonial Causes Act of 1857 and subsequent amendments, one turns naturally to The Domestic Relations Act. This Act, enacted by the provincial legislature of 1927, carried forward not only judicial separation but much of the earlier English law already referred to. One must assume that the legislature was of the opinion that the subject matters contained in The Domestic Relations Act relates to civil rights in the province and therefore within its legislative competence to enact.

It would indeed be foolish to speculate as to whether some legislation is ultra vires or intra vires since to so speculate would open up an entirely different field of law to that here being considered. Rather, one must look at existing legislation as being valid unless and until the courts decide otherwise.

The Domestic Relations Act is divided into parts, each part

dealing with one area of law. For convenience, below is listed each part, showing which court has jurisdiction over the particular action:

Part I	Restitution of Conjugal Rights	Supreme Court of Alberta
Part II	Judicial Separation	Supreme Court of Alberta
Part III	Alimony and Maintenance	Supreme Court of Alberta
Part IV	Protection Orders	Magistrate
Part V	Loss of Consortium	Supreme Court of Alberta
Part VI	Jactitation of Marriage	Supreme Court of Alberta
Part VII	Repealed	
Part VIII	Guardianship	Supreme Court of Alberta, or a Judge of the District Court sitting in Chambers

The action for restitution of conjugal rights very seldom reaches the judgment stage (The Clerk of the Supreme Court in Edmonton cannot recall any one action seen to its conclusion). In actual practice, lawyers occasionally -- but seldom -- use it as a legal tactic to gain an advantage in judicial separation actions.

In the same light, an action of jactication of marriage is an unheard of thing in Alberta courts for probably two reasons. Firstly, seldom does a person persistently and falsely allege he is marred to another person. Secondly, that other person would probably apply to the court for an injunction against the person making the allegations.

Part IV of The Domestic Relations Act is dealt with in terms of Family Court jurisdiction since the part deals with magistrates and not the Supreme Court.

As has already been mentioned, Board v. Board held that the Supreme Court of Alberta has jurisdiction to hear a suit for judicial separation. Part II of The Domestic Relations Act to a certain extent codifies the law. Grounds for a judgment of judicial separation are adultery, cruelty, desertion, sodomy or bestiality (or an attempt). Cruelty is

more broadly defined than in the Divorce Act. Where domicile, the matrimonial home, or residence is in Alberta, the Supreme Court has jurisdiction to hear an action. Certain sections in Part II refer to instances where the relief asked for in the action may not be granted, refused, or the action dismissed. Section II states the effect of a judgment of judicial separation: neither party is under any duty of cohabitation, and the wife during the separation is to be considered as a femme sole, reckoned as sui juris, and as an independent person.

Under Part III of The Domestic Relations Act, the Court has jurisdiction to grant interim alimony in an action for alimony, dissolution of marriage, a declaration of nullity, judicial separation, or restitution or conjugal rights. (Since the Divorce Act, the claim for alimony in divorce actions does not properly belong under the Domestic Relations Act). In an application for interim alimony, the Court is not concerned with the issues in the action, but rather with the question as to support for the wife pending the trial of the action. Where there is a subsisting order for alimony, and when the husband is not in arrears under the order, the husband is not liable for necessaries supplied to his wife. The order for alimony may be registered in the land titles office and upon registration binds any interest the defendant has in any lands in that registration district. The Domestic Relations Act does provide for variation of the order for alimony but except for Part IV, does not contain provisions setting our methods of enforcement.

Since actions under Part V and Part VI of The Domestic Relations Act are so seldom resorted to, it is hardly necessary to refer to them except to say that any value of these two actions might be in the nature of a deterrent.

Part VIII of The Domestic Relations Act - dealing with guardianship -- includes such topics as the appointment of guardians by deed, will or court order and provides for the removal of such guardians. Although "Court" in section 40 is broad enough to include a judge of the district court sitting in chambers, the court pronouncing a judgment of judicial separation and declaring a person unfit to have custody of the children of the marriage under section 47 would seem to be limited to the Supreme Court of Alberta, since it is only the Supreme Court which may grant judicial separations.

Section 48 provides that parents may enter into a written agreement with regard to the custody, control and education of the children and if the parents fail to reach agreement, either may apply to the Court for tis decision.

The next section provides that a mother, father or infant may apply for an order of custody of the infant and the right of access to the infant. The Court does, of course, have the right to alter, vary or discharge the order on application of either parent. Oddly enough, it would appear that, through omission, the infant does not have the right to apply. It is also interesting to note that the Act does not provide for the means of enforcing an order relating to custody of access. The Court has the further authority to make an order for maintenance of the infant and to be paid by the father or mother, or out of an estate to which the infant is entitled. Under section 50, a parent or "other responsible person" may apply for an order for the production or custody of an infant and the Court may grant, or decline to make, the order.

In questions relating to the custody and education of infants, the rules of equity prevail when they do not conflict with The Domestic

Relations Act.

Section 35 sets out the powers of the guardian where a guardian is appointed by virtue of the Act.

In most cases where an alimony or maintenance order is made, the parties reside and continue to reside in Alberta. As has been pointed out by reference to the legislation involved, provisions are made to permit the defendant to take proceedings to have the order enforced where maintenance or alimony payments are in arrears. However, an order (excluding an order under the Divorce Act) made in Alberta is of no effect in another province or state, nor is such an order made in another province or state of effect in Alberta. In order to overcome the necessity of having the dependent take proceedings for an order against the respondent in the province or country where the respondent is newly located, resort may be made to The Reciprocal Enforcement of Maintenance Orders Act. Under this Act, arrangement may be made with other provinces or states, whereby the reciprocating state will make provision for the enforcement of maintenance orders made in Alberta and Alberta in turn will provide for the enforcement of such orders made in the reciprocating state. While complete statistics may be difficult to obtain, it would appear from the volume of orders passing through the Attorney General's Department that the Family Court is designated to a very great extent for the enforcement of such orders.

Reference has been made earlier to sections 10, 11, 14, 15 and 19 of The Divorce Act. The question arises as to whether the Divorce Act has so occupied the area of maintenance and alimony orders granted in divorce actions as to make the provisions of The Reciprocal Enforcement of Maintenance Orders Act inoperative when the maintenance order to be enforced has been granted under the Divorce Act. If such is the case, it would be unfortunate

for the dependents in whose favor the order was made. In the first place, superior courts do not have the organization to effectively deal with enforcement. In the second place, it would be expensive for the dependent: while the method of registering the order in the superior court is relatively simple, the dependent would presumably retain a lawyer in the other province to initiate enforcement proceedings.

Assuming The Reciprocal Enforcement of Maintenance Orders Act is inoperative, in order to render assistance to the dependent, it would therefore appear that the province would have to either provide the superior court with an organization to enforce payments in a simple and inexpensive manner, or press the federal government to legislate changes.

Other provisions of The Reciprocal Enforcement of Maintenance Orders Act deals with the dependent whose deserting husband (or father, as the case may be) has taken up residence in another reciprocating state. Possibly one of the clearest explanations for the provisions comes from Cartwright, C.J. in BAILEY v. BAILEY 1968 S.C.R. 617:

> "The primary object of that branch of the Legislation providing for the Reciprocal Enforcement of Maintenance Orders with which we are concerned is to enable a deserted wife, resident in a state or province the courts of which do not have jurisdiction over the husband who has deserted her and is residing in a reciprocating state, to initiate proceedings in the province where she is and so avoid the necessity of travelling to the province in which the husband is, a course which would often be a practical impossibility."

Under the Act, once an order is granted in favor of the dependent- called a provisional order - it is then referred to the reciprocating state where the husband is given every opportunity to defend. Assuming the defence is not successful, the court in the reciprocating state then confirms the order and the order is as binding on the husband as if it had been an order

originally obtained in the court which did the confirming. As in the Bailey case, where family courts are in existence the family courts usually handle such reciprocal cases.

Earlier it was pointed out that The Domestic Relations Act does not contain provisions for the enforcement of alimony or maintenance payments. The Alimony Orders Enforcement Act contains such provisions. The definition section in this enforcement Act limits the court to that of the Supreme Court or District Court and judge means a judge of either of those two courts and includes a judge in chambers. The Alimony Orders Enforcement Act applies where there are arrears under an order made under The Maintenance Orders Act, The Reciprocal Enforcement of Orders Act or Part III of The Child Welfare Act, or for alimony.

Enforcement proceedings are commenced by the person to whom the sums under the order are payable procuring from the clerk or deputy clerk of the particular court a summons requiring the defendant to appear at a particular time and place for examination. Service of the summons depends upon the direction of the judge. Successive summons within six months of each other may not be issued without leave of the judge. Upon appearance of the parties the judge shall inquire into such circumstances as the resources, means and ability, property, debts and circumstances of the defendant which are relevant to the default of payments. Of course, where the defendant does not appear in obedience to the summons, the judge has the authority to issue a warrant for the apprehension and production of the defendant. By Section 8 of the Act, the judge has the power to commit a defendant to gaol for not more than a year where the defendant in reality is in contempt of the judge's directions or is in contempt of the original order (by seeking to avoid compliance with the order). The defendant may obtain a discharge from

imprisonment when he in effect discharges his contempt (see section 11). Imprisonment under this Act does not impair the original order or extinguish the cause of action on which the order has been obtained, nor does it deprive the person obtaining the order of any right to take out execution against the defendant.

If a person residing in Alberta has an order for maintenance or alimony which was made outside Alberta, he may file the original, or an exemplification or certified copy of the order in the particular court and may then take proceedings and have the order enforced.

Assuming that a change is desireable from the view of efficiency, economics, the judiciary, the legal profession and the public, the next question is in what direction will reform take? Proper reform must necessarily involve two areas: the reform of law and reform of the court system. Before discussing changes in law, it is suggested that what must first be decided is, what changes in the court systems would be acceptable and feasible? After reviewing proposed changes in the courts, it would then be in order to discuss changes in the law.

On proposing changes in court structures, it is absolutely necessary that one considers such changes in the light of present court jurisdictions as they exist in Alberta. In this province there are three courts involved in handling domestic relations cases: the Supreme Court, the District Court, and the Family Court. Assuming that all domestic relations cases should come under the jurisdiction of one court to avoid a "legal jungle" the problem arises: which court should be given the jurisdiction?

Recalling that it was earlier stated that while the province under the B.N.A. Act may establish courts, if such courts come within the intendment of Section 96 the judges would be required to be appointed by the federal government, then obviously extra powers - such as that of judicial separation - cannot be passed on to the Alberta Family Courts as they presently exist.

for to confer such powers would bring the Family Courts within the intendment of Section 96. The present family court judges are provincially appointed. Taking into account that many of the present family court judges, and taking into account the political reality of such federal appointments, it becomes evident that the family court as presently organized cannot become a court to handle all domestic relations matters.

Of the two remaining courts, there is little to choose as between them. Both are presided over by federally appointed judges. Both emphasize a legal approach to family disputes. Judges of both courts preside over actions of great variety, and none of the judges of either court pretend to specialize in, or prefer, cases involving matrimonial disputes. All judges of both courts, by design, circuit throughout Alberta points in such a way as to deprive Alberta points with a lack of continuity and contact with any one judge. (The system is calculated to ensure that the judges are immune - in fact and in appearance - from influences in the community which could conceivably have a bearing on the case being decided). Probably the one factor weighted against the District Court becoming a court specializing in family law is the provisions of the Divorce Act specifying that in divorce actions "court" means the trial division of the Supreme Court.

The suggestion that the Supreme Court is the court to specialize in all matrimonial matters is not in itself the final solution. Other problems immediately surface.

Accepting the suggestion contained in the articles in the annexed schedules to the effect that there should be a presiding judge over domestic cases, it becomes clear that under the present system no one justice presently sitting in Supreme Court would be assigned solely to matrimonial cases. One of the reasons is that the system of rotation and

and circuiting of justices in the Supreme Court is so well imbedded that any charge would be resisted by the justice's individually and collectively. Secondly, it would be assumed that had any justice in the past or present wished to specialize in matrimonial disputes, or had the system wished to become specialized in this area, then either the system or the justice would have leaned in that direction. As well, it would be unfair to any of the Supreme Court Justices to attempt to impose specialization, for in all probability the justice in accepting the appointment to the bench, did so on the understanding he would exercise general, not specialized, jurisdiction.

In so far as the system is concerned, by its basic legal nature, the system would tend to dissassociate itself from not only community contacts but also from continuous and close contacts with any social agency -- whether it be a governmental agency or a private agency.

Going one assumption further, it would appear that should a justice of the Supreme Court be delegated to a specialized family or domestic court, it would probably be necessary to isolate such a justice from the other justices both in a "jurisdictional" and physical sense. The term "jurisdictional sense" is used to indicate that the isolated justice would somehow be confined to exercising jurisdiction in matrimonial causes only. For to permit him to exercise the general jurisdiction of the other justices would mean in time he would be called on to exercise that general jurisdiction more and more in cases involving other than matrimonial disputes. Before long, the specialization would cease to exist.

In the physical sense there must be a separation of the specialized justice from the other justices. Whether the separation is one

of floors in the same building or of different buildings is of little importance. Such a physical division would ensure there would be no obstruction to the present Supreme Court administrative structure. On the other hand, it would ensure that the present structure would not have a limiting effect on the expansion of the new specialized court.

As indicated earlier, a specialized court in matrimonial disputes cannot properly function without the necessary staff. What is the "necessary" staff?

It is here that one must have regard to the situation as it presently exists in Alberta together with those who would imitate foreign family court organizations by implanting into the proposed Alberta family court system such professions as psychiatry, psychology, medicine and so on. These are desired objectives, but the concern here is to suggest a change in the family court system which would prepare the way for such objectives as they become economically and socially feasible.

It is as well to keep in mind that the more complete and sweeping the proposal of change - and actual change - the greater the temptation to the government, the judiciary and the law profession to resist change. Modification rather than revolution would seem to be the key to successful change.

Taking for example the Edmonton Family Court organization, what would be its role in a reorganized system? As has been described above its basic structure is so organized as to practically be a "made to order" structure for a new system. While other jurisdictions use such terminology as "social arm," "legal arm," "court services," the present Edmonton Family Court already has such positions but uses different terms.

What positions are lacking in the Edmonton Family Court to make

it completely acceptable and efficient from the legal, social and economic aspects?

Firstly, it would be desirable to have appointed a Provincial Director of Family Court services. The Director would primarily be responsible to ensure uniformity in family courts and their development throughout the entire province. His responsibilities would also include the suggestion to the government of salary schedules of family court staff, sitting on the Personnel Selection Committee of the government for staff appointments to the family courts, in-service training of social workers attached to the family courts, as well as ensuring co-operation between family courts and voluntary or governmental agencies in order to further court-community relationship. It may well be that it would be desirable to have such a Provincial Director housed in one of the family court physical facilities, since any physical separation would likely tend to weaken the Director's understanding of the realities of family court operations.

Under the direction of the Chief Court Counsellor would be added another Senior Court Counsellor. One Senior Court Counsellor would be responsible for the operation of intake and marriage counselling, while the other Senior Court Counsellor would be responsible for the ~~Intake~~ ENFORCEMENT Section.

The third position to be added would be that of Clerk of the Court. It would be his responsibility to administer the operations of the Court Reporter Section, the Court Services Section and the Accounts and Officer Service Section.

Finally, a position of Court Orderly would have to be added. The need of such a position is so well known as not to require elaboration.

It should perhaps be noted that re-organization in itself would not create these positions: based upon the rate of growth of the Edmonton

Family Court in the past five years, such positions are now required, or will be required within a few years.

Assuming that the re-organized family court will have jurisdiction over such Child Welfare cases as "Children of Unmarried Parents", wardship (temporary and permanent), and adoption, another solicitor should be added. At the present the Welfare Department through the co-operation of the Department of the Attorney General, uses the services of at least two other solicitors for these types of cases. Because such cases are set down in the District Court to fit a schedule, the present solicitors' services are to a great extent wasted. In a family court setting, the solicitor - through scheduling according to his (or her) time-table in conjunction with that of the court's - would eliminate such waste which results in inefficiency and needless expense.

In assessing the number of judicial positions required, several factors must be taken into consideration. Where will the present family court judges fit into the picture? Assuming no re-organization, how many family court judges will be required in the next few years? How many more Supreme Court justices will be required in say the next five years? Assuming re-organization where one or more Supreme Court justices specialize in domestic matters, how much will the specialized judge relieve the other justices of case load? Will the province stand to lose - or gain - economically?

What are the present requirements in the existing family Courts? Lethbridge has a part time judge, but in all probability could be most effective with a full time judge. Calgary presently has two full time judges and probably will require another full time judge in about three years time. The Judge in Red Deer is full time, but devotes some time in Small Debts Court. With further circuit expansion the Small Debts jurisdiction should be eliminated

and no further judge would be required for several years. Edmonton now has two full time judges and one part time judge, but is now in dire need of three full time judges and one part time judge. Within five years four full time judges will be required to meed demands. Grande Prairie has a part time judge and in all probability the part time position will be adequate for about ten years. The Lethbridge and Grande Prairie judges have legal training as does one in Calgary and two in Edmonton.

Should the family court be included in a Supreme Court Structure, it is suggested that the present family court judges, by virtue of their experience, could continue to handle the same type of cases they have been handling and could be appointed "deputy judges".

It has been suggested that Alberta adopt a "referee" system common to some of the states in the United States. Without going into any great ~~deal~~ detail, suffice to say that the referee holds hearings in less serious cases and submits his findings and recommendations to the judge. In some states, the people appearing in court have the right to choose whether the hearing will be before a referee or a judge. Such a system ensures that the superior court judge will have complete control over the family court system. The disadvantages are two-fold: The Supreme Court judge in time becomes a "rubber stamp" and there is an unnecessary waste of administrative effort.

There is an alternative to the referee system which would probably be more effective. Give the Supreme Court Judge complete jurisdiction over all matters in Family Court, but limit the jurisdiction of the deputy judge to those cases handled in courts of inferior jurisdiction: maintenance, custody, access, enforcement, assaults, Criminal Code 717 cases, temporary wardship, permanent wardship, adoptions. For example in custody cases where divorce or judicial separation was not an issue, the hearings would be decided by

the deputy judges and an order issued accordingly. In the event either party to the issue wished to appeal on a question of law or mixed law and fact, an appeal would lie to the Supreme Court justice. Appeals from the Supreme Court justice (whether from a decision made at trial or an appeal from the deputy-judge) would lie to the Appellate Division of the Supreme Court on questions of law alone.

As to the question of how many Supreme Court Justices will be required to specialize in domestic cases, one must be forced to speculate to a great extent because statistics from the Supreme Court are not too reliable in predicting increases. However, looking at Schedule VI dealing with the number of cases, it is to be noted that in 1968, in Calgary, of 4,267 cases, at least 1,073 of these involve divorce. The projected figures show that in 5 years there will be 5,400 civil actions, and of this figure at least 1,800 will be divorce actions. Looking at page 2 of Schedule VII, which deals with the Supreme Court at Edmonton, it would appear that of 5,265 civil actions commenced, over 20% of these would be matrimonial in nature. Projected figures for 1972 on page 2 indicate that the divorce cases will still account for approximately 20% of the total actions.

From these figures -- assuming there was one justice specializing in matrimonial cases in Calgary and one in Edmonton -- and taking into account that each justice would be sitting five days a week (except for statutory holidays and a three week vacation period), and that there are comparatively few contested divorce cases and judicial separation cases, it

could safely be said that each justice would without difficulty be able to handle all domestic relations cases now heard in the Supreme Court for the next projected 5 year period, as well as being able to supervise the deputy judges and family court structure under him.

It is to be noted that the specialized justice would not cover the entire province as do his brother justices (see Schedules v and viii). Rather, the justice located in Edmonton would have jurisdiction in northern Alberta, and the one in Calgary over southern Alberta, with the dividing line of the two jurisdictions being Red Deer. Each justice would arrange for the circuit of his family court.

On the theory that a specialized Court - one which combines the functions of the Supreme Court and the existing Family Courts -- could handle a larger volume of cases with an elimination of the inefficient systems which are presently in existence, it would appear that the specialized court could so arrange its circuit and sittings as to incorporate those District Court cases underlined in Schedule IX. In other words, re-organization of the court structure would lighten case loads of all judges in both the Supreme Courts and District Courts. In the long run, such an event would be of economic advantage to both the federal and provincial governments since it would tend to slow down, or reduce, the expanding member of judicial positions required in the Supreme and District Courts.

To illustrate how Family Court has already relieved the higher courts, reference may be made to Schedules X and XI. Of course, not all cases contained in the Schedules would have been matters hearable in the higher courts. The increasing number of cases shown in Schedule XI from 1963 to 1968 (marked

F.C. for Family Court cases) does indicate an increasing reliance on Family Court facilities by the general public. Schedule XII shows the monthly sums collected in the Edmonton Family Court for the calendar year of 1968, and is attached hereto to indicate that Family Court does have as one of its concerns the economic factor as between parties to an order. Schedule XIII illustrates the present case loads of other family courts in the province and indicates that extension of circuits would not overload the present family courts when one considers that smaller urban areas have comparatively few matrimonial cases.

It would be surprising if a reform of the present court structures did not meet with resistance. Some members of the judiciary may well feel their own particular position threatened. Some lawyers who pick and choose judges for particular cases may resent limitations on such methods by the creation of a specialized court. Clerks, deputy clerks and court staff may fear being burdened with judges who are simply "impossible to work with".

Assuming that the advantages of reform outweight the resistance to change, one must then consider reforms with reference to the law itself. In this respect, focus must be on legislation. Schedule XIV lists all legislation touching upon domestic matters and courts involved in matrimonial disputes. Taking into account the historical development of matrimonial law and the pith and substance rule, those Acts which are underlined are considered to properly belong under the jurisdiction of a specialized domestic relations court. For example, the Surrogate Court Act, although it deals with guardianship, is by history and in pith and substance mainly concerned with estates and consequently is not underlined.

Without going into any great detail, it can be seen from those Acts which are underlined that the following topics would be covered in a court specializing in matrimonial law:

1. Formation of the contract of marriage.
2. Divorce.
3. Annulments.
4. Judicial Separation.
5. Alimony and Maintenance (including enforcement).
6. Family disputes involving assaults, threats, non-support, and liquor.
7. Custody and Access.
8. Guardianship (not including guardianship in estate matters).
9. Neglected children.
10. Temporary and Permanent Wardship of neglected children.
11. Adoption.
12. Paternity.

Whether or not the court system is reformed, there should be a reform of the law. In the first place, many of the existing Acts could be incorporated into one or two Acts. In the second place, there should be uniformity of procedure in all courts. For example, the procedure in Family Court in custody matters is different than that in Supreme Court. Because procedures are unnecessarily different, it is not uncommon to have lawyers appear in court uncertain as to procedures. Such uncertainty is not desirable. From the writer's point of view, reform of procedures should be based on

simplicity rather than on technicalities, since simplicity would enable the courts, the lawyers, and the participating people to focus their attention and efforts on the real problem rather than on the mechanics of the action.

It has been pointed out that procedures in custody matters vary from court to court. The same may be said of alimony and maintenance application procedures, enforcement procedures and provisions regarding appeals. On these matters as well, the focus should be upon both similarity and simplicity of procedure. Such similarity and simplicity would not only relieve lawyers of confusion, it would also minimize the necessity of lawyers - except in essential cases - being assigned under any civil legal aid program.

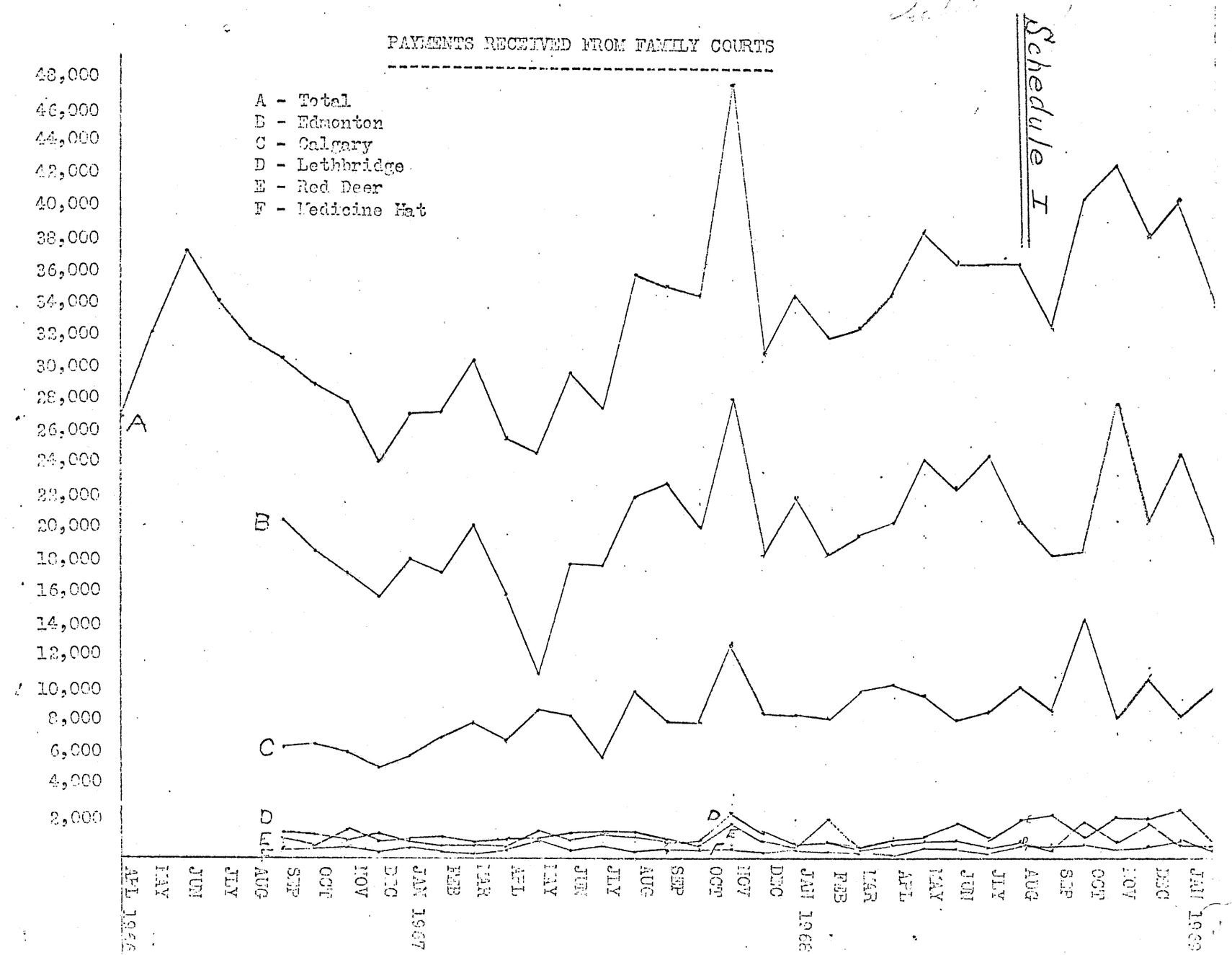
The usual brief concludes by purporting to answer questions. Not so with this one. Throughout, it has been obvious that there cannot be an all-embracing specialized family court without that court having Supreme Court jurisdiction and powers. Suggestions have been made in the Purvis report that The Judicature Act be amended. But would such provincial legislation come within Section 92 (14) of the B.N.A. Act? Or would it be a colourable attempt by the province to limit the powers of a judge appointed under Section 96 of the same Act? Would the federal government be prepared to appoint a Supreme Court Judge under Section 96 but with modified letters patent, if necessary? In other words, what degree of co-operation is required between the federal and provincial governments, and in what form must the co-operation be?

In the field of family law and law reform, all else follows according to the answers of these last four questions.

N. G. Hewitt

April, 1969

Schedule I


PAYMENTS RECEIVED FROM FAMILY COURTS
A - Total
B - Edmonton
C - Calgary
D - Lethbridge
E - Red Deer
F - Medicine Hat
48,000
46,000
44,000
42,000
40,000
38,000
36,000
34,000
32,000
30,000
28,000
26,000
24,000
22,000
20,000
18,000
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Schedule II

The Place of the Family Court in the Judicial System

ROSCOE POUND
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IT HAS come to be recognized that the work of independent agencies treating the controversies that arise in the course of family relations needs to be unified. To maintain an elaborate system of independent tribunals and agencies, each with limited jurisdiction, endeavoring to adjust the relations and order the conduct of the several parties to a suit for a divorce, or controversy involving the property or contracts among themselves, business relations among themselves, or guardianship or custody of the children, or crimes affecting each other or their children in the course of carrying on the relation, such as contributing to the delinquency of the children and juvenile delinquency, in the course of operation of a single household—to do these things is wasteful of public funds and of private means, wasteful of the time and activity of both the parties and the particular judicial or administrative or private social agencies to which resort must be had, as well as often wasteful of some of the dearest interests which individuals cherish as their own. But all this is in truth but part of the problem of unifying the administration of justice, which is becoming continually of increasing importance in the bigness and complexity of everything today.

Others will expound more particularly the case for a family court—what that court should be or may be, or do. Let me consider the place of the court in a modern judicial organization, how it can and should fit into such an organization, and thus have an effective role in the whole system of administration of justice according to law. The place of a family court in such an organization is no less a serious question than whether there should be such a court. For the time for new courts, self-sufficient and independent, contending for jurisdiction, has gone by. There is room for more judicial achievement of justice but not for new courts on the old model.

Why a Unified Judicial System Is Needed

Multiplication of tribunals is characteristic of the beginnings of judicial organization. When some new type of controversy or some new kind of situation arises and presses for treatment, a new tribunal is set up to deal with it. So it was at Rome. So it was in England from the twelfth century to the sixteenth, and, on the whole, to the nineteenth century. In the same way we in the United States have set up administrative tribunals in the present century with no system, with little or no uniform provisions for or practice as to review, and not infrequently with no clear definition of jurisdiction as between one and another. The reason in each case is the same. Every new condition is met at first by a special act, and so for every new problem there is likely to be a new court.

This was true especially in the beginnings of our American polity. Coke's Institutes were a bible to the founders of our legal polity. In the *Fourth Institute* he treated of "district courts above the number of one hundred," except for a very few of general jurisdiction, each limited to a specialty. It was not till the latter half of the nineteenth century that English lawyers began to see that the ideal was not a special tribunal for every special legal situation but instead a system of specialist judges in a unified court. Competent treatment of any controversy requires much beyond knowledge of a special branch of the law. In the complicated conditions of a crowded urban society it requires much more than an unassisted specialist can know, in even the most petty prosecution. Wiggin says of the magistrates of the metropolitan police courts in London, who are trained lawyers: "They have the supreme virtue of knowing how little they know." The knowledge they lack is supplied by a modern apparatus of probation officers, physicians, and social workers unknown to the courts of the past.

Today we have come to see the defects of the system of multiplied specialized courts:

1. It involves conflicts and overlappings of jurisdiction and consequent waste of judicial power on jurisdictional points at the expense of the merits of cases.

2. It involves waste of litigants' time and money in throwing meritorious cases out of court to be litigated over again in other tribunals.

3. It involves successive appeals, such as those on jurisdictional questions followed by appeals on the merits.

4. It requires determination of controversies in fragments in which tl merits of the whole situation may l lost or the efficacy of the legally a pointed remedies may be impaired.

5. It involves waste of public mone in maintaining separate courts (limited powers, whereas a unified ac ministration not only would dea more adequately with each aspect bu would assure effective dispatch of th whole at less expense both to litigant and to the parties.

A system of multiplied separat courts has been embarrassed also b a rigid analytical doctrine of separa tion of powers so that it has bee difficult to give the judicial system th administrative powers necessary t proper exercise of the judicial func tion in the complex organization re quired for the administration of jus tice in the social service state of today

FLEXIBILITY

It is only recently that we have begun to see the need to organize courts in such a way that judges may be called from one to another, as the exigencies of judicial work may re quire, by some administrative agency in the judicial system which has the function of applying judicial power where it is needed and without waste. What appears most conspicuously needed is responsible administrative leadership over an all-embracing court or court system and in each branch and division. But this is requiring, as unification has been going forward, new habits of thought on the part of both the bench and the legal profession. The institution of judicial councils is showing itself particularly helpful in this regard.

The advantages of unified treatment of family troubles is manifest. But, where separate courts with exclusive jurisdiction of particular sit-

uations are set up, sharply drawn jurisdictional lines are the result. These are not always easy to draw well in advance of experience. Specialist judges for particular phases of the situation requiring their specialized knowledge and experience ought to be made available in a unified proceeding in a unified tribunal to help in the solution of specialized problems in what is still one proceeding. Experience shows that even with the best of plans it is wise not to go into too much detail in constitutional provisions as to courts. A constitution is not the place for details which, if they work badly, can only be removed or improved by the slow and painful process of constitutional admendment.

From time to time exceptional cases or exceptional issues in complicated controversies appear in which it is desirable to assign the best judicial talent for that case or issue which the staff of the court affords, instead of leaving it to the accident of what judge chances to be at hand at the time and place. Power to assign and duty of assigning the most experienced and best qualified judges for such cases or issues may save delay and expense—for example, by obviating proceedings for review—and prevent miscarriage of justice.

TRADITION OF THE SINGLE ISSUE

Legal procedure has had a long hard struggle to get away from the mold in which it was cast in the beginnings of law—simple contention between two masterful heads of households in a kin-organized society, and intervention of authority in order to keep the peace. The exigencies of the modes of trial in Anglo-Saxon law required a single simple issue which could be decisively determined by ordeal or battle or oath of witnesses to a formal transaction whose attestation was required for its validity, or compurgation, or a charter or record which proved itself. To these the beginnings of the common law added the verdict of a jury, which could establish the fact in dispute from general neighborhood knowledge. So at common law it came to be held necessary to confine the controversy to a single decisive fact, asserted by one party and denied by the other. Separate causes of action required separate actions. Cross suits were not allowed. A party to an action had to be a party to all of it. What we now regard as parts of a controversy were held distinct controversies. Courts of Equity later, under the maxim "Equity delights to do justice and not by halves," sought to do complete justice by looking at the whole picture, allowing joinders of parties so as to bring in all who had an interest to be affected, and permitting cross actions, counterclaims and setoffs. Today bankruptcy proceedings, receivership and winding up of partnerships and corporations, may, in what is one suit, call for numerous separate determinations of particular issues and distinct interlocutory adjudications, before the final disposition of the whole cause. But even in the present century progress away from the original conception of a single issue has been slow, and family controversies—I might almost say the winding up of the household entity—remain in the eyes of the law single one-point affairs.

If it be argued that a unified court, with the whole situation before it, will present the danger of abuse of power of the administrative authority to assign a particular judge to hear a particular issue, the answer must be that jockeying to get exceptional cases before a particular judge in a rapidly

rotating panel of judges is not unknown in the system of independent tribunals. The remedy, in either type of organization, is to put the function of assigning judges to particular causes, or particular issues or cases to be heard before a specially qualified judge, into the hands of a functionary definitely pointed out as responsible and subject to responsible control by a superior of competent position. Definitely putting responsibility in a chief justice with corresponding power will insure applying the possibilities of a bench of judges to the fullest extent while assuring that the assignment of judges for special cases or for special issues will not be abused.

A system of courts devised to deal with the typical single issue required by the system of formulating an issue in pleadings, reducing the controversy by a series of successive formal statements to a fact asserted by the one and denied by the other, is not adequate to the troubles of a family in the complex society and manifold, diversified, and complicated activities of today. Treating the family situation as a series of single separate controversies may often not do justice to the whole or to the several separate parts. The several parts are likely to be distorted in considering them apart from the whole, and the whole may be left undetermined in a series of adjudications of the parts.

A court of equity can carry on in a single proceeding any number of determinations of single controverted claims, and can adjudicate controversies among numerous parties with only partial interest in the main cause, by means of reference to masters who take evidence, make findings, and make reports. This analogy, rather than that of the action at law, should be used in the disposition of the many-sided situations which ma develop in the affairs of a family.

INSEPARABLE ELEMENT OF ADMINISTRATION

Reviewing the analogies upon whic judicial institutions have been buil we note three: (1) Summary actio by a peace officer to inflict punishmen in order to maintain the general secur ity, becoming proceedings for tria and conviction before a magistrate o tribunal. (2) Summary interferenc by an official to put an end to violenc or breach of the peace in a privat quarrel, becoming an action at law (3) Official winding up of the com plicated affairs of a composite entity —a group of individuals having group interests as an entity which affec also individual interests of different sorts involved in the relations of the individual with the group and the relation of the group to other groups and to individuals outside of the group.

Of these analogies the first is the one upon which our criminal procedure has taken form. The second was employed in the Roman *legis actio* of the period of the strict law and in the Anglo-American action at law. The third, which is eminently appropriate to difficulties in the family relations, was developed in English equity, in the winding up of partnerships and companies, and in the last century was adapted to bankruptcy.

As the common law developed on the lines of the second analogy, the ideas of procedure at law affected also subsequently developed procedure in every feature to which legal proceedings were directed. Supplementary procedures which are required by the conditions of juvenile delinquency and by the growth of enormous metropolitan urban com-

munities have had to contend in their development and application with ideas appropriate to the first analogy. But we have been increasingly turning to the third and the line of progress is in that direction.

The crucial part which the common-law courts have played in the development of Anglo-American administration of justice has made the legal profession, and to no small extent the public at large, suspicious of any administrative element in the course of judicial proceedings. But the exigencies of complete adjudication and full justice in the bigness of everything today call for it more and more. It is steadily gaining a place in the unified system which is being urged effectively in a growing number of states. It does not mean supplanting the judiciary by administrative agencies but rather that all government action, whether legislative, executive, or judicial, has a necessary and inseparable element of administration which does not involve importing the technique of executive action into the judicial.

Hearing by a competent specialist of particular questions incidental to complete dispatch of the differences which have come to exist in a household, as part of a complete judicial winding up of the general situation, is as legitimately a part of the work of the judiciary as adjudicating the claim of a defrauded customer of a deceased dealer may be when dealt with as part of the administration of the dealer's estate. In each case a unified court may be able to give the claimant the benefit of trial or hearing before a competent specialist without resort to an independent court. While jurisdiction of courts with respect to administration of estates varies greatly from state to state, the modern type is becoming emancipated from limitations growing out of the medieval distinction between common-law, equity, and ecclesiastical courts.

It is instructive to note how the police courts in London are able to adjust procedure so as to make adequate advice and information available to judicial magistrates as to petty offenders. Also notice should be taken of practice of advice and information as to sentence in criminal courts in many states today. A well-organized unified court system can make effective provision for this in a family court division.

DEMANDS ON FAMILY LAW

A shifting of ideas everywhere as to the purpose of the legal ordering of society, of the regime of adjusting relations and ordering conduct by systematic application of the force of politically organized society, and as to the meaning of justice, has been putting a heavy pressure on the administration of justice according to law. Very likely it is too soon to be sure of the path which juristic thought of the future will follow. But what seems to be indicated is increased weight given to the social interest in the individual life in the concrete instead of in the abstract. The concrete human being rather than the abstract will of the abstract individual is being emphasized. Men are thinking of satisfaction of concrete wants rather than of abstract wills. Family law, in which there must be a balance between the security of social institutions and the individual life, is necessarily affected by such a change. More is demanded of the system of courts than in the past generation.

Likewise in another respect we are

demanding more of family law than in the last century when our judicial organization took form. Progressive enfeeblement of domestic discipline, or neighborhood public opinion discipline, and of the discipline afforded by religious organizations, has thrown an added and heavy burden upon the legal order. Family law has to carry much more of the burden of domestic discipline than is in proportion to its place in the legal system as it is. In the study of almost any legal subject today we are constrained to look first at the problem of administering justice in a homogeneous pioneer, primarily agricultural, community of the early nineteenth century, and the way in which those problems were met with the legal institutions and legal doctrines inherited from England, and then turn in comparison to the problems of administration of justice in a heterogeneous, urban, industrial community of the present, and the difficulties of solving them with the legal machinery of the past. Behind many of these problems are those raised by the wholly changed—and, in some parts of the land, somewhat suddenly changed—background of the legal order.

Not the least significant feature of the background of the legal order is the working of the more important nonpolitical, and in that sense nonlegal, agencies of social control. Loss of efficiency in our older nonlegal institutions and the rise of new ones are phenomena to be brought into relation with those of the legal order. In the last century the main organized agency of social control after the law was the church. It was for the great mass of the people the authoritative exponent of the social norms of a pioneer, rural, agricultural society. But the churches have problems of their own in coping with the tas of social control in the society of tl time. It is not easy for any institutic whose ends and tenets have been mo or less formulated to the needs of or time, although with reference to pr positions conceived in terms of un versal validity, to maintain its autho ity when those formulations cease i varying degree to govern men's ac tions. A certain condition of institu tional inadequacy is characteristic o eras of transition in our legal history It was felt strongly at the Reforma tion; it is felt once more with respec to all the institutions of social contro today. The law cannot bear the whole burden. Nothing in the way of law-reform will achieve all that we seek through social control. There must also be strengthening of the old restraining agencies which have in the past shared with the law in maintaining civilized society. We seek to organize, give direction to, and make effective the pressure upon each brought to bear by his fellow men in order to constrain him to do his part in upholding civilized society and to deter him from conduct at variance with the postulates of the social order.

There are great advantages in a family court with general, including juvenile court, jurisdiction rather than a wholly administrative agency such as the board of children's guardians which was at one time advocated instead of the juvenile court. Although there was for a time in the early part of this century a cult of the administrative in this country, experience has been making us appreciate the importance of the ethos of judicial adjudication—of open hearing of both sides with full disclosure of the case to be met on each side, of acting upon evidence of logically probative force, of care not to com-

bine the positions of accuser, prosecutor, advocate of the complainant, and judge, and of a record from which it can be seen what has been done and why, and of possibility of review before an independent bench of judges in order to secure constitutional and legal rights. This last is something which our American constitutional polity was set up to maintain. A well-regulated family court, part of a unified judicial system, is better adapted than a purely administrative agency to keep the balance between justice and security.

Moreover, not merely in the setting up of an effectively organized family court but increasingly on every side of organized administration of justice there is today a task of development of the apparatus of sheriff's officers, clerks, shorthand reporters, and bailiffs, familiar from our formative era, into the full and well-trained administrative, investigatory, and advisory staff required for the complete and effective administration of justice in the society of today.

If nothing else, a unified organization, in which the records are records of the court system as a whole, and so do not need copying and certification in going to or for inspection by another branch or division of the one great court, would work a profound change in the expense of legal proceedings—it would go far to meet the expense of a staff of experts which adequate administration of justice in the family relations requires however the system of tribunals having cognizance of them may be organized. How the magistrates in police prosecutions may be helped by even the beginnings of such a staff is well brought out in the sketches of the London police courts in Wiggin's *My Court Case Book* (1918).

The Place of the Family Court in a Unified System

No less important than the question of unifying the agencies of judicial treatment of the family's legal difficulties is the place of the unified tribunal in the unified system of courts toward which we have been moving in the United States in the present generation and to which we shall be compelled to come ultimately by the bigness of everything in a crowded and mechanized world.

From the lawyer's standpoint it is vital to have magistrates trained in law. From the standpoint of the social worker it is of no less importance that the determinations be arrived at with the advice and concurrence of persons well trained in and qualified for social service. Both of these points of view must be heeded. The judge must know what the court may do and how it may be done within the limits of the law. The social worker must take account of this. But the judge must be advised of what is best suited in the individual case to rehabilitate the actual or redirect the potential delinquent. They will work together best in a unified system rather than in separate and very likely mutually jealous and potentially hostile organizations.

It has been pointed out more than once of late that a juvenile court passing on delinquent children; a court of divorce jurisdiction entertaining a suit for divorce, alimony, and custody of children; a court of common-law jurisdiction entertaining an action for necessaries furnished to an abandoned wife by a grocer; and a criminal court or domestic relations court in prosecution for desertion of a wife and child—that all of these courts might be dealing piecemeal at the same time with the difficulties of the

same family. Indeed one might add an action for alienation of the affection of the wife, actions about receipt of a child's earnings, habeas corpus proceedings to try the immediate custody of the child, a proceeding in a juvenile court for contributing to the delinquency of a child, and another in a juvenile court to determine what to do about certain specific delinquencies of the child. It is time to put an end to the waste of time, energy, money, and the interests of litigants in a system, or rather lack of system, in which as many as eight separate and unrelated proceedings may be trying unsystematically and frequently at cross purposes to adjust the relations and order the conduct of a family which has ceased to function as such and is bringing up or threatens to bring up delinquent instead of upright children.

One difficulty in judicial treatment of family problems is that while marriage is sometimes spoken of as a contract, it is radically distinguishable from contracts which create duties of debtor and creditor in commercial relations. A legal procedure designed to deal with breach of such contracts, having to do with an economic relation capable of being reckoned in money, is not equal to treatment of the more complicated task of unraveling the complicated threads of the marriage bond and adjusting the respective relations so that each party may continue to live a useful life. Marriage creates a status. Dissolution of a status calls for a procedure different from the one that suffices for recovery of damages for breach of a commercial contract or reparation for forcible aggression upon person or property. The former affects both the social and the economic order; the latter affects the economic order only.

But judicial method is not boun inescapably to strict outlines of pr cedure such as are usually appropriat to economic relations. In crimina juvenile, and domestic relations court the traditional processes have bee modified and supplemented by de velopment of such procedures as pro bation and parole, reference for re ports by physicians and psychiatrists and expert investigations so as to en able the court to reach conclusions upon an assured basis of expert in quiry and opinion.

Courts of equity, confronted with exceptional situations under conditions of railway transportation over continental distances and arrangements contemplating duration of expensive constructions beyond ordinary terms of years, found how to adapt them to the formal procedure which had grown up in the English Court of Chancery. In the well-known case of the Council Bluffs Bridge over the Missouri River there was a contract for use of the bridge and tracks for 999 years, requiring schedules of rules and regulations for the movement of engines and trains to be made with equal regard for the rights of all parties. With improvements in equipment and increased use because of growth of population and business, these schedules had to be revised and modified continually. Despite an older idea that the court could not enforce contracts for continuous performance, the federal court found how to decree and compel specific performance. This shows how a court of equity can deal with a complicated situation for a protracted period and keep a proceeding alive so long as its supervisory powers were called for to do complete justice. In that case an administrative agency was afterward provided by Congress to regulate the

use of facilities of interstate commerce. But so far as the situation presented by the contract for use for 999 years went, apart from a general question of control of interstate commerce, the court with general equity jurisdiction was entirely equal to it.

FAMILY COURT PROCEDURES

There are four applications of the analogy of a proceeding in chancery, rather than that of an action at law, which should govern in the family court procedure:

1. Instead of being wholly contentious the proceeding in the family court division should be investigatory—directed to determining the best disposition or adjustment of the family situation as a whole and seeking a complete disposition thereof. It may involve contentious trial of certain issues of fact. But the proceeding as a whole should not be primarily and characteristically contentious.

2. The purpose should be to work out and seek to establish whatever plan is best for the family as a whole while not ignoring the interests of individual members.

3. All persons who will be affected by a complete disposition should be made parties to the proceeding and there should be a simple method of bringing parties into the proceeding or a part thereof or dismissing them.

4. The court should have an adequate staff of well-trained assistants. The staff of sheriff, sheriff's officers, clerks, bailiffs, and messengers which we have inherited from the common-law courts and ecclesiastical courts of eighteenth-century England is not enough for a modern court organization. Reorganization of the administrative work of the courts has made much progress in the present century as to the contentious civil proceedings and bankruptcy proceedings. It should be carried out in the family court, and so carried out as to make full provision for dealing with cases in the organization of the family court division (as it may well be in the unified court) with the best of professional advice and assistance.

Certainly the analogy of a contest over possession of or title to an automobile should not be applied to the custody of children.

When the juvenile court as an institution had its inception in Chicago in 1899 it was fortunate that the statute creating it was drawn up by a committee of the Chicago Bar Association and so by lawyers in a state which had preserved a distinct equity practice. It was set up as a court of equity procedure, with the administrative functions incidental to equity jurisdiction, not as a criminal court, and not, as might have happened later, as an administrative agency with an incidental adjudicating function.

A family court made to the model set by the juvenile court as a court of equity may be relatively informal in its procedure, a characteristic going back to the origin of English equity when one who sought relief in equity presented to the chancellor an "English bill'—that is, an informal petition in English—whereas one who sought relief in a court of law had to buy a Latin writ and follow it up with a formal statement of his claim likewise in English. What is required is a simple investigatory procedure with contentious trial of issues of fact.

PRINCIPLES OF ORGANIZATION

But a court with administrative powers incidental to its function of doing justice is no more anomalous than an administrative agency with powers of adjudication incidental to doing effective administration. A complete analytical separation of powers

as to every item of government, so that sharp analytical lines are to be drawn rigidly and maintained inflexibly as to everything which may be involved in each exercise of governmental activity, may sacrifice substance to form in maintaining formal jurisdictional lines at all hazards.

The modern idea is one of specialist judges sitting in courts of wide general jurisdiction, made available on a flexible administrative system when and where they are needed.

It was almost one hundred years ago that Lord Westbury called attention to the waste of judicial power involved in unsystematic multiplication of courts, successive appeals, independent courts of first instance in every locality, concurrent jurisdictions raising unnecessary technical questions of jurisdiction so that proceedings had to be thrown out instead of being transferred to the more convenient place in the same judicial organization, and venue as a place where proceedings must be brought instead of where normally they must or should be carried on. But it was not until the pioneer work of Lord Selborne in his plan which resulted in the Judicature Act of 1873 that the primary cause of inefficiency in the administration of justice was adequately treated. He conceived of a single court, complete in itself, which the inferior local and special courts of law—the courts of general jurisdiction of first instance at one end and a single court of final appeal at the other end—were to be but branches or departments, with divisions as needed in the several branches or departments. His plan has not been carried out fully anywhere. But he made clear the controlling principles of a modern organization: unification, flexibility, conservation of judicial power, and responsibility. To meet the conditions calling for a family court as a part of such a unified system, we must add power to organize and maintain an adequate staff of specialists as part of its administrative force.

That the clerk's office and the sheriff's office in the courthouse of today, organized as they have been for the purposes of the courts in the rural agricultural society of our formative law, are not shaped to be effective auxiliaries to the family court required for full securing of social and individual interests in the domestic relations as things are today—that is no reason for committing justice in the family relations to administrative agencies with no legal experience and no effective apparatus of adjudication and equally unstaffed. Our task is rather, along with organization of a family court as part of a unified judicial system, to provide a modern, thoroughly organized, competently chosen, and responsibly directed staff for the whole, of which the staff of the family court should be a part.

In a unified judicial system the family court will involve simplification and so reduce the cost of public administration of justice in comparison with the expense of unsystematic multiplication of independent specialized judicial or administrative agencies, each organized to be complete in itself and in potential conflict with like tribunals or agencies and so raising questions of jurisdiction, at the expense of the real purpose.

Ministry of Justice

Providing a good family court is only a part, although an important part, of the inevitable reshaping of our institutions of public justice to the requirements of the times. In the end it must be done by legislation and under our American polity by legisla-

tion following plans laid out by state constitutions. Urging this reshaping should be a joint task of social worker, law teacher, and practicing lawyer. By working independently and often at cross purposes each may defeat himself as well as hold back the others. The activities of organizations of every sort having to do with features of justice in action in America ought to be united toward some common plan including the special interest of each.

As long ago as 1823, Bentham, the founder of the science of legislation in the English-speaking world, urged a Ministry of Justice. He saw that preparation had to go before wise lawmaking and that no systematic provision for such preparation was made in the English polity. Later, Lord Westbury, one of the leaders in the legislative reform movement in English law in the nineteenth century, urged that there should be, as he put it, "machinery for ascertaining how the law is worked." He complained that there was no body with a duty of seeing "how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth, and the progress of mankind." He pointed out that important questions often remained long unsettled and that this left the law in doubt and uncertainty until some remarkable case arose and the necessary remedial legislation followed. Later Sir Frederick Pollock, speaking of English commercial law of fifty years ago, said that businessmen "walk every day upon a road strewn with open pitfalls, which remain open, merely because it is nobody's business, until the mischief is done, to see that they are filled up." In 1918, the report of Lord Haldane's Committee on the Machinery of Government noted the difficulty of getting the attention of the Cabinet, which in the British polity has a large measure of control over what shall come before Parliament, for measures of improving the law, and pointed out that no one was responsible for seeing to it that defects in the administration of justice were discovered and that there was appropriate remedial legislation.

In the United States, I urged a Ministry of Justice in an address in 1916, and again in 1917, before the American Bar Association. In 1921, the matter was taken up vigorously by Mr. Justice Cardozo, who urged it zealously thereafter. He explained that the need of such an institution had been driven home to him "with steadily growing force" through his work in the appellate courts. His experience showed that for ordinary cases the judges were constrained by rules which were beyond their power to alter or abrogate while the legislature, which had the power, was occupied with issues more clamorous than the rights of ordinary litigants and took no steps to provide a remedy. He pointed out that where interests specially entrusted to some administrative department were affected there was another story. For example, he said, any tax law defect affecting the government was at once brought to the attention of the legislature with a proposal for amendment. "Seeing these things," he said, "I have marveled and lamented that the great fields of private law, where justice is distributed between man and man, should be left without a caretaker. A word would bring relief. There is nobody to bring it."

The proposal for a family court is one calling particularly for the Ministry of Justice which Mr. Justice Cardozo had in mind. In urging the one may we not achieve our purpose more effectively if we succeed in bringing about the other?

Schedule III

FAMILY COURTS--AN URGENT NEED

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Welfare Administration
Children's Bureau
1960

FAMILY COURTS—AN URGENT NEED

A LITTLE CHILD died of malnutrition. She was an adopted child whose adoptive parents had been charged with neglect in one court prior to the adoption which was granted by another court. This tragedy occurred in a large urban community where specialized social services were available to courts.

This tragic event raises many questions: Why should two courts be involved in proceedings so closely related involving the same people? Why should they proceed independently? Investigative services were available; were they used? If not, why not? If so, were the findings considered by the courts? Clearly this was a situation where the state failed to discharge its responsibility for the protection of a child. A pitiful event such as this points to many urgently needed reforms.

The above is only one example. It could happen in most jurisdictions as conditions now exist. Tens of thousands of cases involving intimate family relationships and problems such as custody, support and delinquency are being processed by a number of different courts each year. The action taken by courts in these cases has a major impact upon the lives of the individuals and families involved. In spite of this, dispositions in great numbers of cases are routinely made without drawing upon the contribution of the behavioral sciences. Also, orders involving the same family made in one court are often unrelated to or are actually in conflict with orders made in other courts in the same jurisdiction on related issues involving intrafamilial relationships. While the result is not usually as sensational as in the case above, it may nevertheless be equally tragic to the individuals and families involved and for the community in general.

Assessing blame when such incidents come to the public attention may provide an outlet for community feelings, but will serve no constructive purpose and may in fact merely aggravate an already tense situation. Sustained positive action is needed to resolve the numerous sociolegal problems which now contribute to the chaotic handling of family cases.

I. FAMILIES IN COURT

Although other contributing factors exist, three primary areas appear to call for immediate attention: (a) court jurisdiction and structure; (b) or-

ganization and use of specialized services; and (c) attitudes, including attitude of the bench, the bar, other professions concerned, and the general public.

The jurisdictional problems of the present courts handling controversies involving intrafamilial relations have been pointed out many times in the past.[1] More recently it has been said that:

> To maintain an elaborate system of independent tribunals and agencies, each with limited jurisdiction, endeavoring to adjust the relations and order the conduct of the several parties to a suit for a divorce, or controversy involving ... guardianship or custody of the children, or crimes affecting each other or their children in the course of carrying on the relation, such as contributing to the delinquency of the children and juvenile delinquency, in the course of operation of a single household—to do these things is wasteful of public funds and of private means, wasteful of the time and activity of both the parties and the particular judicial or administrative or private social agencies to which resort must be had. ...[2]

Court status has a direct relationship to structure. Individuals and groups concerned with the legal processing of family problems believe that a court having jurisdiction over family cases should have status commanding the respect of the legal profession, of other persons coming before it, and of the community generally.[3] They also believe that it will more likely achieve such status if part of the highest court of general trial jurisdiction.

Since this is a specialized court, the judge whether appointed or elected should be selected for this particular bench. He should also have sufficient tenure to become specialized in family law and experienced in hearing juvenile and domestic relations issues. The salary of the judge and the jurisdiction of the court are other characteristics of the court which should tend to attract individuals of high judicial caliber.

Unfortunately where separate specialized courts have been established having limited jurisdiction, they have generally been given the status of "inferior" courts. Even where juvenile jurisdiction has been placed in an existing court, in many jurisdictions it is a court of limited or "inferior" jurisdiction and often presided over by a judge untrained in the law. This situation coupled with the vagueness of the statutes,[4] which in many

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1 Gellhorn, Children and Families in the Courts of New York City (1954); Alexander, Family Cases are Different—Why Not Family Courts? 3 Kan. L. Rev. 26 (1954).

2 Pound, The Place of the Family Court in the Judicial System, 5 N.P.P.A.J. 161 (1959).

3 Standards for Specialized Courts Dealing with Children (Children's Bureau Pub. No. 346, 1954).

4 "Provisions for hearing in a summary or informal manner, or for chancery or equity procedure, or provisions that the procedure shall not be criminal, or that the hearing 'shall be without regard to the technicalities of procedure or rules of evidence' are

jurisdictions resulted in each court making its own interpretation and rules, has not enhanced the status of the court. Larger urban areas have had some tendency to place the specialized court, family or juvenile, at a somewhat higher jurisdictional level. As a result, inequality in the caliber of justice has arisen between urban and rural jurisdictions.

Effective operation of a specialized court means the use of specialized services—social, medical, psychiatric, and psychological. Without such services, it is a specialized court in name only. Great disparities exist in this area. Again, such services are usually available to some degree in courts serving large urban areas. However, in the great majority of courts serving smaller communities and rural areas, they are either nonexistent or woefully inadequate.

Even in urban communities these services may be segmented in that they are attached to several different courts working independently without effective avenues of communication.

Because of the shortage of trained personnel, change in structure and organization alone will not assure complete coverage of services. This should, however, make for more efficient and effective use of existing personnel and help to meet the great inequalities between jurisdictions in the present availability of service.

The philosophy and approach of the specialized court is based upon the principle that the state has a responsibility to protect its citizens, particularly those who cannot protect themselves, such as children, and to preserve family life and promote their general welfare. Because of these responsibilities and the nature of the cases in the specialized court, the use of such services is necessary and appropriate. However, valid and perplexing questions have arisen as to how and when in process these services should be used. Members of the legal profession and members of other professions in the fields of behavioral science and medicine differ on this point. In fact, even within these groups differences of opinion exist.

The establishment of an integrated family court would of course not resolve all of the sociolegal problems involved in the handling of juvenile and family cases, but it would be a step in that direction. Even though the reasons for an integrated family court are self-evident, great resistance remains and progress in this direction has been discouragingly slow. One of the disheartening aspects of this situation is the fact that no small measure of this resistance comes from the very professions and groups that are closest to these problems and aware of these needs. Some of it is due to the inertia of the status quo, some to vested interests, and some to either unwillingness or inability to face and resolve the social and legal issues involved.

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included in the laws of most states." National Probation and Parole Association, Standard Juvenile Court Act 24, at Comment on § 17 (Rev. ed., 1949).

II. Recent Trends

However, reasons for optimism exist. All persons who are interested in the eventual establishment of family courts and in improving and blending the legal and social approaches in court process can find encouragement in a number of recent events.

Of particular significance is the recent action of the American Bar Association in aproving the creation of a section on family law.[5] Family law, in moving from the committee to the section level, has finally come into its own. The objective of this section, established in August of 1958, is to improve the administration of justice in the field of family law through a variety of methods including study and publication of materials. A number of committees on specific aspects of family law were also authorized.[6] The American Bar Association, through this section, is now in a position to take leadership in the task of improving the administration of family law.

Another indication of growing interest in family law is the increasing number of notes and articles in the various law reviews and other professional journals dealing with the operation of specialized courts in such matters as due process, the application of other constitutional safeguards in juvenile cases, and the use of independent investigation in court process.[7]

Social workers and social work agencies are becoming increasingly aware of the need to develop sound working relationships with courts and attorneys. In 1956, the Family Service Association of America appointed a committee on lawyer-family agency cooperation. This committee in a report released this year discusses the contributions of both professions to the strengthening of family life and some of the methods helpful in establishing sound working relationships.[8] Also, in the spring of

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[5] Approved by the House of Delegates in February 1958.

[6] Committees authorized were as follows: Adoption, Custody, Judges—Role in Domestic Relations, Juvenile Law and Procedure, Marriage Law, Matrimonial Action, Membership, Paternity, The Practicing Lawyer, Public Relations, and Support. 44 A.B.A.J. 1096 (1958).

[7] Younghusband, The Dilemma of the Juvenile Court, 33 Social Service Review—(1959); Clark, Juvenile Delinquency in Colorado: The Law's Response to Society's Need, 31 Rocky Mt. L. Rev. 1 (1958); Dunham, The Juvenile Court: Contradictory Orientations in Processing Offenders, 23 Law & Contemp. Prob. 508 (1958); Rappeport, Juveniles Being Denied Basic Rights, Harv. L. Rec. (March 13, 1958), and Determination of Delinquency in the Juvenile Court: A Suggested Approach [1958] Wash. U.L.Q. 123; Breitenbach, Due Process of Law for Youthful Offenders, 32 J. State Bar Calif. 655 (1957); Diana, The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Procedures, 47 J. Crim. L. & Criminology 561 (1957); Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957); Neal, Criminal Law, 3 Mercer L. Rev. 46, 58 (1951); Employment of Social Investigation Reports in Criminal and Juvenile Proceedings, 58 Col. L. Rev. 702 (1958); The California Juvenile Court, 10 Stanford L. Rev. 471 (1958); Problems Arising under the New Jersey Juvenile Court Law, 11 Rutgers L. Rev. 641 (1957); Use of Extra-Record Information in Custody Cases, 24 Univ. Chic. L. Rev. 349 (1957); Due Process in the Juvenile Courts, 2 Catholic U.L. Rev. 90 (1952); Juvenile Justice: Treatment or Travesty?, 11 U. of Pitt. L. Rev. 277 (1950); 45 Ky. L.J. 532 (1957); 41 Minn. L. Rev. 701 (1957); 54 Mich. L. Rev. 1000 (1956); 41 Cornell L.Q. 147 (1955); 44 Geo. L.J. 138 (1955); 1 Howard L.J. 277 (1955).

[8] Family Service Association of America, The Lawyer and the Social Worker—Guides to Cooperation (1959).

1958, the Children's Bureau called a group of attorneys together to consider the role of the attorney in adoption. Some were engaged in private practice, others were faculty members of law schools, and still others were representatives of public or voluntary agencies, either as staff or board members. A report of this meeting discusses the role of the attorney in adoption cases and how he works with community agencies and resources.[9]

Further evidence of this awareness is the fact that about fifteen states have employed a consultant (employed by the welfare department in ten states and in the remaining cases, a variety of other state agencies) whose responsibility is primarily or partially concerned with improving court services and agency-court working relationships. In addition, a number of state welfare departments have been adding attorneys to their staffs or enlisting the aid of the attorney general's office to help staff work with courts and to represent the agency in cases where court action is involved. Also, a number of state agencies have appointed special advisory committees composed wholly or in part of judges of specialized courts for the purpose of advising them on the state programs and for the mutual consideration of problems arising between the courts and the agency.

Another interesting trend is that the appellate courts appear to be looking more critically at the procedures of specialized courts.[10] In the past the absence of certain procedural safeguards was permitted on the basis that delinquency action was not a criminal proceeding. In recent appeals courts have ruled that a child's personal freedom is at stake in such hearings and his constitutional rights cannot be denied merely by a change in nomenclature, and that the requirement under due process of a fair hearing involves adherence to a number of constitutional safeguards.

III. The Standard Family Court Act

An event which may have considerable impact in the establishment of integrated family courts is the development of the new Standard Family Court Act, a cooperative project of the National Probation and Parole Association, the National Council of Juvenile Court Judges, and the Children's Bureau.[11] In designing the act, problems of jurisdiction, court structure, and status as well as the need for specialized services were considered.

Unlike the earlier Standard Juvenile Court Act,[12] the Standard Family

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[9] The Attorney's Part in Adoption (Children's Bureau Pub. No. 47, 1959).

[10] White v. Reid, 126 F. Supp. 867 (D.C.D.C., 1954); In re Barkus, 168 Neb. 257, 95 N.W. 2d 674, 678 (1959); Shioutakon v. District of Columbia, 236 F. 2d 666 (App. D.C., 1956); In re Poff, 135 F. Supp. 224 (D.C.D.C., 1955); United States v. Dickerson, 168 F. Supp. 899 (D.C.D.C., 1958).

[11] Standard Family Court Act—Text and Commentary, which can be found in 5 N.P.P.A.J. 99 (1959).

[12] National Probation and Parole Association, Standard Juvenile Court Act (Rev. ed., 1949).

Court Act does not provide for the establishment of a *new* court. Rather it provides for the establishment of a family court division in the "highest court of general trial jurisdiction." [13] This provision would eliminate some of the problems posed because of lack of status. It would also meet the objections of those who are concerned about the growth of special courts of limited jurisdiction. It might also facilitate passage since it would not necessarily mean a major change in the state court system and would perhaps avoid constitutional problems that so often arise when attempts are made to change the jurisdiction of constitutional courts. In about two-thirds of the states, passage of this act would mean the establishment of a family court division in a circuit or district court structure.

The Standard Family Court Act also provides for integration of jurisdiction. The jurisdictional sections, Section 8 relating to children and minors and Section 11 relating to adults, combine actions which are now generally in juvenile court with the usual domestic relations actions. Passage of the act, therefore, would eliminate juvenile courts and domestic relations courts as separate tribunals. The act also gives the family court jurisdiction over other actions, often placed in still other courts, such as the commitment of the mentally ill, adoptions, and certain criminal offenses by one member of a family against another.

Several criteria were used in determining whether the family court should have jurisdiction over a particular action. Is the issue one which involves intrafamily social relationships? Is it one in which the state has an interest or responsibility, such as the protection of children and the preservation of family life? Is it one where the proper discharge of state responsibility and the efficient and effective administration of justice require the specialized services of the court?

The Standard Family Court Act provides for the establishment of a State Board of Family Court Judges and the appointment of a state director of the family court.[14] Certain duties such as preparation of the budget, keeping statistics, preparing annual reports, and providing supervision and consultation to district staffs are assigned to the state director. District directors with similar duties are also provided for, with all personnel appointed under a merit system. Such a system in and of itself is not going to assure adequate services in every community in the light of the present great shortage of qualified personnel. It should, however, lead to a more efficient use and equitable distribution of existing services and to the establishment of more uniform procedures and policies throughout the state.

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[13] Supra note 11, at § 3.
[14] Ibid., at §§ 5, 6.

IV. Court Reorganization

Recently, many states have become interested in judicial reform and reorganization in order to have judicial power exerted where it is needed without waste or duplication. Legislation providing for state court administrators reflects a growing realization that courts need to use modern dministrative concepts and methods. Among the states now having such an office or its equivalent are the following: Connecticut, Colorado, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Puerto Rico, Rhode Island, Virginia, Washington and Wisconsin.[15]

The Illinois statute enacted in 1959 provides for appointment by the state supreme court of a state court administrator and deputy. Their duties include study of dockets, gathering of court statistics, submission of budget estimates, and recommendations for assignment of judges where needed, and recommendations for improvements in administrative methods and systems. Under Colorado legislation, also passed in 1959, the chief justice of the supreme court is to have the assistance of a judicial administrator. The chief justice is empowered to supervise the court system. The judicial administrator's functions are to assemble and analyze court statistics and to recommend when judicial assignments should be changed to relieve court congestion.

Roscoe Pound has pointed out that a multiplicity of tribunals characterizes the beginnings of judicial organizations.[16] This has been true in continental Europe, including Great Britain, and also in the United States. However, as courts continue to operate, multiplicity must give way to unity.

Today more is demanded of courts than in the past. This is especially true in the realm of family law where the security of social institutions and the well-being of the individual should be considered. In attaining a balance, the concrete social interests and needs of the individual as distinct from social institutions are paramount. As Dean Pound indicates, a family court with jurisdiction over matters usually dealt with in a juvenile court has great advantages over an administrative agency attempting to function as a quasi-court.[17] An adjudication providing for a full presentation of both sides of the case with a delineation of the functions of complainant, advocates, and judge, together with a record which shows what has been done and why, and an opportunity for judicial review assists in maintaining an effective balance between justice and security.

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[15] 43 J. Am. Jud. Soc. 24 (1959).
[16] Supra note 2.
[17] Ibid.

V. Study Prior to Legislation

Where interest exists within a state for the adoption of a family court system based upon the Standard Family Court Act, careful study and planning preparatory to the drafting of legislation are imperative. Any model or standard legislation to be effective should be adapted to the social, economic and cultural conditions of the state which seeks to utilize it. Many times more problems are created than solved when a model act of any kind becomes law without regard to the individual conditions within the state. That is why emphasis should be placed upon fundamental social, legal and judicial concepts.

It is recommended that in considering a family court system each state should establish an interprofessional and lay group to function as a planning committee or commission. Its members should represent different sections of the state, different groups within the state, different political parties, and different viewpoints. Social workers and board members of voluntary and public agencies, physicians, lawyers, religious leaders, judges, and representatives of labor and management should compose the membership. This group can effectively stimulate support of a legislative plan. Also, such a group is in a unique position to analyze and evaluate the many complex problems involved. Continuity of the group after the enactment of the legislation, perhaps through representation on an advisory council to the new division, will aid in its interpretation and also aid in its implementation.

The planning group should ascertain what is required and how the major provisions of the Standard Family Court Act can be adapted to the state's needs. In the study process, the various tribunals having jurisdiction over different segments of family controversies—for instance, termination of parental rights, divorce, paternity, support and guardianship—and the personnel engaged in coping with them must first be known. In addition, the volume of each of the specific types of family cases should be noted. This information will furnish a base for determining what judicial structure and facilities including clinical and counseling services will be needed. In this way, a practical plan for establishing the new judicial structure and facilities can be evolved in light of the state's needs.

The planning group should also study how the body of related substantive and procedural law should be modified. Thus, laws pertaining to guardianship, domestic relations, parent and child, and the like should be analyzed to see what amendments are necessary to conform with the new family court legislation.

Since these issues arise in every state, and constitutional or legislative provision for judicial proceedings concerning them already exist, a design for the transitional period is essential. In preparing for this, the proposed

legislation regarding a family court system should include a plan for the transfer of cases now in litigation; for the utilization of staff members already functioning in existing courts; and for the use of records, supplies, equipment and premises, perhaps in the latter instance, with some modifications to assure adequate office space and hearing facilities. Administratively speaking, arrangements should be made for notification to litigants, members of the bar, employees, and others concerned.

In formulating legislative proposals, the planning group will need to take into account the state's judicial districting and also questions of finance. Sufficient funds should be appropriated to make certain that the tribunals will function productively. This means estimating for such needs as staff, housing, equipment and the like. The legislation should also include the major concepts and principles enunciated in the Standard Family Court Act with attention given to the comments accompanying the act.

VI. The Family Court in Operation

After the enactment of legislaton establishing a standard family court system and its financing, the process of translating it into an administrative and judicial reality begins. The more thoughtful and realistic the prior study and planning have been which led to the legislation the easier this process will be. The most vital part of the new law will be that providing for integrated jurisdiction and services. The structure is designed to be a court, not a social agency, even though certain social services will be available and will be utilized within the judicial framework. These social services will be for the purpose of facilitating and implementing the judicial process so that the court, as a court, can render effective judicial service.

In our system of government, courts are primarily for the protection of personal and property rights through the settlement of controversies. Litigants and prospective litigants and their representatives have the right to expect that all of our courts will function as courts with regard for a person's constitutional rights and in accord with principles of procedural law as well as substantive law. This does not diminish the importance of social studies and social reports as basic elements in the functioning of family courts. A sound investigatory procedure in connection with controversial issues of the judicial cases is of the utmost value, since what is best for the family as a whole must be considered without ignoring the rights and interests of family members and the protection of society.

How many family divisions there will be and how many sections these will have will depend upon what is needed to cope with the volume of family court litigation within the state and within each district of the state. For example, in large centers the volume of domestic relations cases will necessitate a section of the family court devoted exclusively to cases of divorce, separations and annulments with another section devoted to

delinquency and neglect cases. In fact, within metropolitan areas, more than one judge will be needed within each of these sections. In lightly populated areas, a district division with one or more judges may be able to handle all types of family litigation. Irrespective of the number of district family divisions or the number of sections or the number of judges required, structural arrangements, judicial rules, procedures and methods will be necessary to enable the court to carry out its responsibilities.

As all jurisdictional areas encompassed within the Standard Family Court Act include individual and family problems, one unified social service and clinical program should be provided within the court structure. In transferring present personnel such factors as density of population and the most effective distribution of staff members require consideration. Staff assignments should be based upon availability and quality of staff in relation to specific problems encountered within each jurisdictional area.

Likewise, one unified system of records, even though divided into judicial and social records, is invaluable in preventing overlapping, duplications and omissions. The use of a unified record system would have helped to prevent the tragedy referred to at the beginning of this article.

The intake process requires special skill. To assure the benefits of unified jurisdiction a unified intake system is imperative. In this area, the social service intake workers and the court's legal adviser should work closely together. The former can ascertain immediately from study of the court's social service files whether or not this family or any of its members is already known to the court and if so, what prior judicial and social problems were presented and how these were handled. The latter can assist with the present problem of court process for example, whether sufficient data has been presented to warrant a delinquency petition or a neglect petition. Pleadings in domestic relations proceedings, support, paternity, termination or parental rights, adoption, guardianship and similar cases will have to be prepared and filed by counsel in accordance with the statutory requirements relating to such matters. Even in these instances, principles and practice of a unified intake system will be beneficial.

Unity of jurisdiction, of intake, of records and of services will be promoted by having single-structure housing. Small hearing rooms and simple offices are better than huge courtrooms and ornate chambers. In other words, the premises should be functional with emphasis upon simplicity of design and furnishings.

VII. Social Studies

The social study is a significant component of the work of a family court. In recent decades, with the rapid growth of social legislation con-

cerning adoption, custody, termination of parental rights, delinquency and neglect, social studies and reports are becoming mandatory.

The main purpose of the social study is to ascertain family factors, especially those concerned with interpersonal relationships, as an aid to the court in making dispositions. The scope of the study is broad and while some guides are presented as to topics to be covered, much is left to the discretion of social agencies and social workers in carrying out their studies. Whether these studies be conducted by court workers or by personnel of social agencies within the community or the state, this function calls for a high degree of skill and expert knowledge of human behavior and interpersonal relationships.

Whether the litigation involves adoption or delinquency or other family law matters, certain principles and concepts are applicable to the use of social reports. Unfortunately, this has not always been understood by social workers, attorneys and judges. Consequently, difficulties have arisen in their use and in the relationships between social workers and judges and social workers and lawyers. Although many points embodied in the report are factual, others are conclusions or opinions. Even in the factual sphere, there is room for controversy. This is even more true of opinions and conclusions.

Social workers are equipped by training and experience to study social factors in family conflicts, to evaluate these, and to make their evaluations available to courts before the judicial decisions are made. The legislative intent is to have skilled, unbiased investigations used for the welfare of children and families. These studies should include not only physical items such as housing, economic conditions and medical problems but also family relationships with psychological and psychiatric implications.

Oftentimes, social workers are more skilled in making studies than in reporting upon them. One reason is that social workers tend not to give sufficient attention to the reports. Sometimes they contain too many assumptions, surmises or conjectures. At times the reporter has not distinguished sufficiently between items of major and minor importance as related to the judicial proceedings. Other times, fearful of omitting essential data, the worker includes unnecessary detail. Moreover, the use of highly technical language with insufficient interpretation decreases the value of reports.

A worker preparing a report of the social study should be clear as to its purpose, its meaning, and its effect. He should also be prepared to stand behind his report and be willing and ready to appear as a witness concerning both the social study and the report. Social workers have tended to want scrutiny of these reports limited to judges. This has led to ill-feeling on the part of counsel representing litigants in the judicial

action. They believe strongly that these reports should be shared with them when the judge relies upon these in making his decision.

In fact, many social workers are reluctant to appear as witnesses. Recently, the feeling of attorneys on this subject was expressed at a joint meeting in Akron with the North Central Ohio Chapter of the National Association of Social Workers: "Social workers should have enough conviction about their opinions as expressed in their summaries to court, to be willing to appear for cross-examination. . . ." [18]

VIII. The Hearing

In the Standard Family Court Act consideration is given to the hearing.[19] Sound procedural principles should be applied to safeguard the constitutional right of due process. Due process requires adequate notice and a fair hearing. For a hearing to be a fair hearing, adequate attention must be paid to questions regarding the admissibility of evidence.

As is pointed out in the Standard Family Court Act,[20] stenographic notes should be taken or a mechanical recording of the hearing should be made. Family litigation requires privacy of hearings, and therefore, the general public should be excluded.

At the hearing, the social worker should be present and should be prepared to testify if called. Social workers trained and experienced in the handling of interpersonal problems should be recognized as having a sphere of special competency similar to that of physicians. Like physicians they should be permitted to express expert opinions based upon professional training and experience. A lack of willingness on the part of social workers to appear at the hearings and to submit themselves to direct and cross-examination creates difficulties and tensions between lawyers and social workers.

It is incumbent upon counsel to deal with the social worker as a witness in a dignified manner whether he is testifying on direct examination or cross-examination. Lawyers should bear in mind that a social worker, except where his social agency is a party, is not appearing as a litigant nor as a partisan witness.

In judicial actions a distinction must be made between evidence upon which findings concerning the allegations in the petition are based and evidence to support findings upon which the disposition is based. More leeway is permitted in the latter, especially in respect to social factors. This is particularly applicable to delinquency and neglect.

Evidence required for a finding of delinquency should meet the test

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18 4 National Association of Social Workers News 7 (1959).
19 Supra note 11, at Art. V.
20 Ibid., at Art. V. § 19.

of "beyond a reasonable doubt" instead of "a preponderance of the evidence" which is the test in civil cases.[21] Where a denial has been made of the act of delinquency complained of in the petition, a preponderance of the evidence should not be sufficient to justify a finding that the act has been committed by the child named as the offender. Even though the proceedings are regarded as civil rather than criminal, the delinquent may face a loss of liberty since he may be committed to an institution. It is the risk of loss of liberty instead of the term applied to the proceedings which should govern, and therefore, the evidence required should meet the test of "beyond a reasonable doubt."

The importance of protecting records is stressed in the Family Court Act.[22] It provides that the judicial records are to be protected as also are reports of social and clinical studies and examinations. Protecting the privacy of children and families is vital for their welfare and that of the community.

IX. Social Workers and Lawyers

The key to effective use of family courts is good relationships between social workers and attorneys. This means that present problems in relationships between these two professional groups should be explored. The existence of conflicts between social workers and lawyers is traceable to lack of mutual understanding. Their purposes are not contradictory even though sometimes they are so considered. As mutual sharing occurs between these groups on behalf of the individuals and families from whom they work, difficulties will diminish both in number and intensity.

Members of their professional groups working together on committees for the preparation and passage of social legislation and for the productive working of family courts can help immeasurably. A joint committee composed of members of local and state bar associations and local and state chapters of the National Association of Social Workers can aid family courts in interpreting their work to the public.

Cooperative relationships among the court, police authorities, social service, health, and welfare agencies and institutions within the community are essential to effective functioning. Care should be taken at the outset to formulate referral policies and procedures and these should be reviewed periodically in the light of practice. Among the areas needing special attention are those involving marriage counseling and neglect situations. Family courts should assist people in using community resources instead of setting up duplicating ones or those which more appropriately belong elsewhere. The court should be represented in community councils and should not lag behind other organizations in sharing in the process of sound

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[21] It should be noted that this represents a departure from an earlier position taken in the Standard Family Court Act. Ibid., at Comment on § 19.

[22] Ibid., at § 33.

community planning. With its integrated jurisdiction, the court will be in a favorable position to know community gaps and lacks.

The court should also develop cooperative relationships with law schools and schools of social work within its vicinity, since the court can offer unique training opportunities for students in both professions. An intern program can help students in understanding areas of service and also provide a means of obtaining future staff.

X. Conclusion

Justice, service to people, and efficiency in functioning demand that our present diversity of tribunals with their segmented jurisdiction over family problems give way to family courts with integrated jurisdiction and services. These courts can make a substantial and lasting contribution in helping to maintain family living. To this end, team work among judges, lawyers, social workers, physicians and clergy is indispensable. They should join forces with other professional and lay groups to make family courts a reality throughout our land. Because of their position of leadership, law schools and schools of social work have a special obligation in the attainment of this goal.

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Schedule IV.

WHAT IS A FAMILY COURT, ANYWAY?

By Paul W. Alexander

By what right does a foreigner from Ohio presume to expound to his Connecticut brothers-in-law on the family court? Surely not just because his mother happened to be a Connecticut Yankee. Could it be because the doubly-distinguished team of CLARK and CLARK spoke in your estimable Bar Journal of the "Experiences in Other States and the Teachings of the Experts"?

Well, possibly I have had a little experience--less than many others--in another state: fifteen years' learning to run a family court in Toledo (still learning), thirty thousand divorce cases, twenty-five thousand juvenile delinquency cases, uncounted thousands of other types of family problems. And I am afraid I must plead guilty to being an expert on two counts: by popular gag (I am a fellow holding forth a thousand miles from home) and by etymology ("expert" and "experience" derive from the same root; fundamentally an expert is one who is experienced).

From my contacts with lawyers both off and on the bench I have learned there are as many degrees of comprehension of the family court as there are degrees on a thermometer. While the juvenile courts of the country approach uniformity in philosophy, if not always in practice, the so-called domestic relations courts vary widely in philosophy, jurisdiction, composition and modus operandi. And except to students of the subject (whose number, by the way, is multiplying like rabbits) the concept of the true or integrated family court is only vaguely understood outside Ohio and an additional half-dozen cities at the most.

I. WHAT THE TRUE FAMILY COURT IS NOT

At first blush the Family Court Division of the Children's Court of New York City might be expected to be a true family court. But, as lamented by many of its distinguished judges including PRESIDING JUSTICE JOHN WARREN HILL, HON. JUSTINE WISE POLIER, HON. DUDLEY F. SICHER and others, their court's efficacy is hampered by its limitations and they are pleading for surcease from restricted and conflicting jurisdiction. The Domestic Relations Court of Richmond, Virginia, under veteran JUDGE JAMES HOGE RICKS, makes no pretense of being a true family court as its principal jurisdiction is juvenile, including some family cases. The same is true of the Domestic Relations Court of Miami under HON. WALTER H. BECKHAM, and most other "domestic relations" courts. The well known Home Term of the Magistrate's Court of New York City under HON. ANNA KROSS bears some of the aspects of a family court, but its jurisdiction is even more restricted.

II. WHAT IT IS--JURISDICTION

That Connecticut generally embraces the proper concept of the family court may be gathered from reading the various proposals for court reform.

But here let me digress a moment to comment on that word "reform". The older I grow, the more bar associations I visit, the more lawyers and judges I talk with, the clearer it becomes that most of us of the legal profession sort of recoil emotionally, if not intellectually, at the mention of "reform". We seem as a class to be traditionally and constitutionally allergic to all reform (except, of course, for other professions and institutions.) So why bother to reform Connecticut's courts? As they are the trust res of the legal profession and hence our responsibility, why not just do a little reorganizing? We lawyer folk do not do so badly at reorganizing things like business corporations--and improvement generally results. Why permit that talent to become, even in part, a buried talent? If we, as members of a learned profession rather than mere money-makers, would not mind some day hearing "Well done, thou good and faithful servant," why not invest some of that talent in our courts? Improvement might result there too. (End of digression.)

To the students, scholars, committees, commissions and others who study, discuss, write and speak on the subject, a family court means simply a court with jurisdiction plus facilities to handle all manner of justiciable family problems. This embraces some two or three dozen different types of actions,--equitable, civil, criminal and purely statutory--the more common ones being listed on the accompanying chart. It includes all cases involving children now ordinarily handled by the standard juvenile court; generally speaking all cases arising from conflict between members of a family, primarily in their intra-family and interpersonal relationships; and all cases involving adults which arise from laws designed for the protection of children.

Obviously it does not include extra-family conflicts: e.g., cases involving infants' contracts, tort actions by or against a child, property cases such as partition actions (although in Ohio the family court not infrequently handles a partition action between spouses by consolidating it with a pending divorce action), will contents, even though between brothers and sisters, etc. And, of course, it does not infringe upon the probate court's jurisdiction to handle the estates of minors and appoint guardians therefor.

Numerically the family court handles mainly divorce, juvenile delinquency, neglect, dependency, custody, bastardy, assault and battery by spouse, and contributing to delinquency cases. It employs a jury when, e.g., a neglect charge is brought under a felony statute, and when demanded in misdemeanor cases. It frequently issues injunctions, occasionally issues a decree of annulment (the annulment racket has never to my knowledge gained a foothold in any family court), may appoint a receiver now and then, conceivably could issue a writ of mandamus, e.g., to order an inferior court to surrender to it a child's case (although I do not know that this ever had to be done), and has been known to render declaratory judgments (I once heard the case of a mother who bore five children--at curious intervals--while she had four successive husbands and it was a wise child who knew his own father and vice versa, for it took a number of days and many witnesses to decide and declare who had sired whom.)

III. PHILOSOPHY

There is nothing extraordinary about the broad jurisdiction of the family court. The juvenile court is already endowed with most of it. But it is the philosophy of the juvenile court epitomized in the criterion "What is best for the child" that has enabled it to operate for half a century with its breadth of jurisdiction rarely challenged and never impaired.

The family court has merely adopted the time-tested philosophy of the juvenile court and adapted it to the resolution of additional family conflicts and problems. For, just as juvenile delinquency is very much a family problem, and "the family is the treatment unit," so divorce is principally a family problem born of conflict rooted in the personalities of the spouses and expressed in their interpersonal relationships.

Perhaps the philosophy of the family court in matrimonial causes can best be explained by quoting from the statement of purpose of the Interprofessional Commission on Marriage and Divorce Laws, the substance of which statement was originally borrowed from the family courts. The family court so operates that it "may tend to conserve not disserve, family life; that it may be constructive, not destructive, of marriage; that it may be helpful, not harmful, to the individual partners and their children; that it may be preventive rather than punitive of marriage and family failure."

IV. COMPOSITION

By traditional courtesy the judge or judges of courts are referred to as "the court." But to refer to the judge of the family court as "the court" would be, if not discourteous, at least misleading; such a court is composed of far more than the judge. For children's cases it employs the types of personnel that make up the standard juvenile court. To these it adds for the matrimonial and other cases new types, such as investigators (a term used in some statutes) and marriage counselors (sometimes confused with conciliators.)

Thus in a family court you may expect to find probation officers and counselors who are social caseworkers, the seniors often serving as referees in children's and some adult cases, psychiatric caseworkers, an occasional medical caseworker, an occasional lawyer usually serving as a referee, clinical psychologists, a psychiatrist or psychiatric service, investigators, and the necessary administrative and clerical staff; and for the children in the detention home there is a pediatrician or pediatric service, nurses, supervisors, teachers both general and handicraft, recreation directors, etc., and a housekeeping staff. Over all there is usually an administrator or two, or director or office manager, to relieve the judge of some of the administrative burden, which is one of his biggest headaches.

Except in Portland, Oregon, the family courts are presided over by a single judge. However, next year Dayton and Columbus will catch up with Portland and have two each. Further increases in judicial personnel may be expected.

V. MODUS OPERANDI

In order to achieve its fundamental philosophy of helpfulness to the client or litigant, the family court, acting always within the framework of the law creating it, endeavors so far as possible to apply to the resolution of all personal conflicts and family problems the vindicated and proven procedures of the juvenile court. The informality of hearings is only part of the procedure. Its most effective work is done in personal interviews, many in the client's home.

The court tries by every legitimate means to minimize the adversary aspect of its cases. It seeks to avoid the infliction of fresh wounds and the rubbing of salt into old ones. While it must ultimately render judgment its attitude is not judgmental; While it does not condone human frailty it is not too quick to condemn it. It is punitive only as a last resort. The essence of casework being to help people to help themselves, the court is an implemented caseworking agency, using also group therapy with children and, where possible, with adults.

A. THE TRUE FUNCTION OF MARRIAGE COUNSELING

Take, for instance, marriage counseling, a discipline only presently emerging into the stature of a recognized profession. The accredited marriage counselor (one eligible for membership in the American Association of Marriage Counselors) has had years of schooling in sociology and psychology plus rigidly supervised training in this special field.

Unlike us legal counselors who, for example, in a negligence case are required to bring to light only the proximate cause of the collision, the marriage counselor must bring to light the primary cause, the ultimate facts, probing back through the chain of causation that led to the collision of personalities.

If papa has taken to drinking and beating mamma, or mamma has gotten mixed up with that fellow who drives her to work, those are all the facts the court needs to know if it is merely going to be punitive. But the marriage counselor is there not to hurt and punish but to heal and prevent, so he must know <u>why</u> papa took to drink and <u>why</u> mamma got herself into such mess.

The physician tries to learn the source of the infection causing the patient's fever before he undertakes to cure it. He doesn't try to cure it by locking the patient in a refrigerator. He doesn't treat symptoms. Yet that is all anybody--marriage counselor, legal counselor, judge, caseworker, physician--can do, treat symptoms, unless and until he knows the case clear through to the real causal factors. That is what it means to diagnose: to know through.

B. MORE THAN MERE CONCILIATION

The futility of undertaking marriage-mending without special training is widely overlooked. Fools rush in, knock the couple's heads together, and proudly send them home "reconciled". Even the most sagacious and sympathetic person who sometimes seems to have performed a near miracle is seldom sure he has done a permanent job. As I have said elsewhere, "Too often when the lawyer relies solely on his own skills to reunite the estranged couple, he merely postpones the denouement. He hears all about the symptoms, the overt acts and omissions. But he does not discover the causal factor or factors and eradicate or change them. He corrects nothing. He effects no cure. He sends the same two people back together, the same as when they separated, and the same underlying cause is still lurking there to get in its deadly work."

Contrary to popular opinion conciliation (or more properly reconciliation, which according to the Century Dictionary means to conciliate anew, to restore to union after estrangement) is only one of half a dozen functions of the professionally trained marriage counselor. (1) Before marriage he educates and advises on choice of a mate, implications of marriage, etc. (2) After marriage he diagnoses and helps partners gain insight, to prevent marriage failure. (3) After separation he brings to bear all his knowledge and skill to help the spouses to rectify or modify the causative factors and mend their marriage. (4) He counsels with parties, attorneys, in-laws, relatives and judge to safeguard the best interests of children in regard to custody, visitation, companionship, education, medical care, support, etc. (5) When it becomes definite that a divorce is going through he helps the wife to prepare for her status as divorcee. (6) If a party intends to remarry he counsels with regard to choice of a new mate and avoidance of factors that caused first marriage to fail. (7) Underlying all post-marital counseling he helps the parties to understand themselves and each other with a view to healing their wounds, restoring their self-respect and self-confidence, quieting their fears, relieving their neuroses, substituting thinking for feeling, friendliness and tolerance for hatred and bitterness, all with a view to readjusting and at least partially maturing their personalities, so that even though unable to make a go of the marriage they will be <u>better citizens, not bitter, because of their court experience</u>. As a by-product of this effort he paves the way for amicable instead of hostile settlements of side issues such as alimony, division of property, etc. In a nutshell, he is always a diagnostician and healer, and hence inevitably sometimes a marriage-mender.

VI. ORIGIN OF THE FAMILY COURT

The integrated family court originated in Cincinnati. It opened for business in 1914, about a decade after the establishment of the juvenile court. I do not know the details of its genesis but I surmise that the conflicts and frustrations arising from overlapping jurisdiction, somewhat as outlined on the accompanying diagram, may have played a part. And I have no doubt that my venerated colleague, HON. CHARLES W. HOFFMAN, who was its first and only judge and who still presides with remarkable wisdom and vigor,

was persuaded that much of the philosophy and methodology of the juvenile court could and should be applied to the handling of divorce cases.

Anyway, it worked. Within another decade the news had spread and similar courts were created in Dayton, Columbus, Toledo, Akron, Canton and Youngstown. Another one starts at Warren in 1953. Cleveland, having an independent juvenile court, never joined in the movement. These courts are divisions of the trial court, cognate with the Superior Court in Connecticut, and are called "Court of Common Pleas, Division of Domestic Relations." Each is created by special statute which provides that all juvenile, divorce, alimony and bastardy cases be referred to it. The judges of these courts retain jurisdiction to handle the complete civil, equity and criminal dockets, but do so only in Akron.

Since these courts are divisions of the trial court and retain their general jurisdiction, they are empowered to handle every type of family case with the illogical exception of adoptions, which remain exclusively with the probate courts.

And because the family division is better implemented than the general division to handle family cases, by general consent all such cases are ordinarily handled in family court, the principal exception being such misdemeanors as inter-spouse complaints of drunkenness, assault, and some neglect cases. In such cases its jurisdiction is concurrent with that of municipal, police, mayor's and justice of the peace courts. But since it always has all the business it can handle it does not compete with these courts, but remains content with whatever the complainants voluntarily bring to it.

In 1951 the germ of the family court idea seemed to have taken such firm root in Ohio that the legislature, moving almost entirely under its own steam, made the remaining eighty trial courts into quasi-family courts without integration. It amended a statute permitting investigation of divorce cases--which outside the eight metropolitan counties had remained almost wholly disregarded for lack of personnel to do the investigating--by making the investigation mandatory in cases with children under fourteen.

VII. THE RAISON D'ETRE OF THE FAMILY COURT

To those who work in a family court or are familiar with it the advantages seem so obvious as hardly to require exposition. But most lawyers have little or no occasion to become familiar with more than a small facet of it. Even the so-called divorce bar (which, if limited to lawyers averaging two or more cases per month may constitute less than one and a half per cent of the total bar, or if you include all lawyers averaging one or more cases per month would probably be only around eight per cent of the total) sees mainly a single phase of the court's operations--yet with experience becomes to a surprising degree en rapport with the court's philosophy.

And those learned lawyers who sit in reviewing courts are permitted to glimpse from the records more often than not an imperfect and distorted picture, for in the nature of things many records are bound to be what they call "sloppy"--except in jury and criminal cases, which are uniformly conducted with due formality, yet which, of course, reveal but a portion of the whole picture.

So, for the benefit of that overwhelming portion of the bar which has had little or no opportunity to become acquainted with the family court, may I point up some of the reasons for its existence--and some of the difficulties--which the two hundred years of cumulative experience of the Ohio family courts have brought to light.

1. Avoids conflicts of philosophy--The philosophy of the law, both substantive and adjective, is something which many lawyers lack time or inclination to go into. Yet it is basic. And the havoc that can be wrought in a single family by conflict of philosophy is hardly conceivable to the uninitiated. This can be more readily and quickly explained by illustration than by dissertation. So let us take the subject of child-custody which is not too unfamiliar to most lawyers, and a case handled in my bailiwick commencing well over a dozen years ago.

THE CASE OF THE CONFLICTING CONCEPTS

The mother of two sweet little girls was too good-looking for her own good. She tired of her children and of her husband who worked hard and long and was himself too tired to go gallivanting with her. So when he went on the night shift she stepped out and strayed from the straight and narrow. She was flattered by the attentions of strange men. She drank more and more and went from bad to worse to worst. The house went to pot; the children were pitifully neglected and at times were mercilessly abused by their mother when she came home drunk. They distrusted, then feared, then hated her. The children and the father grew closer to each other. For their sakes "he did not want to break up the home," but when the mother contracted syphilis and the father learned about it, he came to juvenile court and asked that the law step in.

The usual field investigation was made and when the seriousness of the situation developed, psychological tests were given. The children were dull normal, the mother of lower intelligence. Our diagnostic tests and observations indicated the mother belonged in that well-known category called psychopathic personality.

This diagnosis was borne out at the hearing when she persisted that there was nothing wrong with her conduct. She contended it was her life and she could live it as she pleased; that it was her body and she could use it as she wished. This latter sentiment she expressed with such vehement vulgarity in open court that even the old-timers were shocked.

At the hearing the mother was found unfit to have custody of the children. The father had no plan to offer, there were no adequate relatives, so the children were committed to the custody of a private agency for placement in a licensed foster home. At the request of the agency, which knew of the mother's baleful effect upon the children, she was enjoined from visiting them unless accompanied by an agency worker.

Not long thereafter the mother filed a petition for divorce. Just how she expected to get away with it is hard to figure out, for in due course the petition would be heard before me. And before me, to fortify my memory, would be the record of the custody hearing and the complete family file brought down to date.

But alas, the case was somehow set for trial when I was away on my modest summer vacation, and it came up before one of my colleagues, now deceased, in the general division of the court. This judge was of the old school. He had more than once declined my offers to furnish him our juvenile court records and family files containing full social histories for his help in handling divorce cases in my absence. He told me that I was wasting the taxpayers' money in hiring those bob-haired, flat-heeled social workers; that their reports were illegal and that I would get myself into trouble if I used them.

So this judge heard the mother's divorce case without benefit of our records. Naturally her lawyer did not bring out anything about the earlier custody hearing. He may not even have known of it. The father did not appear or enter any contest because, as he explained later, he did not care one way or the other if she got a divorce and he naturally supposed the matter of child custody had been all settled and decided at the previous hearing.

Under these circumstances the judge granted the divorce (the evidence must have been entirely false, but of course it was undisputed) and awarded custody of the two little girls to their mother. I had not been back from my vacation five minutes before my staff and the agency worker were telling me what had happened.

"Well, that's simple," said I. "The judge would never have given her custody if he'd known all the facts. I'll just explain it to him and he'll vacate the order in a jiffy."

"Too late, too late," they chorused almost in tears. "By the time we found out about it the mother had gotten a certified copy of the decree awarding her custody, had taken an officer and gone out to the foster home and gotten the children and left town with a new boy friend for parts unknown."

"Well, didn't you have the police send out a tracer?"

"We thought of that," they groaned, "but they couldn't. The mother's within her legal rights. She's got legal custody, awarded by a court of competent jurisdiction over both the persons and the subject matter."

This happened many years ago and neither mother nor children have ever been heard from. The father, too, dropped out of sight some years later. Those of us who remember the case regard it as a major tragedy, that we visibly wince whenever someone wonders out loud what ever became of those two sweet little girls.

This case history illustrates what can happen when there is a conflict not of jurisdiction but of philosophy, not between two different courts but between two divisions of the same court. How much worse, then, when the conflict is between two separate, disparate courts, notably the juvenile and divorce courts which almost universally are disassociated from each other by constitution or statute!

Unfortunately there is not much we can do about judges of the old school who publicly or privately reject the enlightened, social-minded philosophy of today. When judges of different courts think alike they usually manage to find some way to obtain at least a measure of co-operation. But when there is a clash of basic philosophy, when traditionalism meets humanitarianism, when legalism meets liberalism, then co-operation gives way to competition, to conflict--then tragedy stalks the innocent victim.

2. Avoids conflicts of jurisdiction---All lawyers are familiar with the "masterpiece of confusion" created by conflicting laws and jurisdictions between states in cases of migratory divorce, whereby a couple may find itself divorced in one state, still married in the next, and so on. Yet few lawyers or other persons are aware of the far greater confusion and far more numerous injustices that result, especially in the larger cities, from the almost universal overlapping and duplication of jurisdiction. Case histories without number could be cited. In a recent study reporting on her survey of the courts in the Detroit Metropolitan Area, made under the auspices of the University of Michigan, a Connecticut-educated lawyer, Mrs. Maxine Virtue, devotes a lengthy chapter to the evils arising from "over-lapping, defective and conflicting jurisdiction over subject matter and person." She points out in conclusion, "There is much duplication of effort, mutual irritation and many cases in which the efforts of each inhibit or even cancel out those of the others."

The same can be said of the situation in New York City and in almost every metropolitan center, and even in quite a number of the less populous jurisdictions.

3. Avoids multiplicity of litigation---In Richmond, Virginia, for example, the lawyer may select any one of five different courts in which to file an action for divorce; and if in the court of his choice preliminary motions and things do not seem to be going to his liking he may dismiss his action without prejudice and try his luck in another court. Of course Connecticut has nothing like that, but whenever and wherever a similar condition prevails there is nothing to prevent the lawyer from shopping around among the different courts until he finds one to his liking.

"What's so wrong about that?" a lawyer or two may inquire, and naturally. He sees in it a better chance to get for his client just what he wants. The short answer, gathered from nation-wide experience, is that it costs the state more, costs the litigants more, and facilitates the perpetration of fraud upon the court and injustice upon the defendant.

4. It is more economical for the family--Time, effort and sometimes considerable money may be saved for the family by handling its legal difficulties in a single court. This proposition is so obvious as not to need laboring. The only thing that is not obvious, is not even realized by the average lawyer, is that especially in the large communities it is common for a single family to have a number of problems at one time and have them handled contemporaneously in a number of different courts. Mrs. Virtue's survey of the Detroit courts points this up dramatically.

5. It saves lawyers time and effort--What lawyer would prefer running from court to court in earning the paltry pittances usually afforded in family cases to husbanding time and energy for really remunerative business ? Verb. sap.

6. It saves courts time and effort--No lawyer is expected to lose sleep over the sleep lost by judges and court staffs, but every lawyer should lose sleep over inefficient courts. The avoidance of unnecessary complications and conflicts makes for more efficient judges and staffs, hence for better service to lawyers and litigants.

7. It provides a common repository for family records--Just as it makes sense to have all real estate records concentrated in one office in the county seat, so it makes sense to have all family records and social histories derived from any court in a single repository in the family court. It may be an item of interest to the legal fraternity that these family records are referred to and studied a little bit like real property records. The more places one has to look, the more chances of overlooking something. And overlooking a piece of information can be as important, for example, to a child whose transfer is sought in a custody case, as overlooking a lien in a transfer of property--and incomparably more disastrous!

8. It encourages social agency co-operation--Most private social agencies seem to have a slight distaste for dealing with most courts--to their mutual disadvantage, for each has something of value to contribute to the other. A unified court with a single staff makes for easier inter-staff acquaintance and overcomes a sort of psychological barrier. This works both ways, for some courts lacking the family court philosophy seem to have a corresponding distaste for social workers.

9. It tends to develop specialist judges--While some judges prefer the cloistered seclusion of the reviewing court, some the hurly-burly of the trial court and some the non-adversary aspects of the probate court, not many have deliberately set out to do something about humanity in the raw by becoming juvenile or divorce court judges. There are those who do not believe it wise or necessary for a judge to specialize; and almost no sitting judge

thinks it necessary or wise for him to specialize in order to handle juvenile or family cases. Yet there are those who think otherwise. Chief among these is one whom the American Bar Association Journal has characterized as "the pre-eminent legal scholar of the world," Dean Roscoe Pound. In writing of the juvenile court he has said:

"Just because the procedure is so flexible and the scope for personal discretion and individualization of treatment is so great, it is imperative that the judges who sit in these courts be exceptionally qualified. Bad consequences have flowed in more than one locality from the unfortunate practice of rotation which prevails so generally in American judicial organizations. *** But it is still true in too many jurisdictions, in courts of first instance with a number of co-ordinate judges, that they sit successively in turn in civil jury cases, equity cases, criminal cases, and divorce proceedings. Thus each has to learn what he may by a brief experience as to the art of handling special classes of judicial work only to pass to some other special class where he must learn in a short time a new art."

It is significant that those courts generally recognized by the National Council of Juvenile Court Judges as the outstanding juvenile courts of the country are without exception presided over by men who, regardless of whether they landed in that particular job by choice or by accident, have studiously schooled themselves in the necessary disciplines and professions outside the law so that they can fairly be called specialist judges.

Lawyers are neither taught in school nor trained in practice to understand what they sometimes facetiously allude to as the esoteric features of juvenile court practice. Of course they are taught and trained in the comparatively simple legal phases of divorce, but few of them ever venture into the realms of biological, psychological, sociological and other factors that caused the marriage failure that caused the broken family that caused the divorce action. Specialist judges learn to go into this chain of causation, at least vicariously, and since the specialist developed by the juvenile court has invariably rendered the most satisfactory service it would seem logical to expect the family court to develop similar specialists who would ultimately render the most satisfactory service in those courts.

10. It develops more effective staff work--Instead of one person here working with the children and another there working with their parents (and sometimes still others trying to work with either or both) the client-centered family court regards the family unit as its client, realizing all the while that the family unit which is in some senses a fictitious entity (like a corporation) is itself composed of very non-fictitious units each of which is likewise a client.

Since the only way to treat a family is by treating its component parts, one worker may sometimes develop the skills necessary to treat the entire family. And when special skills are required, e.g., a probation counselor for the delinquent child and a marriage counselor for the embattled parents (whose battling most likely brought about the delinquency,) the two

skills are applied under the direction of a single command, the judge, usually through his deputy called a casework supervisor. Thus conflict is avoided and maximum effectiveness is assured.

11. It is the cheapest way to render the necessary service--Of course the very cheapest way to run a court is to hear the evidence, render judgment--period. No investigation, no diagnosis, no treatment, no service. But that is the philosophy of yesteryear. All across the land there are unmistakable signs that it has stumbled and even now is falling down, down into that abysmal slough called desuetude, there to take its place with the decaying corpses of the philosophies of earlier yesteryears!

If it be held that the services herein attempted to be described are desirable it would be somewhat out of the ordinary for a lawyer to question the proposition that it normally costs less to operate one complete unit than several partial units!

12. It makes for greater certainty--One bane of the legal profession is the uncertainty and unpredictability arising from the current multiplicity of bureaus, courts and forums of various sorts. It is often hard to advise a client or lay out a course of action with any assurance that you will turn out to be right. But when all family cases are handled in a single court experience it has shown that lawyers soon learn to appreciate the comparative uniformity and certainty resulting therefrom.

In time they can say to a client with fairly complete assurance, "No, they won't accept that as a ground for annulment. We'd better sue for divorce." Or, "We'll never get by with that defense. We'd better cop a plea (plead guilty) and ask for probation. You're pretty sure to get that first time up." Or, "Don't worry, Mrs. Jones. The court won't send your boy away unless it's absolutely necessary for his own good. You just go over there and tell them the whole story. You needn't cover up anything."

13. It helps the judge avoid mistakes--When hearing a divorce case the judge has before him not only the pleadings in the case at bar; he sometimes has the family's complete social history that has been building up for years (for a considerable proportion of divorce litigants have had prior contact with juvenile court--in one court in one year as high as 40%.) Or the judge has the report of the current investigation. Or both. This information is used to supplement the evidence from the witness stand and to guide the judge in making further inquiry from the bench.

Illegal? Unconstitutional? Apparently not. In one Ohio court in some 20,000 cases, both contested and uncontested, not a single objection has ever been made to the use of any of this dehors material. This may sound remarkable, but it really is not, because, for one thing, the lawyers have access to it both before and during the hearing. But, far more important, they have found that the philosophy of the family court actually is preventive and not punitive, and that this extra information will never be used against the client but always in the best interests of the entire family.

To illustrate briefly the kind of facts: Occasionally the social history reveals the existence of a child whom the client had "forgotten" to mention to attorney or anyone else. Sometimes a plaintiff-father thinks that by concealing the child's existence he can avoid his obligation to support it. Or maybe a plaintiff-mother fears that for one reason or another she may lose custody of a child so she tries to conceal its existence. And parents have been known to just plain forget. Not infrequently the social history reveals that the children are already wards of another court; or that legal orders with respect to them are subsisting. Or it may disclose that one of the major actors in the drama is a dangerous criminal, an alcoholic, a chronic wife-beater, a chronic wife-deserter, is feeble-minded, syphilitic or even psychotic. Thus forewarned, the judge is enabled to use his discretion and the resources of his court to best advantage for all concerned and avoid ghastly or conceivably fatal mistakes.

As might be expected, the very existence of these records and reports and the knowledge that the judge makes use of them has tended to reduce to a minimum perjury, fraud, collusion, conspiracy, attempts to deceive the court, and the like, and to encourage complete candor.

14. Results produced--Valid statistical measurement of the results produced by the family court is just about impossible for a number of reasons.

First, while there are ample and valid statistics showing most of the results produced by the standard juvenile court, and while most if not all of the juvenile courts operating as part of an integrated family court have for years been producing superior results (of course in my own court it is all due to the excellent staff, it does the work while the judge does the bragging,) it is impossible to estimate with any degree of accuracy how much of this superiority is due to the integration. Too many other factors are involved. Besides, most of what is accomplished defies meaningful statistical measurement, much as in the case of a church, for example, where numbers may mean much or little. And while, so far as I can learn, most people working in integrated courts believe honestly that the success of the juvenile department is attributable in fair degree to the integration, they are naturally open to the charge of bias! Moreover, not a few of the very best juvenile courts have no connection with any family court.

Second, the number of true family courts presents too small a sampling to warrant absolute or positive conclusions or perhaps anything more than tentative assumptions to be tested out. A few successful courts would not prove a proposition any more than a few failures would disprove it.

Third, to date no family court has been adequately staffed. Only a very few are even approaching minimum requirements. To pass judgment upon them in this condition would be not only unfair but meaningless. No lawyer who bought himself a shiny new car with a high-powered, high-compression motor under the hood, then found himself obliged to try to run it on kerosene instead of high-test gas, would be heard to complain that the motor was no good.

Fourth, the few statistics now available covering results in divorce and family discord cases are too susceptible to misinterpretation to warrant publication. For years some people have been inclined to regard the ratio of cases dismissed to cases filed as a yardstick to measure the effectiveness of reconciliation services. The figure almost uniformly pointed to, with or without pride, has been 30%.

In 1945, I personally examined the divorce statistics for each of Ohio's eighty-eight counties back as far as 1875. They showed that in the 70-year period, with astonishing uniformity throughout the years and throughout the state (no significant variance appearing between metropolitan and rural counties,) almost exactly 30% of the cases had been dismissed with or without prejudice! And for more than half of that time there were no courts or bureaus or other agencies serving as marriage-menders.

The trouble is that nobody knows the facts behind those dismissals: how many were voluntary due to reconciliation; and if so who or what brought about the reconciliation, and how long it lasted; how many were dismissed for want of prosecution and whether plaintiff "let it drop" for lack of funds to pay costs or attorney's fees or lack of personal service in cases where the wife was mainly after alimony, or for reasons of reconciliation, or indifference (the spouses perhaps deciding to continue to live apart without benefit of divorce or possibly to continue living with others without benefit of clergy); how many were due to sickness, death, removal from the jurisdiction for legitimate reasons or to seek a supposedly more favorable forum; and how many of all these came back later to the same court to pursue the same end in a subsequent action. Et cetera.

However, lest somebody attach a sinister motive to my reluctance to cite dismissal statistics, and insisting that nobody attach any unwarranted significance to the glimpse I am going to reveal, I shall go so far as to say that in the better equipped family court the ratio of cases dismissed to cases filed has long been nearer 40% than 30%, and in more than one instance has approached 50% per annum.

VIII. OBSTACLES IN THE WAY OF A FAMILY COURT

As might be expected, those who have studied the family court movement and been called upon to explain it to others have found that as a rule, in the discussion of its merits and demerits, all is not sweetness and light. In my experience with a few state bar associations I have discovered that at the outset the sweetness is in direct ratio to the light, but that it diminishes in geometrical progression with the dimness of the light. For the benefit of both proponents and opponents of the idea for Connecticut I shall list the more common obstacles I have encountered and the more common answers thereto, if any.

1. Neophobia--Maybe the Greeks didn't have this particular word for it, but I will wager they would have if they had had to contend with organized lawyers like you and me. For if there is one thing in which we of the legal profession (with a single possible exception) can claim undisputed pre-eminence it is our fear for something new.

We are only in a measure to blame for this. We are simply what tradition and training have made us. But just as our traditionalism has not gotten us too far too fast, so our trying to explain it away will not get us any farther any faster. Then how overcome it? I do not know the answer to that, if there is one. Many ways have been tried, but one clear truth that has emerged is that innovators must not throw cold water on our profession. That only adds hydrophobia to our neophobia and makes us foam at the mouth. Better a drop at a time to wear our wont and our won't away, each drop being a pearl of truth and reason.

2. Expense--Of course it costs a lot to operate a family court. The staff must consist of technically trained and specially skilled persons. It must be large enough to do its job without crippling pressure. And it must have adequate and first class quarters, strategically located. Of course this costs money!

One common answer: So does a hospital. A hospital is operated to help cure or at least alleviate physical ills; a family court, to help cure or at least alleviate domestic ills, often a more difficult task. No sizable community would think of getting along without a hospital, or would tolerate one staffed with politically appointed amateurs, or with poor equipment or inadequate quarters, regardless of cost--unless the people of that community did not care what happened to themselves, their children and their fellow-citizens in sickness and physical distress! No more would the community think of getting along without a family court, or tolerate one staffed with amateurs or poorly equipped or with inadequate quarters, regardless of cost--unless the people of that community did not care what happened to themselves, their children or their fellow-citizens in family trouble and domestic distress.

Another short answer commonly heard: Statistics are available to convince anyone that broken families cause almost unbelievable expense. So do fires. If a fire can't be prevented it is less costly to put it out with the least possible damage to the structure than to let it rage and take the consequences. If a divorce cannot be prevented it is less costly to handle it with the least possible damage to the family structure (the members who composed it) than to let the domestic conflagration rage and suffer the consequences. And just as fire prevention saves more than it costs, so divorce prevention, generally speaking, saves more than it costs.

The shortest answer yet heard: The family being the basic unit of society, family stability is of basic importance and its value may not be haggled over. Therefore anything conducive to the stability of family life is of basic importance and its cost may not be haggled over.

3. Fear of loss of lawyers' fees--This is a perfectly natural fear, yet it has been pointed out repeatedly that it is quite unfounded. In no place where a family court has been in operation any length of time have lawyers been known to complain that they were losing business or money because of the court's operations. Exceptions have been sporadic and negligible.

Contrariwise, the busier practitioners realize that with infrequent exceptions divorce practice is about the least lucrative of all, and they welcome the opportunity to send their clients to court for counseling in the hope of avoiding a divorce suit. And, mirabile dictu, even members of the "divorce bar" who depend largely on divorce practice to make a living occasionally do the same! Instead of resenting the court's preventive measures, as might be expected, most of them appreciate its services and say so. Of course the exceptional fellow who tries to overreach a client and is hauled up short by the court may cavil for a while, but he soon gets over it.

It would be helpful if the legislation establishing the family court provided ample protection for the attorney. After all, he is an officer of the court, and certainly no less deserving of compensation than the other court workers. The main reason for special attention to this problem seems to be that while everybody else recognizes that the lawyer's services are of greater value to both client and community when he collaborates in bringing about a peaceful resolution of the conflict, oftentimes the reunited or mollified client at first has difficulty seeing it in this light.

However, even without special legislation family court judges appreciate the services of the lawyers and are usually unusually zealous in protecting and helping them out in the matter of collection of fees. Most judges are willing to go to great lengths to persuade reconciled couples to pay their lawyers in full. The judge is in a strategic position to explain that legal services are not unlike that hat the wife bought and took home and then never wore because she changed her mind about liking it--but she (or her husband) had to pay for it just the same.

4. Misapprehensions about counseling--The first one usually is that by the time the couple is in the divorce court it is too late to do anything about it. Stock answer: It may be much more difficult, but it may not be too late. It is like physical illness. If the doctor had been called when the first sign of trouble appeared he could have healed it promptly. The longer the healing process is deferred the harder it becomes. But that does not mean that every case taken to the hospital is incurable. And the family court is more like a hospital than anything else: It uses surgery as a last resort; it cures when it can; in any event it alleviates suffering. And experience shows that many marriages have been mended after being taken to court.

The second most common misapprehension is, "Courts have no business counseling. Why not leave it to the private agencies?" Answer: Folks who take their marital troubles to pastor or private counselor want help and reconciliation; those who take them to court want riddance, not reconciliation (except the very small number who sue for divorce on the precarious assumption it will bring the other partner "to his senses.") And since what they want is riddance they shun the private agency. The family court is like a hospital interposed in their path as they lug their moribund marriage to the morgue for burial. It does not believe in burying live corpses and examines each one before issuing a burial certificate in the form of a divorce decree. There is no by-passing the court as there is by-passing of the private agencies.

No family court is knowingly or willingly in competition with the private agency. Spouses who come to court for counseling rather than divorce are immediately referred to a private agency if there is a competent agency available to handle the problem. Even after divorce is started they are, in proper cases, referred to private agencies and other community resources. The only ones retained by the court when they come voluntarily are those who refuse pointblank to go to a private agency, or those specially referred.

Third misapprehension: "No use trying compulsory counseling; it won't work." Of course it won't work. There is no such thing as compulsory counseling. Nobody knows better than the marriage counselor that you can lead a horse to water but you cannot make him drink. Some of those who raise this objection may be thinking of the kind of counseling done by quacks, amateurs, even persons trained well enough in other professions (including the law) but not in marriage counseling.

Also, through no fault of their own they may be unaware of the established fact that tactful, gentle and persistent persuasion can induce even the most prideful or willful or belligerent spouse to talk frankly and freely with the counselor, and surprisingly often with happy results.

5. Personnel difficulties: the judge--As hereinbefore indicated, the judge is the keystone of the arch. No court can be expected to rise above its judge.

Eagerness to learn--that is the distinguishing characteristic of the judge of a successful juvenile court and likewise of a family court. This is in addition to all the qualities of character and ability required of judges in other courts. It means not just brushing up now and then on a point of law involved in a pending case, not just keeping abreast of current decisions and legislation, not just reading in legal literature of subtle analyses and present-day developments in the law, not just listening to enlightening speeches at bar association meetings! These are the every-day duties of every judge of every court.

No, the family court judge must have an eager urge to venture far into many fields which may appear wholly unrelated to the law, far enough to obtain a reasonable working knowledge in most of them and a thorough familiarity with all of them. Otherwise he would be like a landlubber trying to captain a large vessel on uncharted seas.

How about it? Can Connecticut produce a dozen or so good successful lawyers (unsuccessful lawyers do not have what it takes) willing to dedicate themselves and the remainder of their careers to such a rigorous program of self-education which will occupy the most productive years of their lives? If not, we may as well all pick up our toys and go home and forget the whole business.

The staff--Scarcity of the right kind of judges is not the only personnel obstacle to be overcome. Right now in the entire country there is not an available supply of properly trained workers of the necessary varieties to

staff adequately more than a few fair-sized family courts. This fact is known to the deans of the graduate schools of social work throughout the country, and to the other graduate schools of many universities. Some of them possibly all, are planning to keep up with the growing demand for these particular types of personnel, not merely by enlisting new recruits and turning out fresh graduates with their masters' and doctors' degrees, but by affording older workers already in allied fields an opportunity to come back for refresher courses or further schooling, perhaps while on sabbatical leave.

Also, many family courts have been compelled by force of circumstances to employ an occasional inadequately trained person as an apprentice and, through in-service training and allowing him regular time off to take courses in a near-by university or to attend summer school, has helped him to emerge into a rightly trained and valuable worker.

This lack of personnel presents a problem, and a serious one, although not nearly so difficult as the lack of lawyers willing to make the personal and financial sacrifices necessary to preside properly over a family court. But in the past personnel problems have always worked themselves out somehow, albeit slowly. As the engineers designed higher compression motors the oil industry came through with higher octane gas to make them run properly. I doubt if those who planned the new liner "United Sates" were deterred by fear they could not obtain enough able seamen to man her. The aircraft industry constantly brings out new models, some of revolutionary design, yet the military and commercial authorities manage to procure and train the pilots and other personnel needed to operate them.

6. Why all this bother about an inferior court? This attitude, like the one first mentioned (neophobia) is surprisingly prevalent, though seldom openly voiced, and is most difficult to overcome. There is no simple answer to it, for like all the other obstacles in the way of the family court movement it is founded on ignorance of the facts or a failure to grasp their significance.

Now, everybody knows that in family cases the purely legal problems are rarely as complicated or abstruse as in civil cases heard in Superior Court; seldom are the facts placed in evidence as involved or hard to straighten out; an uncontested divorce hearing may take fifteen minutes while a civil jury case may take fifteen days; while the family court is issuing an order for $100 a month the Superior Court may be rendering judgment for a hundred thousand dollars; and while the former is dissolving a marriage the latter may be dissolving a million dollar corporation. In these outward aspects the family court would strike anybody as being an inferior court.

On the other hand, to quote from the most hard-boiled and realistic of sources, a newspaper editor, "The personality of even a small child is far more complicated in its details than the most complicated contract, the most involved dispute at law or the most controverted question in ethics." (F. Perry Olds in the Milwaukee Journal.) Facts placed in evidence are at least out in the open where they can be studied and weighed by any intelligent person without special skill--juries do this daily; but to interpret the true meaning of these facts and to elicit the further facts necessary to diagnose

and treat underlying causes requires a special type of skill not ordinarily required in civil cases, and certainly not one to be labelled inferior.

While a civil jury trial may take fifteen days, the treatment of a delinquent child is apt to take fifteen months; and the treatment of some family problems has been known to extend over fifteen years. While the civil court is deciding the fate of property, the family court may be deciding the fate of children. While the former is determining whether there was a valid civil contract or whether it has been broken, and is trying to remedy matters by assessing damages, the family court may be deciding whether there is still a viable marriage contract (so called) and exploring the possibilities of the more difficult remedy of specific performance. While the former is transferring dollars from one man's pocket to another's (with no apparent effect on the dollars) the latter may be transferring little Donny from one person's custody to another's (which is almost certain to affect Donny's whole future). In these less obvious aspects the family court is less apt to strike anybody as being an inferior court.

IX. IMPORTANCE OF FAMILY COURT

The relative importance of the family court may be judged from another angle: volume of business. During World War II the country seemed to be full of people who had just discovered juvenile delinquency. It subsided somewhat but is again increasing and in places has outstripped divorce. Following the war the country seemed to be full of people who had just discovered divorce. Rightly so, for divorce became big business. As I have said elsewhere:

"In a great many cities it is true now, and has been true at least since the great depression, that in the courts of general jurisdiction the number of divorce cases filed annually exceeds the number of all other civil actions combined.

"For instance, during the war, in Dayton, Ohio, divorce petitions reached a peak of 80% of all the civil law suits filed in common pleas court; in Columbus, 75%. In other Ohio cities, for years one-half to two-thirds of all civil actions filed in common pleas court have been divorce cases.

"In the states along the Atlantic Coast (except in some Florida cities) the ratio of divorce to other civil cases is lower. But as one proceeds toward the Pacific, the divorce rate increases and in many mid-western and western cities we again find divorce cases outnumbering all other civil actions combined."

From all the foregoing it must be apparent that the family court because of its very nature has a greater impact upon the sum total of human welfare and happiness than all other divisions of the trial court combined. Yet in most quarters it is still regarded and treated as an inferior court.

However it is all a matter of opinion or sense of values. Those of us who are impressed by wealth or gentility, who do not savor the messes of masses of humanity, will continue to regard and treat the family court as an inferior court. But it is safe to say that those of us who prize children more highly that chattels; who put family life before fortune; who value people above property; who prefer healing to hurting; who think human welfare more important than wealth; and who comprehend the imperative importance of buttressing the stability of the family--such of us are apt to treat the family court not as inferior, but as superior in fact if not in name.

X. WHY TREAT IT AS A SUPERIOR COURT?

What difference does it make? A lot. If Connecticut should decide upon a Family Court Division, that division, to succeed, should be placed on a par with the Superior Court in every respect. To overcome its unpopularity with lawyers and to attract the right men to the bench it must be made unusually attractive. Thus, in addition to affording prestige it should pay the highest salary below the Supreme Court of Errors; it should provide maximum security of tenure; it should inhibit all political obligation; it should draw the standard pension (Connecticut's present judicial pension schedule is generally regarded as eminently fair.) Everything possible will have to be done to make the job so attractive that it will appeal not just to the legal failure or the politically ambitious or any other type of job-seeker, but to the well qualified, highly successful lawyer, and will preclude any temptation for him to go back to his more lucrative private practice or to use this job as a stepping-stone to other judicial or political office.

The foregoing considerations apply with equal validity to the staff. Their salaries ordinarily should be higher than those in most private agencies. Their jobs are harder and require greater skill for at least four reasons. First, they must break down a wall of resistance or hostility arising from the fact that their clients are brought in against their will instead of coming in voluntarily for help. Second, being in a public agency they must accept all comers; they may not wash their hands of the undesirable, unsuccessful, "unco-operative" clients as may and do some private agencies. Third, for this reason their case loads are generally higher and they must work under greater pressure. Fourth, they must please not only their own boss, but the lawyers and the public as well--matters to which most private agency workers are comparatively indifferent. And of course, if there is any possibility of their being fired for political reasons that extra hazard must be duly compensated. It takes good salaries to get and to keep good personnel.

XI. QUARTERS ARE UNUSUALLY IMPORTANT

Banks spend millions on their quarters in order to impress upon the public some idea of their strength, stability, permanence, and power. Court-houses are usually designed with the intention of being stately, dignified and even majestic in order to impress people with the power and majesty of the law.

Some elements of the diversified class of clients coming to family court sorely need to be so impressed at the outset. Once inside, beauty, warmth and interior decorations designed to put people at ease and make them feel at home are a tremendous psychological asset. Above all, space--even what might seem an abnormal amount of space--is needed. Not only do the individual clients and the families, especially those with children, need and deserve as much privacy as possible; for few things are more conducive to mental and emotional confusion than the crowded physical confusion prevailing in confined quarters.

Space, attractiveness, lighting, ventilation, functional efficiency--these also are vital in keeping the staff happy and working at top level efficiency, and even in keeping them. Their work being of a confidential and especially intimate nature, it is unfair to expect the best results from them unless they are provided with private, pleasant, personal offices. And more than one good family court worker has allowed himself to be enticed away to another job just because he had to work in unsatisfactory quarters. Yes, salaries are important, but so are working conditions.

XII. WHAT OTHERS THINK OF THE FAMILY COURT

Now, you've been hearing far too long about and from Ohio. Perhaps some ideas circulating in other parts of the country might be enlightening.

The Minnesota State Bar Association in June, 1952, by the significant vote of 51 to 47, rejected a committee report recommending for the larger cities what they termed a family court. It was not really one, although it was another step in that direction. It had been so watered down to meet expected opposition that its failure of approval was no great loss. The greater loss was that those who spoke against it lacked factual information and understanding of the family court.

A special committee of the Alabama Bar Association after two years' study, in the spring of 1952 filed a report recommending for Birmingham the type of true family court we have been talking about.

California for more than a dozen years has had something a little bit akin to a family court in the "Children's Court of Conciliation." At least the idea behind it is somewhat the same, although no integration is provided for. It might be interesting to study the California Code of Civil Procedure, Title XI, Chapter 1, (Civil Procedure and Probate Codes of California, 1949, pp 676-684.)

Washington in 1949 created what it calls a family court, and which has some of the features of what we have been calling the true family court. It has the enthusiastic support of Hon. William G. Long who for many years presided over the Domestic Relations department of Seattle's Superior Court. It is set up by Chapter 12B, Washington Revised Statutes, (Remington's Revised Statutes of Washington, Annotated, 1949 Supplement, pp 125-131.)

Efforts to come somewhat closer to the true family court were embodied in the 1951 Report of the Interim Commission on Domestic Relations Problems, appointed by former Governor Youngdahl of Minnesota.

In a recent contribution to the New York Bar Journal discussing a certain case, William M. Wherry, long time chairman of the N. Y. County Lawyers' Association committee on socio-medical jurisprudence, said "This is a timely illustration of the need of modernizing the Supreme Court practice in cases involving the custody of children and for the ultimate creation, in New York City, of a single comprehensive and adequately implemented court of general jurisdiction over all justiciable matters relating to the child and the family."

That is a learned lawyer's view. Here is the view of a body of laymen in a report made public a few years ago. They comprised a special grand jury that spent two years probing the notorious phony divorce racket in New York. Their presentment concluded: "The Grand Jury recommends the centralization of all matrimonial litigation and related family problems in one court. *** Such a court, with power to investigate matrimonial matters, could make a complete study of each case with the primary objective of preserving the family unit. It would seek not merely to ascertain whether there is sufficient legal evidence to terminate a marriage, but to discover and remove the factors which are contributing to its breakdown."

In dwelling on jurisdiction over problems involving families and children, the Mid-Century Conference considered "extension of the juvenile court concept to embrace these various problems in a family court. In this way, the family could be treated as a social unit and essential services could be secured and consolidated. *** Where local courts, particularly in rural areas, are unable to specialize or secure necessary services, a State or district court system should be considered."

Hon. Morris Ploscowe, of the New York City Magistrates' Court, in his recent book, Sex and the Law, says, "What the law needs is a unitary instead of a fractionalized approach to problems of the family. *** It would be highly desirable if in each community there were established a single court which could deal with all aspects of family life."

Professor Quintin Johnstone of the University of Kansas, writing in the Oregon Law Review, says:

"Family courts having extensive investigation and counseling services to handle marital-discord cases can do something to increase family stability. They can also do a far better job of adjusting differences between members of broken and discordant families than can the conventional courts. Their advantage lies in broad jurisdiction, large and skilled staffs, and centralized control."

In conclusion if you have had the stamina to read this far and are still conscious and interested, I am sure I can speak for my colleagues in the family courts of Ohio in inviting you to come out and see for yourself and form your own conclusions--on condition you will promise to bear in mind that none of us pretends to have even "come close to the full potential of his court."

Schedule V

TRIAL DIVISION - SUPREME COURT
SPRING - 1969

	Milvain C.J.	Primrose J.	Greschuk J.	Riley J.	Manning J.	Kirby J.	Dechene J.	O'Byrne J.	MacDonald J.	Sinclair J.
30, 3	Cr.A.				Dec.30, 1968 Cr.A.					
	CPR v. City	Ch. & Div.	Edmon. Cr.	Calg. Cr.	Edmon. Civ.(1)		Edmon. Civ.(2)		Calg. Civ.	
	Calg. Cr.Spec.	Edmon. Civ.(1)		Edmon. Cr.		Leth.	Calg. Civ.	Calg. Cr.	Ch. & Div.	Edmon. Civ. (2)
			Edmon. Cr.		Edmon. Civ.(2)	Ch. & Div.		Edmon. Civ.(1)	Calg. Cr.	Calg. Civ.
	Edmon. Cr.	Calg. Civ.	Bank-ruptcy	Edmon. Civ.(1)	Calg. Cr.	Drum-heller Spec.	Edmon. Civ.(2)			Ch. & Div.
	Calg. Civ.		Edmon. Civ.(1)	Bank-ruptcy	Ch. & Div.	Edmon. Cr.	Calg. Cr.	Edmon. Civ.(2)	Med. Hat	
	Grande Prairie	Edmon. Cr.			Edmon. Civ.(2)	Edmon. Civ.(1)	Calg. Civ.	Vegre-ville	Ch. & Div.	Red Deer
	Wetas-kiwin		Ch. & Div.	Calg. Civ.	Edmon. Civ.(1)	Edmon. Civ.(2)				
	Edmon. Civ.(1)		Cr. A. Edmon.				Edmon. Civ.(2)	Ch. & Div.	Cr.A. Calg.	
		Calg. Cr.		Edmon. Civ.(1)	Calg. Civ.	Ch. & Div.		Edmon. Civ.(2)		Edmon. Cr.
	Peace River	Leth.	Calg. Cr.	Ch. & Div.			Edmon. Civ.(2)	Edmon. Cr.	Calg. Civ.	Edmon. Civ.(1)
	Calg. Cr.	Edmon. Civ.(2)	Ch. & Div.		Edmon. Cr.	Edmon. Civ.(1)				
		Ch. & Div.			Edmon. Civ.(2)	Calg. Cr.	Edmon. Cr.	Edmon. Civ.(1)		Calg. Civ.
		Edmon. Civ.(1)		Calg. Civ.	Ch. & Div.		Edmon. Civ.(2)		Edmon. Cr.	
	Hanna		Ch. & Div.		Med. Hat	Calg. Civ.	Edmon. Civ.(2)	Edmon. Civ.(1)		
	Red Deer	Ch. & Div.	Edmon. Civ.(1)	Bank-ruptcy	Edmon. Civ.(2)			Calg. Civ.	Drum-heller	Leth.
		Calg. Civ.		Ch. & Div.		Edmon. Civ.(2)	Edmon. Civ.(1)			
3	Edmon. Civ.(1)	Cr.A. Edmon.	Edmon. Civ.(2)		Ch. & Div.	Cr. A. Calg.			Calg. Civ.	
			Edmon. Cr.	Calg. Cr.	Fort Macleod		Edmon. Civ.(2)	Edmon. Civ.(1)	Ch. & Div.	Calg. Civ.
2	Vegre-ville	Edmon. Cr.			Edmon. Civ.(2)	Wetas-kiwin	Edmon. Civ.(1)	Calg. Cr.		Ch. & Div.
)	Ch. & Div.		Bank-ruptcy	Edmon. Civ.(1)	Peace River		Edmon. Cr.	Edmon. Civ.(2)		Calg. Cr.
)	Calg. Civ.	Edmon. Civ.(1)	Edmon. Civ.(2)	Bank-ruptcy		Calg. Cr.		Ch. & Div.	Edmon. Cr.	
)	Edmon. Civ.(2)	Red Deer		Edmon. Cr.	Edmon. Civ.(1)		Calg. Civ.	Leth.		Ch. & Div.
)			Edmon. Civ.(1)		Ch. & Div.	Edmon. Civ.(2)	Grande Prairie		Calg. Civ.	
) 5	Med. Hat						Edmon. Civ.(1)	Edmon. Civ.(2)	Ch. & Div.	Calg. Civ.
) 3		Edmon. Civ.(2)		Calg. Civ.		Ch. & Div.		Edmon. Civ.(1)		
))	Calg. Ch. & Div.									Edmon. Ch. & Div.

Operational Statistics for the year January 1968 to December 19
for the Office of the Clerk of the Court, Court House, Calgary, Alberta.

INDEX	STATISTICS	1968	PROJECTIONS 1969	1970	1971	1972	1973
	APPELLATE DIVISION - SUPREME COURT						
2	Criminal Appeals filed	271	300	300	300	300	300
2	Criminal Appeals heard	271	300	300	300	300	300
4	Civil Appeals filed	100	100	100	100	100	100
4	Civil Appeals heard	58	60	60	60	60	60
	SUPREME COURT - CRIMINAL JURISDICTION						
4	Trials Held	304	364	437	524	629	754
	SUPREME COURT - TRIAL DIVISION						
1	Civil Actions Commenced including divorce	4267	4500	4700	4900	5250	5400
4	Civil Trials Held	244	300	325	375	425	500
4	Decrees Nisi	1073	1500	1700	1800	1800	1800
	MISCELLANEOUS						
	Admissions to the Bar	42	35	40	40	45	45
4	Crown Practice Applications	64	70	70	75	75	75
	SUPREME COURT CHAMBERS						
	Judges						
3	Applications	1985	1569	1599	1629	1659	1684
	Ex Parte	371	367	363	359	355	351
	Specials	281	286	391	396	401	406
	Bankruptcy	176	62	66	70	74	78
	Total	2813	2284	2419	2454	2489	2519
	Master						
	Applications (35 week period)	587	1248	1262	1286	1310	1334

Schedule 74

Schedule VII

S T A T I S T I C S 1968

CLERK OF THE COURTS OFFICE - EDMONTON

SUPREME COURT:

1.	Civil Actions commenced	4,188		
	Divorce Actions Commenced after July 1st, 1968	1,077	(4,535)	
		5,265	Increase	16%
2.	Criminal Actions Commenced (to 22891-C)	417	(298)	
3.	Chamber Applications Heard	2,274	(3,440)	
	Master in Chambers Heard	957		

Decree Nisi	1,020	(923)
Decrees Absolute	862	(866)
Other Trials	263	(383)
	2,145	

In all matters held in Courtrooms the following Justices were present the number of days shown:

Justice Manning	110
Justice Dechene	104
Justice Primrose	82
Justice Greschuk	76
Justice Riley	46
Justice Milvain	45
Justice Kirby	21
Justice McLaurin	1
Justice O'Byrne	102
Justice Sinclair	22
Justice MacDonald	16
	625

STATISTICS 1968

CLERK OF THE COURTS OFFICE - EDMONTON

SUPREME COURT PROJECTIONS:

1. Civil Actions Commenced

Previous projections were under-estimated due to the new Divorce Act not being taken into consideration. The possibility of changes in Accident Claim Legislation could cut the projection considerably, as may other unforseen matters.

1968	1969	1970	1971	1972
5,265	6,000	6,600	7,200	8,000

2. Criminal Actions Commenced

This is altered from Criminal Trials held due to the fact that in large areas such as this, many adjournments are made which can increase the numbers but not be an effective indicator.

1968	1969	1970	1971	1972
417	500	550	600	650

3. Chambers Applications Heard

This is also a problem to secure accurate figures, since many matters are started but are adjourned. The records make it difficult to ascertain in what category each hearing falls. Our figures in the Court Chambers may be considered low but are more accurate. The Masters figures are easier to ascertain since they are mostly Ex Parte and seldom adjourned.

1968	1969	1970	1971	1972
3,231	3,300	3,500	3,700	4,000

4. Civil Trials Held

Again, we have eliminated the problem of securing worthless figures caused by hearings being adjourned, part trials, chambers mixed in, and many other factors to build up the numbers. The best indicator is to show the number of days each Judge sits in Court and total these. One trial can last 2 minutes while others could take over a week. The divorces are shown separately but are also included in the days of sittings.

W. C. CROFT
DEPUTY CLERK OF COURT

	1968	1969	1970	1971	1972
Decrees Nisi	1,020	1,200	1,300	1,400	1,500
Decrees Absolute	These will phase out and become administrative by Clerk's Office				
Days of sittings	625	700	750	800	850

Schedule III

THE SUPREME COURT OF ALBERTA

1969

APPELLATE DIVISION

Sittings of the Appellate Division of the Supreme Court for the year 1969 will open as follows:

EDMONTON—On the 13th day of January; the 24th day of February; the 5th day of May; the 8th day of September and the 3rd day of November.

CALGARY—On the 3rd day of February; the 8th day of April; the 2nd day of June; the 6th day of October and the 24th day of November.

TRIAL DIVISION

Sittings of the Supreme Court for the trial of causes, Civil and Criminal, and for the hearing of motions and other Civil business will open at the following times and places for the year 1969:

TRIALS OF CIVIL NON-JURY CAUSES (EXCEPT UNDEFENDED DIVORCE ACTIONS) WILL OPEN:

EDMONTON—On January 7th, 13th, 20th and 27th; February 3rd, 10th, 17th and 24th; March 3rd, 10th, 17th, 24th and 31st; April 7th, 14th, 21st and 28th; May 5th, 12th, 19th and 26th; June 2nd, 9th, 16th and 23rd; September 8th, 15th, 22nd and 29th; October 6th, 13th, 20th and 27th; November 3rd, 10th, 17th and 24th; December 1st, 8th and 15th.

CALGARY—On January 7th, 13th and 20th; February 3rd, 10th and 17th; March 3rd, 10th and 17th; April 7th, 14th and 21st; May 5th, 12th and 19th; June 2nd, 9th and 16th; September 8th, 15th and 22nd; October 6th, 13th and 20th; November 3rd, 10th and 17th; December 1st, 8th and 15th.

UNDEFENDED DIVORCE (EXCEPT IN VACATION):

At Edmonton each Thursday at 2:00 p.m.

At Calgary each Monday at 2:00 p.m.

TRIALS OF CRIMINAL CAUSES:

EDMONTON—commencing on January 7th; March 3rd; May 5th; September 8th; November 3rd; and continuing through the five weeks succeeding each of said dates (see note (a)).

CALGARY—commencing on January 7th; March 3rd; May 5th; September 8th; November 3rd; and continuing through the four weeks succeeding each of said dates (see note (a)).

TRIALS OF ALL CIVIL AND CRIMINAL CAUSES OUTSIDE OF EDMONTON AND CALGARY WILL OPEN:

LETHBRIDGE—January 13th; March 10th; April 14th; June 2nd; September 22nd; November 17th.

MEDICINE HAT—February 3rd; April 7th; June 16th; September 8th; November 3rd.

FORT MACLEOD—May 5th; October 13th.

HANNA—April 7th; October 20th.

DRUMHELLER—April 14th; October 13th.

RED DEER—February 10th; April 14th; June 2nd; September 22nd; November 3rd.

WETASKIWIN—February 17th; May 12th; October 6th.

VEGREVILLE—February 10th; May 12th; October 13th.

PEACE RIVER—March 10th; May 19th; November 3rd.

GRANDE PRAIRIE—February 10th; June 9th; October 20th.

(a) In all cases criminal courts at Calgary and Edmonton will open one week prior to the dates above set forth, at which time accused persons will be arraigned and the court will then be adjourned for one week.

(b) A Judge of the Trial Division will sit in Chambers at 10 a.m. (except in vacation) on Monday of each week in Calgary, and on Thursday of each week in Edmonton. All special applications such as those under The Family Relief Act, and Examinations under The Alimony Act are to be set down on the trial list.

(c) During the long vacation a Judge will sit in Chambers in Calgary on Monday of each week at 10 o'clock a.m. and in Edmonton on Tuesday of each week at 10 o'clock a.m.

(d) When the opening day of a Court Sittings is on a holiday, such sittings shall commence on the following day.

(e) The sittings of the Appellate Division and all other Court Sittings commence at 10 a.m. except Divorce Sittings which open at 2 o'clock p.m.

JOHN E. HART
Deputy Attorney General

IN THE DISTRICT COURT OF THE DISTRICT OF NORTHERN ALBERTA

JUDICIAL ASSIGNMENTS - SPRING TERM - 1969

Schedule A

	DECORE C.J.	CROSS J.	GARDINER J.	CORMACK J.	WHITTAKER J.	HADDAD J.	LEGG J.	LIEBERMAN J.
JANUARY	Edmonton Court	7 Wetaskiwin Chambers 14 Wetaskiwin Court 21 Grande Prairie Chambers 27 AOE 28 Wardships 29 Edmonton Chambers	7 Wardships 8 Edmonton Chambers 13 CUP 15 Red Deer Chambers 22 Camrose Court 24 Edmonton Ch.-Trial List 27 Peace River Chambers	7 Red Deer Court 14 Wardships 15 Edmonton Chambers 21 Wetaskiwin Chambers 28 Vegreville Court	8 CUP 14 Vegreville Chambers 20 Adoptions 22 Red Deer Chambers 28 Red Deer Court	Edmonton Court	7 Grande Prairie Court 13 Peace River Court 17 Entry Criminal Appeals for February 20 CUP 21 Wardships 22 Edmonton Chambers 28 Wetaskiwin Chambers	1-29 Edmonton Court 30 Edson Court
FEBRUARY	4 Wetaskiwin Chambers 5 Red Deer Chambers 12 Edmonton Chambers 17 Wardships	Edmonton Court	Edmonton Court 5 CUP 17 Peace River Court 21 Wardships 25 Wetaskiwin Chambers 26 Edmonton Chambers	Edmonton Court	4 Wardships 11 St. Paul Court 17 CUP 18 Vegreville Chambers 19 Edmonton Chambers 25 Grande Prairie Court	11 Wardships 17 Adoptions 18 Wetaskiwin Chambers 19 Red Deer Chambers 21 Edmonton Chambers - Trial List 24 AOE 25 Red Deer Court	5 Edmonton Chambers 10 CUP 11 Wetaskiwin Chambers 14 Entry Criminal Appeals for March	
MARCH	14 Entry Crim. Appeals for April 17 CUP 18 Vegreville Chambers 21 Edmonton Ch. Trial List 25 Wardships 26 Edmonton Chambers 31 Peace River Chambers	4 Wetaskiwin Chambers 5 Red Deer Chambers 10 CUP 11 Wardships 12 Edmonton Chambers 17-31 Edmonton Court	5 CUP	3-16 Edmonton Court 17 Adoptions 18 Grande Prairie Chambers 19 Camrose Court 24 AOE	3 Wardships 4 Vegreville Court 11 Wetaskiwin Court 17-31 Edmonton Court	12 Red Deer Chambers 17 Peace River Court 25 Wetaskiwin Chambers 26 Red Deer Chambers	Edmonton Court 19 Edmonton Chambers	3 Peace River Chambers 4-16 Edmonton Court 5 Edmonton Chambers 18 Wetaskiwin Chambers 19 Red Deer Chambers 20 Wardships 31 CUP
APRIL	Edmonton Court 2 CUP	1 Wetaskiwin Chambers 2 Edmonton Chambers 21 Adoptions 23 Red Deer Chambers 29 Red Deer Court	8 Peace River Court 14 CUP 15 Grande Prairie Chambers 22 Vegreville Chambers 29 Wetaskiwin Chambers 30 Edmonton Chambers	Edmonton Court	1 Grande Prairie Ct. 8 CUP 9 Red Deer Chambers 10 Stettler Court 15 Wardships 16 Edmonton Chambers	1 Red Deer Court 8 Vegreville Court 15 Wetaskiwin Court 21 AOE 22 Wetaskiwin Chambers 23 Edmonton Chambers 25 Edmonton Ch.-Trial List 29 Wardships	18 Entry Criminal Appeals for May 21 Peace River Chambers 23 Wardships	1-28 Edmonton Court 9 Edmonton Chambers 29 Grande Prairie Court
MAY	6 Wetaskiwin Chambers 13 Grande Pr. Chambers 16 Entry Criminal Appeals for June 20 Adoptions 27 Wardships 28 Camrose Court	6 Vegreville Court 7 CUP 14 Edmonton Chambers 20 Wardships 27 Wetaskiwin Chambers	Edmonton Court	7 Red Deer Chambers 12 CUP 20 Wetaskiwin Court 23 Edmonton Ch.-Trial List 27 Vegreville Chambers 28 Edmonton Chambers	5 Peace River Court 13 Wardships 14 Red Deer Chambers 21 Edmonton Chambers 26 CUP 27 Grande Prairie Chambers	Edmonton Court	Edmonton Court	6 Wardships 7 Edmonton Chambers 21 Red Deer Chambers 26 AOE 27 Red Deer Court
JUNE	4 CUP 5 Westlock Court 11 Edmonton Chambers 17 Wardships 18 Red Deer Chambers 24 Red Deer Court	2 Peace River Court 10 Wardships 16-30 Edmonton Court	3 Wardships 9 CUP 11 Red Deer Chambers 16 Adoptions 18 Vermilion Court 23 AOE 24 Grande Pr. Court	Edmonton Court	Edmonton Court	4 Edmonton Chambers 10 Wetaskiwin Court 16 Peace River Chambers 25 Edmonton Chambers	1-15 Edmonton Court 17 Vegreville Chambers 18 Edmonton Chambers 24 Wetaskiwin Chambers	3 Vegreville Court 10 St. Paul Court 16 CUP 17 Wetaskiwin Chambers 24 Wardships 30 Peace River Chambers

Edmonton court assessments held on the third Wednesday of each month.

All Court Sittings open at 10 A.M. except the following: Red Deer 11:00 A.M.; Stettler 11:00 A.M. and Peace River 2:00 P.M.

All Chamber Sittings open at 10 A.M. except the following: Red Deer 11:00 A.M.; Peace River 1:00 P.M. and Grande Prairie 11 A.M.

STATISTICS, SUMMARY, 1968
FAMILY COURT

	JUDGE HEWITT:							JUDGE KANKEWITT					JUDGE BOWKER									
MONTH: SECTION:	S27.S27R;S28;S717;S186;S231 S10;							S27;S27R;S28;S717;S231;					S10;S27;S27 R;S28;S717;S186;S231;S186/									
January	16	0	2	2	0	2	6	20	2	4	8	7	0	9	22	1	0	2	0	5	7
February +1(2c)	20	9	8	1	1	4	6	21	6	4	2	14	0	6	14	3	1	1	2	7	7
March	21	2	12	2	1	6	9	10	3	4	2	8	1	6	13	1	2	1	2	4	2
April	5	2	3	1	0	2	3	10	3	5	2	8	2	5	22	3	1	0	0	3	5
May 1	22	7	6	3	1	8	5	14	2	2	3	1	1	3	14	0	2	0	0	7	6
June	24	3	14	1	2	11	7	33	5	3	3	11	1	14	29	0	2	1	2	6	7
July	17	5	12	0	1	5	8	16	3	5	2	7	0	2	10	0	0	1	2	1	2
August	23	2	3	2	1	3	5	19	2	10	1	8	0	7	30	2	0	6	0	2	4
September	24	1	9	2	1	1	13	17	2	3	2	9	1	10	22	1	1	0	2	3	8
October	10	1	4	2	0	3	7	12	4	3	3	4	1	6	26	2	1	0	0	2	7
November	17	1	4	3	1	12	14	15	3	4	5	5	0	4	9	4	1	3	1	4	9
December	12	2	8	1	0	2	6	5	4	8	3	3	3	1	16	0	3	3	0	5	6
TOTALS:	211	35	85	20	9	59	89	192	39	55	36	85	10	73	223	17	14	18	11	49	70

GRAND TOTALS:

S27 D.R.A.	-	626	
S27(R.)"	-	91	
S27 2c "	-	1	
S28 "	-	154	
TOTALS:		872	

GRAND TOTALS:

S717CC-		74
S186"	-	30
S231"	-	193
S10FCA-		232
TOTALS:		529

Edmonton, Alta.
AE. 25-2-69
Judge Hewitt:

Schedule X

JUVENILE & FAMILY COURTS

MONTH:	Edmonton Juvenile & Family Courts F.C.	Juv.	J.D.	Edmonton Magistrate's Courts N.C.	Juv.	J.D.	Calgary Juvenile Courts F.C.	Juv.	J.D.
January	76	26	63	97	26	99	54	28	32
February	103	26	55	116	34	67	58	26	30
March	115	21	53	93	35	62	45	35	28
April (vacation)	48	8	21	109	29	55	48	33	42
May (vacation)	107	32	59	45	7	20	42	29	24
June	107	18	61	112	38	76	64	39	29
July (vacation)	100	29	34	90	42	55	25	8	13
August (vacation)	64	16	20	100	36	71	76	30	36
September	107	20	23	97	29	101	57	26	50
October	81	31	35	85	33	60	56	29	61
November	93	18	55	80	23	64	52	27	28
December	63	14	37	56	28	53	45	23	46
TOTALS:	1064	269	467	1063	389	753	622	284	419

GRAND TOTALS:	(FC)	2769	TOTALS: (NEG.)	927	TOTALS: (JD)	1658	(5,354)
TOTALS:	1967	2210	TOTALS:	895	TOTALS:	1590	(4,685)
TOTALS:	1966	2000	TOTALS:	662	TOTALS:	1524	(4,186)
TOTALS:	1965	1705	TOTALS:	677	TOTALS:	1191	(3,573)
TOTALS:	1964	1371	TOTALS:	755	TOTALS:	1327	(3,453)
TOTALS:	1963	1182	TOTALS:	754	TOTALS:	1217	(3,153)

Edmonton, Alta.
24-2-69

Schedule XI

Schedule XII

Estimates

MAINTENANCE FOR 1968: FAMILY COURT:

January,	$ 48545.85
February,	45863.43
March,	49606.91
April,	47853.88
May,	57960.70
June,	46187.24
July,	49371.05
August,	54961.18
September,	55380.77
October,	60339.74
November,	61066.76
December.	55757.15
	$632,944.66

Schedule XIII

ITEM 187

PROVINCE OF ALBERTA

DEPARTMENT OF THE ATTORNEY GENERAL
Juvenile Offenders and Probation Branch

MEMORANDUM

OUR FILE NO.:

YOUR FILE NO.:

FROM: J. H. Stearns,
Sr. Probation Officer,
GRANDE PRAIRIE, Alberta.

TO: G. J. Way,
Chief Probation Officer,
EDMONTON, Alberta.

DATE: March 4, 1969

RE: Family Court Cases

Further to our recent telephone conversation, we would advise that, since the establishment of the Family Court at Grande Prairie on 15 January, 1968, we have dealt with the following cases:

Domestic Relations Act - Section 27 ..... 44 cases

Family Court Act - Section 10 - Custody Access .... 2 cases

Enforcement of Supreme Court Orders - Family Court Act. 5 cases

Cases under the Reciprocal Enforcement of Maintenance Orders Act .....10 cases

In addition to the above noted cases, we have also dealt with 65 cases under the Juvenile Delinquents Act and 90 cases under the Child Welfare Act.

I trust that this is the information you require.

J. H. Stearns
Sr. Probation Officer

JHS/as

Schedule XIII

IN YOUR REPLY PLEASE REFER TO

FILE NO.

GOVERNMENT OF THE PROVINCE OF ALBERTA

JUVENILE AND FAMILY COURTS

DEPARTMENT OF THE ATTORNEY GENERAL

Third Floor, Court House
Lethbridge, Alberta
March 20, 1969

Judge N. G. Hewitt
Juvenile and Family Courts
No. 301 Chancery Hall
No. 3 Winston Churchill Square
Edmonton, Alberta

Dear Sir :

Re: Family Court Cases Heard in 1968 - Statistics

Attached please find two copies of the information which Mr. Way requested by telephone on February 25, 1969. There are no probation officers assigned specifically to Family Court at Lethbridge. Family Court is held at Blairmore, Fort Macleod, Lethbridge, and Medicine Hat.

I regret that I forgot to request this information from the Medicine Hat Court and will get this for you as soon as possible.

Yours truly,

F. T. Byrne
Judge of the Juvenile and
Family Court

FTB/cmf

Enclosures (2)

Schedule XIII

Lethbridge

FAMILY COURT CASES HEARD IN 1968

1. SECTION 27, D.R.A. 146
2. RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT 24
3. SECTION 6, FAMILY COURT ACT 53
4. SECTION 10, FAMILY COURT ACT 18
5. C.C. SECTION 231 43
6. C.C. 717 THREATS 9
7. C.C. 186 NON SUPPORT..... 4

Schedule XIII

ITEM 187

PROVINCE OF ALBERTA

DEPARTMENT OF THE ATTORNEY GENERAL

MEMORANDUM

Juvenile and Family Courts

OUR FILE NO.:

YOUR FILE NO.:

FROM: I. F. Carney
Chief Probation Officer
Red Deer, Alberta

TO: G. J. Way
Chief Probation Officer
Edmonton, Alberta

DATE: March 10th, 1969

re: Statistics

With reference to your memorandum, dated March 4th, 1969, the following are the statistics requested by you for Judge Hewitt.

Red Deer Family Court - Statistics from January 1st, 1968 to December 13th, 1968.

Section 27 -	D.R.A.	103 cases
Section 717	C.C.	nil
Section 186	C.C.	nil
Section 231	C.C.	5
Interdiction	L.C.A.	nil
Reciprocal Enforcement		27
Supreme Court Orders		14
Custody and/or Access		46

I. F. Carney

I. F. Carney
Chief Probation Officer

IFC/deb

SCHEDULE XIV

	R.S. CHAP	
Alimony Orders Enforcement Act	12	
Child Welfare Act		S.A. 1966, c.13
District Courts Act	87	
Domestic Relations Act	89	
Dower Act	90	
Evidence Act, the Alberta	102	
Family Court Act	108	
Family Relief Act	109	
Infants Act	158	
Intestate Succession Act	161	
Judicature Act	164	
Juvenile Court Act	166	
Legitimacy Act		S.A. 1960, c.56.
Magistrates and Justices Act	186	
Marriage Act		S.A. 1965, c.52.
Married Women's Act	193	
Reciprocal Enforcement of Maintenance Orders Act		S.A. 1958, c.42
Seduction Act	303	
Summary Convictions Act	325	
Surrogate Court Act		S.A. 1967, c.79.
Liquor Control Act		S.A. 1958, c.37 - sections 100 - 107 (Interdiction)
Criminal Code	Sections 186, 231(1)(b), 717	
Divorce Act		

other organs of government into which it is designed to bring fresh air and common sense.

Much of the Commissioner's work in these opening months of his period of office has been concerned with defining his jurisdiction (a matter within his own decision: cf. s.5(5) of the Act). He emphasizes in his first *Report* that he reads section 12(3), referring to discretionary decisions of ministers, as excluding from his jurisdiction any case where the complaint goes to the "merits"; the Commissioner is concerned only to enquire whether the "administrative processes attendant on the discretionary decision" have been correctly carried out (para. 35). It is this limitation on his powers that has caused the gravest criticism of the United Kingdom's institution.

When we see case histories (promised us in the Commissioner's first *Annual Report*, due in April 1968) we shall probably find that his work has been mostly concerned with complaints where there has been a breakdown of communications between a government department and the public; such was the New Zealand experience. If the office can secure better relations between bureaucracy and citizens, something at least will have been achieved. It is not quite irrelevant, perhaps, that the title of this new officer is "Commissioner *for* Administration," not "for *the* Administration"; he is concerned with administrative methods, and not with the merits of the decisions arrived at by *the* administration of the country.

Murray Fraser*

FAMILY COURTS IN NOVA SCOTIA

In 1938 a young Halifax lawyer, fresh from witnessing a bitterly contested husband-wife assault case in the local magistrate's court, suggested that the administration of justice in the province of Nova Scotia would be improved greatly by the establishment of special courts to deal with legal problems involving members of families.[1] His plea was answered by the government twenty-five years later when the provincial legislature passed An Act to Provide for Family Courts.[2]. The first family court in Nova Scotia, the Family Court for the County of Cape Breton, was established in Sydney in 1965.[3]

The Halifax Welfare Council played a leading role in developing and organizing the social and political pressures which caused the provincial government to enact the legislation. The Council brought social workers and family court officers from other parts of Canada to meet with and explain the philosophy and operation of these special tribunals to officials of the provincial government, local welfare organizations, universities, and interested private citizens. Discussion eventually gave way to action. A brief was presented to the government urging the establishment of family courts.[4] Official reaction, although slow, was favourable and eventually legislation was drafted, introduced in the legislature, and

*Associate Professor, Faculty of Law, Dalhousie University, Halifax.

1. R. A. Kanigsberg, "Domestic Quarrels in the Law Courts," 17 *Dalhousie R.* 61, at 64 (1937–38).
2. Stats. N.S. 1963, c. 4, amended Stats. N.S. 1965, c. 68.
3. Province of Nova Scotia, order in council, February 1, 1965.
4. Brief of the Halifax Welfare Council to the attorney general of Nova Scotia, April

received its approval.[5] It was apparently accepted as being another one of those schemes which had been tried elsewhere and found to be reasonably successful, or at least not controversial.[6]

Continuing its cautious approach the government established the pilot project in Cape Breton County. The selection of this particular municipal unit was understandable because it contains a mixed urban-rural population of a size which could be expected to produce a manageable case-load.[7] Two years later a major step forward was taken with the setting up of the Family Court for the County of Halifax.[8]

The Legislation

A family court may be established in any city, town, or municipality, or in any combination thereof.[9] By order in council exclusive original jurisdiction has been granted to the two courts over any charges, offences, and matters arising from the following acts or subjects;[10] the Education Act,[11] insofar as it relates to truancy and failure to compel attendance of children at school; the Wives' and Children's Maintenance Act;[12] the Maintenance Orders Enforcement Act;[13] the Children of Unmarried Parents Act;[14] the Employment of Children Act;[15] certain parts of the Child Welfare Act;[16] the Children's Maintenance Act[17] in actions between parent and child; the Juvenile Delinquents Act (Canada);[19] sections 186(1) and 231(1) of the Criminal Code[20] where the parties involved are husband and wife or parent and child. Prior to the existence of the family courts jurisdiction over these matters was divided between the judges of the juvenile courts and the provincial magistrates. The governor in council may confer upon the family

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1958. Draft legislation, attached as an appendix to the brief, had been prepared by students in the Legislative Research Center of the Faculty of Law, Dalhousie. Lillias M. Toward made an outstanding contribution in her LL.M. thesis, "A Case for a Family Court in Nova Scotia," Faculty of Law, Dalhousie, 1958. W. A. MacKay advocated the establishment of family courts in his LL.M. thesis, "Maintenance of Dependents in Nova Scotia," Faculty of Law, Dalhousie, 1954.

5. The new legislation was introduced with little fanfare. In fact, other than the formal introduction of the bill, no comment was made in the legislature regarding this important experiment.

6. Legislation relating to family courts in other provinces may be found in: Ontario (see the Juvenile and Family Courts Act, R.S.O. 1960, c. 201, as amended by Stats. Ont. 1960–61, c.42; 1961–62, c.67; 1964, c.51; 1966, c.75); British Columbia (see the Family and Children's Court Act, Stats. B.C., 1963, c.14 as amended by Stats. B.C. 1964, c.20; 1967, c.49, s.5); Alberta (see the Family Court Act, R.S.A. 1955, c.108, as amended by Stats. Alta. 1960, c. 29); Manitoba (see The Corrections Act, Stats. Man., 1966, c. 12, Part II: Family Court); Newfoundland (see The Family Courts Act, R.S.N. 1952, c.118, as amended by Stats. Nfld. 1960, c.5; 1964, c.32); Quebec (see the Courts of Justice Act, R.S.Q. 1964, c.20, Division IV: The Social Welfare Court, amended Stats. Que. 1965, c.17, ss.17–21; 1965–66, c.7, s.6).

7. 129,572. *1966 Census of Canada, Population: Counties and Subdivisions, Atlantic Provinces*, DBS Cat. No. 92–603, (Vol. I, 1–3), table 9.

8. Province of Nova Scotia, order in council 67–39, January 13, 1967. The total population of the County of Halifax is 244,948. It includes the cities of Halifax and Dartmouth, and the Municipality of the County of Halifax (*1966 Census of Canada, supra* note 7).

9. *Supra* note 2, s.2(1),(2),(3).

10. Province of Nova Scotia, orders in council, February 1, 1965, March 30, 1965, January 13, 1967.

11. R.S.N.S. 1954, c.78 as amended.
12. *Ibid.*, c.316 as amended.
13. *Ibid.*, c.163.
14. *Ibid.*, c.31 as amended.
15. *Ibid.*, c.83.
16. *Ibid.*, c.30 as amended.
17. *Ibid.*, c.32.
18. *Ibid.*, c.210.
19. R.S.C. 1952, c.160.
20. Stats. Can. 1953–54, c. 51.

courts exclusive original jurisdiction or concurrent or general jurisdiction over other Acts and matters.[21]

Administration

GENERAL

The Act is administered by the Department of Public Welfare.[22] Appointments are made by the governor in council[23] on the recommendation of the minister. So far, the province has borne the entire cost of the new system although cost-sharing agreements may be entered into between the minister of public welfare and any municipal unit.[24]

THE JUDGES

The government has pursued a curious policy in making appointments to the family courts. The Cape Breton Court is served by four judges, three of whom also sit regularly as provincial magistrates in populous areas. The remaining full-time judge is also the juvenile court judge for three other counties. This haphazard approach has been followed in Halifax. When the court became operative on January 16, 1967 it was served by three judges, one of whom was full-time. The other two travelled to Halifax from different parts of the province when they were needed. At the same time they continued to serve as juvenile court judges in their respective counties. A second full-time judge was appointed in June 1967. At the present time all the family court judges possess legal training.

The result of this combination of part-time and full-time personnel has been to specialize when specialization was not intended. A clear division exists in both courts: one side handles only matters relating to juveniles and neglected children while the other side deals with "family" matters. In addition, the judges have jurisdiction only in the counties for which they have been appointed. They are unable to exchange or substitute without further action by the governor in council.

ADMINISTRATIVE STAFF

Fortunately the new courts have been "managed" by competent, dedicated co-ordinators. Their duties include general office management, participation in budgetary matters, responsibility for administrative personnel, supervision of records and statistics, counselling, negotiating with the parties, and liaison with the Department of Welfare. Probation officers are attached to the court for matters arising from juvenile proceedings. On the "family" side, qualified social workers, enforcement officers, and clerical staff are involved in the daily operations.

THE REFERRAL SERVICES

Apart from the counselling services provided at the family court buildings an attempt has been made to develop other specialized services. Referrals are made to several agencies and institutions. In Halifax psychiatric services are available at the Victoria General Hospital and at the Child Guidance Clinic. Persons in need of immediate support are referred to the appropriate municipal welfare offices. The Regional Office of the Department of Public Welfare and the Protection Department of the Children's Aid Society are called in to investigate allegations of neglect with regard to children, particularly when custody matters are

21. *Supra* note 2, s.4(m).
22. *Ibid.*, s.10.
23. *Ibid.*, ss.3,5.
24. *Ibid.*, ss.8,9.

pending. Marriage counselling is available at several community agencies. Persons requiring treatment for alcoholism are sent to the Alcoholism Research Foundation or to the Nova Scotia Hospital. Those who need the services of a lawyer are dealt with under the Legal Aid scheme of the Nova Scotia Barristers' Society. Similar facilities are available in Cape Breton.

Unfortunately these services operate independently of the family courts and although co-operation is present, the lack of an integrated system is a major weakness. The services of a consulting psychiatrist on a regular part-time basis are urgently needed in Halifax. The voluntary marriage counselling agencies are under-staffed and in financial difficulties.

THE PHYSICAL PLANT

Rented premises in the north end of the city separate the Halifax Family Court from referral services and law offices. The offices, courtrooms, and counselling areas are clean, bright, and well furnished. No facilities are provided for members of the Bar. The increased case load will result in inefficiency unless new, carefully planned quarters are found. In Sydney the court is centrally located in the downtown area. The facilities are much the same as those in Halifax.

Procedure

The procedures vary little from those used in family courts throughout Canada and the United States. Informality is stressed. The Intake Service, manned by the social worker, sifts the cases. Those calling for immediate court action are sent on to the co-ordinator. Those in which conciliation or negotiation may be attempted are deferred, if the complainant agrees, and an attempt is made at counselling. Referrals to specialized agencies may be decided upon at this point. Financial settlements are worked out in advance by the parties with the assistance of the co-ordinator and are later approved by the judge.

Proceedings take place privately with only court officials, counsel, the parties, and the witnesses present.[25] The informality has caused some concern to the lawyers and the social workers involved. As yet there seems to be no standard procedure and evidentiary problems arise frequently. Although no statistics are available it is estimated that counsel appear in approximately twenty-five per cent of the cases that reach the courtroom. With the encouragement of the judges there has been a noticeable increase in the appearance of counsel.

Post-trial proceedings include further attempts at conciliation or negotiation, and the referral of the parties for treatment. Maintenance orders are followed up by enforcement officers who investigate personally any cases in which defaults occur. All payments are made directly to the court which administers the funds through its co-ordinator.

The Case Load

THE COURTS

During its first year of operation 440 cases were processed in the Cape Breton Family Court. Of these, 193 were informal investigations which apparently did not require proceedings to be instituted before the court. The majority of the cases which came before the court were heard under the Wives' and Children's Maintenance Act, the Maintenance Orders Enforcement Act, the Children of

25. *Ibid.*, s.6(2)(3).

Unmarried Parents Act, and section 231(1) of the Criminal Code.[26] This trend has continued in the first few months of operation of the Halifax court.[27]

THE SUPPORTING SERVICES

Essential to the success of a family court system is the provision of a first-class counselling and conciliation service. It is by the provision of diagnostic and therapeutic services that a family court is distinguished from other tribunals. The legal remedies often take second place to the clinical services of the unit. An examination of this phase of the operation of the new courts is not possible because no statistics are as yet available. However, in Halifax the single social worker attached to the family division is responsible for conducting all intake interviews, arranging referrals, attending court sessions, conducting on-going counselling, and accepting referrals from the judges. Her work-load for a typical month included fifty-two intake interviews, counselling twenty couples on a continuing basis, acceptance of four additional referrals from the court, and attendance at several court sessions.[28]

An Assessment

PROBLEMS UNDER THE PRESENT SCHEME

To ensure even a limited degree of success certain changes must be effected in the present system. Judges should be appointed on a full-time basis. They should possess jurisdiction in all the family courts which are or may be established in the province. More money must be made available to provide qualified personnel to handle the expanding case load. Physical facilities will have to be increased and more thought should go into their design. The expansion of referral services and their integration into the system is desirable.

Often parties are not represented by counsel and the judge finds himself assuming the role of advocate. This situation should be studied with a view to providing, particularly in contested cases, counsel or social workers who understand the legal implications. It may be possible to accomplish this under a revamped Legal Aid scheme[29] or by the provision of government-paid counsel in certain situations. Thought might also be given to the establishment of a system of "law guardians" to provide legal representation for minors in delinquency and neglect proceedings.[30]

Perhaps because few counsel appeared in the early stages of the development of the family courts, informality during the proceedings has been carried too far. An effort must be made to strike a proper balance between the dignity of a court of law on the one hand, and the somewhat relaxed atmosphere which is necessary to discover the root of the problem confronting the court, on the other hand. Communication between lawyers and social workers could be greatly strengthened by joint programmes and discussions. For example, the Faculty of Law of Dal-

26. Province of Nova Scotia, Department of Public Welfare, *Annual Report* (Halifax, 1966), 31.

27. Statistics for the months of February and June 1967, indicate a considerable increase in the number of hearings in the "family" side of the court (February, 33; June, 77). The hearings in the "juvenile" side also increased, from 156 in February to 172 in June. Department of Public Welfare, Halifax.

28. Statistics supplied by Mrs. Margaret Halozan, Halifax Family Court, Halifax.

29. The Nova Scotia government, in its election manifesto of May 1967, promised to investigate the establishment of an adequate legal aid service.

30. This concept has been introduced in the New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended. For an informative comment see Jacob L. Isaacs, "The Role of the Lawyer in Representing Minors in the New Family Court," 12 *Buffalo L.R.* 501 (1962–63).

housie University has introduced one general course and two advanced seminars in family law over the past two academic years; representatives of other disciplines have been active participants. This will help to develop a greater understanding of the roles to be played in family court matters by lawyers and social workers.

An Effective Family Court

Even if the suggestions outlined above were accepted and acted upon, the family court system in Nova Scotia would remain greatly handicapped. The fundamental premise upon which the establishment of a family court should be based is that one institution should possess the competence to deal with all major aspects of family litigation. Very few family courts have been blessed with the jurisdiction necessary to achieve the purposes set for them. This has been the experience in Canada where matters such as divorce, nullity, adoption, and custody have been dealt with almost exclusively by "superior" courts.[31] Recently, criticism of the administration of justice has brought renewed demands for the reform of family courts to enable them to play an effective role.[32] The New York Family Court Act[33] came close to giving the ideal jurisdiction to its new courts,[34] and there are indications that this will come about in the near future.[35]

A careful study of the submissions to the Special Joint Committee of the Senate and House of Commons on Divorce will reveal a definite trend in favour of the creation of specialized courts to deal with all areas of family law.[36] The Committee, in its report to Parliament, did not accept the suggestion that family courts be given jurisdiction in divorce matters. It did, however, leave the matter open for further study.[37] Those who opposed the transfer of jurisdiction appeared to do so chiefly on the grounds that family court judges were not properly qualified to handle serious problems and that family courts lacked the dignity required for such proceedings. The constitutional problems which may be involved in any transfer of jurisdiction, including the appointment and payment of judges, were not considered to be major stumbling blocks. When considered against the advantages of specialization and centralization which a true family court would provide, the opposing arguments appear of little significance. Of course there would be problems. The salaries and facilities would have to be improved to attract first-class judges. Consideration would have to be given to the place of family courts in the judicial hierarchy. Adequate appeal procedures should alleviate the fear of the traditionalists who see danger in the development of specialized courts. The areas of jurisdiction to be granted to family courts would also cause

31. The Nova Scotia legislation does not permit the Family Court judge to make any order as to custody. This is more restrictive than, for example, Ontario where the judge may determine the custody and rights of access during maintenance proceedings. Deserted Wives' and Children's Maintenance Act, R.S.O. 1960, c.105, s.2(4).

32. Anna Bacon Stevenson, Ontario Law Reform Commission, Working Paper F.L.-1-56, March 23, 1966.

33. *Supra* note 30, Art. 1, part 1, esp. §115.

34. *Ibid.*, Art. 6, part 2, as amended. By this provision concurrent original jurisdiction over adoption proceedings was given the Family Court from the effective date of the legislation. Exclusive original jurisdiction over adoption was granted to the court at a later date.

35. 1966 report of the Joint Legislative Committee on Matrimonial and Family Laws to the Legislature of the State of New York: Proposed Changes in the Domestic Relations Law, reprinted in *Proceedings of the Special Joint Committee of the Senate and House of Commons on Divorce* (No. 17. Tuesday, February 21, 1967), at 962; see esp. 977.

36. *Proceedings of the Special Joint Committee of the Senate and House of Commons on Divorce* (Ottawa, 1966–67).

37. *Report of the Special Joint Committee of the Senate and House of Commons on Divorce* (Ottawa, 1967), at 20, 90.

concern, although adoption, custody, divorce, nullity, and matters relating to marriage would be natural choices.

The limitations of the system adopted in Nova Scotia are apparent in other jurisdictions. Similar courts with a less limited jurisdiction have been unable to achieve the purposes for which they were created.[38] The judges, social workers, and parties who appear in these courts are frustrated by the seemingly artificial basis by which the courts' jurisdictions have been determined. The existing facilities for diagnosis and treatment often are not available to persons who need them, simply because they must go to other courts.

In population and physical size Nova Scotia is small.[39] It cannot afford the luxury of duplication of services. It cannot afford a system of administration of justice which ignores the logical approach to the treatment of one of society's greatest problems. The establishment of a provincial family court, with jurisdiction enabling it to deal with all problems relating to matrimonial and familial disputes, containing as an integral part an expanded diagnostic and therapeutic service, and fortified by well-paid, qualified, and respected judges, would be a bold and courageous step in the reform of the administration of justice.

A true family court is "a court with jurisdiction plus facilities to handle all manner of justiciable family problems."[40] Professor Payne has suggested the establishment of specialized family courts with an all-encompassing jurisdiction.[41] Nova Scotia would be well advised to adopt this proposal rather than to remain content with a scheme, the inadequacies of which have already been demonstrated.

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38. *Supra* note 32.
39. *Supra* note 7: pop. 756,028, area 20,402 sq. mi.
40. Alexander, "What is a Family Court, anyway?" 26 *Conn. B.J.* 243, at 245 (1952).
41. *Supra* note 36, at 907. See also the excellent submission made to the Committee by Judge P. J. T. O Hearn, at 662.

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LAW AND PROFESSIONAL BEHAVIOUR

The Case of the Canadian Chiropractor

There is a long-standing controversy in the social sciences over the potency of law as a means of social control. On one side, Landis and LaPiere have suggested that informal social controls are most compelling, that law exerts little influence on behaviour. On the other, Timasheff has claimed that human behaviour is deter-

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