STUDY OF FAMILY COURTS

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BACKGROUND AND PURPOSE OF THIS STUDY

In 1963, the League of Women Voters of Kansas studied the family court[1] and after reaching consensus, the League supported measures to establish a court which has centralized jurisdiction over family matters.

More recently and after completing a study of the Kansas penal system with emphasis on juvenile needs, the delegates to the 1973 League convention determined that it was timely to re-evaluate the family court position. It is hoped that this publication will serve as a guide for the re-evaluation. It will include: a general history, and more specifically how the concept of the 'Family Court' relates to Kansas; consideration of an ideal family court; funding; a summary of three state family courts, New York, Rhode Island and Hawaii, which are already well established; the Standard Act (model legislation.)*; and problems and possible solutions.

GENERAL HISTORY

For the past ten years or so, there have been various movements to establish a family court system in Kansas. In December, 1963, the family law committee of the State Bar Association requested the Kansas Judicial Council to undertake a study of the family courts.[2] A few months later, the Honorable Welsey E. Brown, president of the Kansas Bar Association, called for a "citizens'" Conference on Modernization of Kansas Courts. One hundred-twenty leading citizens were invited, including the president of the League of Women Voters of Kansas. Because of the Citizens' Conference, the Judicial Council postponed its study of family courts, waiting for a basic consensus on modernizing the judicial system from the Conference. It was suggested to the Council, however, that no over-all changes as a result of the Conference could be enacted into law until 1967. At the time, it was thought that there would be total reform of the judicial system introduced within a few years.[3] Later, there were one or two abortive attempts to establish a family court system. In November, 1972, the proposed amendment to the Judicial Article to the Constitution of Kansas was approved by the voters. The amendment provides for a unified court system with overall administrative powers vested in the Supreme Court and methods of non-partisan selection of district judges among other things.[4] In May, 1973, history repeated itself. A blue ribbon special judicial study advisory committee was appointed by Chief Justice, Harold R. Fatzer, to study proposals for restructuring and unification of the Kansas Court system to implement the new Judicial Article. The president of the League, was appointed by the Chief Justice to serve on the special committee along with 18 other citizens.

Because of the very real possibility that changes will occur in the judicial system as a result of the constitutional amendment, it will be necessary that the League watch these changes carefully not only in relation to the Family Court study, but to our position on the Judicial Article of the Constitution of the State of Kansas as well.

*Nation Probation and Parole Association (which has since become the National Council on Crime and Delinquency), Standard Family Court Act (1959).

RECENT LEGISLATION*

There are some important factors to be taken into consideration since the League's original study of family courts.

Three new laws were passed by the 1972 Legislature: Marriage Counseling (K.S.A. 60-1608,1972, Vol. IV Supp.); a Court Trustee Act (K.S.A. 23-492,1972, Vol. II) and the Divorce law (K.S.A. 60-1601,1972,Vol. IV.)

MARRIAGE COUNSELING - Once a divorce has been filed and after the filing of the answer by the defendant, the court may on its own motion or upon motion of either of the parties, require both parties to seek marriage counseling if such services are available within the county of venue of the action. Costs are not provided.

COURT TRUSTEE - This is permissive legislation to provide uniform child support and A. D. C. payments, and can be implemented by the district court judges if they so desire. Johnson County has implemented a complete program, while Shawnee, Saline and Sedgwick counties have adopted it on a limited basis. The office of the Johnson County District Court Trustee was established by the judges of the Tenth Judicial District in order to modernize the collection, disbursement and enforcement of support orders of the Court. Support payments must be made to the order of the District Court Trustee. Up to 5% of the amount is retained to defray the expense of operation of the office. The Trustee is authorized and empowered by law to initiate and pursue all civil remedies available to enforce the payment of support monies including court appearances for contempt citations. Data processing provides an automated means of accounting for all support payments. Disbursement of support payments in accordance with the plan ordered by the Court are by computer. There is also correlation with the Department of Social Services. Judge Harold Riggs, Johnson County District Court, explained that for this type of system to be practical, there must be volume so that in rural areas, it wouldn't be worth the money unless multi-districts were formed. There has been a reduction in felony non-support cases since this program has been in existence in Johnson County.

DIVORCE - A new dimension has been added to the Kansas divorce law. Until the law was amended to include incompatibility, there were seven reasons for obtaining a divorce, all fault-oriented. In other words, guilt had to be proven by one or both parties.

Professor R. E. Schulman[5] says, "The problems created when a family disintegrates are endless and brutal. In various ways the law and legal institutions have aided and abetted the terrifying, dehumanizing process of ending a contractual relationship**which no longer meets the needs, desires, and requirements of one or both parties to that contract. Paradoxes and conflicting attitudes that have developed in the legal system add further injury to the domestic relations client and further vilify attorneys and the law in the eye of the public. It is anomalous that a few divorce petitions are denied when often they cannot be distinguished from the more than 98% that are granted...If, however, the law is to reflect what actually takes place, then the adoption of and utilization by the courts of incompatibility (no-fault) will make all parties to a divorce action - clients, attorneys, and jurists - more honest and credible in the public's mind... In fact, practitioners and jurists now have the opportunity to use the law as a means to encourage rehabilitation and reconciliation of couples having marital problems.

*See K.S.A. statutes for complete information.
**The marriage contract is considered a civil contract.

A well established easing of the fault orientation, lack of need for corroboration, and the possibility of having a couple seek marriage counseling all provide a hospitable background for the law in Kansas to facilitate attempts at reconciliation as opposed to forcing the parties into hostile adversary positions."

It has been estimated by Judge Riggs that about 40% of the cases to come before the District Court in Johnson County are divorce proceedings. In a summary of District Courts[6] in the state of Kansas in 1966, the total of civil cases was 25,385. Of that total the highest number of cases was divorce, 9,942. As the divorce rate in Kansas is now one in four, this figure could be higher.

Some interesting points should be mentioned here. An article in Newsweek, Feb. 13, 1967, states that at least half of today's divorces involve couples who have not had children or whose children have grown up and left home. It also says that nearly 40% of all broken marriages lasted ten years or more, and 13% had lasted over twenty years. The median age of two million divorcees in the U. S. is now 45. In other studies, it has been suggested that evidence is far from complete that juvenile delinquency is "caused" by broken homes. It has been further suggested that some children from broken homes may adjust better than those from unhappy, unbroken homes.

Still other factors to be taken into consideration are new concepts in juvenile rights and women's rights. Obviously, many changes have taken place in these two areas since the original League study took place.

SPLIT JURISDICTION

The present method of handling family problems is relatively easy to describe in the Kansas Court system. The Juvenile Court has jurisdiction over all matters relating to juveniles.[7] The District Court's jurisdiction includes criminal and civil cases. These cases include divorce, child custody, separate maintenance, support payments and paternity proceedings. The Probate Court handles cases which include adoption, commitment of the mentally ill, will and estates.

CONSIDERATION OF AN IDEAL FAMILY COURT*

If jurisdiction over all family problems were merged in one court, with a trained staff able to investigate root causes of family disputes and to suggest or offer appropriate psychological services, some of the present system of multiple courts might be eliminated and families in trouble might be helped. This is the basic theme of proponents of family courts. Variations on the theme have been regularly advanced ever since the first court with jurisdiction over children's and family cases was established in Hamilton County, Ohio in 1914.

* The major source of material used from here to the end of the publication was condensed from FAMILY COURTS IN THE UNITED STATES, U. of Louisville School of Law; Parts I & II, Vol. 8, J. Family L.,pp505-586, 1968, and Part III, Vol 9, pp 1-99, 1969. The authors are Elizabeth D. Dyson and Richard B. Dyson. Mrs. Dyson obtained her L.L.B. from the Univ. of Ks. and is a member of the D.C. Bar, and State Bars of Kansas and Massachusetts. Mr. Dyson received his L.L.B. from Harvard in 1962.

Besides integrated jurisdiction and investigatory and counseling staff, certain other attributes have been added to the ideal family court: physical location in one plant with all services concentrated there and central files accessible to all personnel, long-term judges with special skills in handling family problems, status and facilities equal to a state's highest trial courts, and state-wide operation so that uniformity of policy and practice may evolve.

Underlying this concept is a philosophy similar to that of the juvenile courts. Just as the best interest of the child is supposed to be the guiding standard of the juvenile court, the family's best interest is the family court's guide. The orientation of the courts has been called therapeutic, not punitive, and its purpose is prevention of family disintegration, not punishment after the fact.

Besides creating a unitary framework for applying social casework methods for family conflicts, certain administrative benefits are claimed for family courts. Proponents assert that properly established family courts will lead to more efficiency by unifying practices and procedures, eliminating conflicting decisions, promoting better services through continuity in treatment, reducing administrative costs, eliminating duplication of services, and improving supervision, training and recruitment of staff.

All over the country courts have mushroomed that call themselves "family courts." Most of them fall short of the model described, lacking one or more of the three characteristics: integrated jurisdiction, investigatory staff, and counselors trained in social work. Further, most are not of highest court status.

Consideration of family court systems involves real danger, reflecting a practice common in America, of looking to legal institutions for the correction of social ills. Experience shows that courts seldom contain answers to problems arising outside the legal system. We delude ourselves if we think that delinquency and family disorganization can be cured simply by reforms in legal institutions. There has been no convincing evidence that family courts are any more or less successful in promoting family stability than any other type of court. Family courts, as we will see, do not in practice seek comprehensive solutions for the family merely because all family problems have been placed under one jurisdiction.

If there is no concrete evidence that existing family courts have lessened family disorganization, one can still evaluate the presence or absence of some of the improvements in judicial administration.

Further, in setting unrealistic goals for family courts we may be tempted to blame statutory restrictions and constitutional guarantees for failure to achieve these goals.

On the other hand, questions arise which will also have to be considered while studying the family courts. Do they unify practice and procedure? Have they promoted better supervision, training and recruitment of staff? These questions will be discussed later under problems and possible solutions.

FUNDING: STATE FAMILY COURTS VS. LOCAL OPTION

Local court development depends on the local governing body's attitude toward financing court operations. A local court may experience long and generous county financial support, then suddenly be brought up short by sudden withdrawal of necessary funds. Ohio is a perfect example of this. Some of its courts have had longer experience with consolidated jurisdiction and social work staff than courts in any other state.

Its family court system derives from a series of special laws locally applied. Toledo's family court grew steadily in size of staff from 25 to 150 auxiliary persons, from 1925 to 1966. 1966 proved nearly disastrous for the Court and its entire staff. Failure of a tax levy in 1965 resulted in a greatly reduced budget and the necessity of curtailing the services offered by the Court. A substantial number of positions were abolished, the morale of the staff reached a low point, and key personnel resigned.

A state-wide court may experience similar problems in certain localities if the court's social services are locally financed, as they are in New York, but at least the Family Court operates within a basic framework of a state-wide system. The state Legislature has in its hands a means of correcting the situation, if correction is deemed needed, and if the Legislature is willing to do so.

STATE-INTEGRATED FAMILY COURTS

Three state family courts in New York, Rhode Island and Hawaii have been selected for our initial study. New York falls short of completely integrated jurisdiction, since divorce actions and criminal matters are handled outside the family court, but the New York system is important since the court is geared to an unusual concern with procedural rights of litigants. At the same time, New York's lack of totally integrated jurisdiction affords an opportunity to assess the importance of this factor. All three courts will be compared to the Standard Act (model legislation). It is hoped that this method will provide a useful perspective from which to view the theory and practice of existing family courts.

Family Court Acts in Rhode Island, New York and Hawaii have several historical features in common. All three were passed within five years of each other: Rhode Island's Act was passed in June and became effective on September 1, 1961; New York's Act was born in 1961, effective September 1, 1962; Hawaii adopted a Family Court Act in 1965, effective July 1, 1966. All three Acts were preceded by officially commissioned studies of the existing court structure, and the resulting legislation was designed to cure supposed deficiencies uncovered by these studies. With various changes and additions, the Acts combine the jurisdiction of predecessor domestic relations and juvenile courts, consolidating the jurisdiction of these courts in one tribunal.

STRUCTURE

1. PLACE OF THE FAMILY COURT IN THE COURT SYSTEM.

Standard Act	A division of the state's highest court.
New York	Unified, but operates apart from the Supreme Court which is the court of general trial jurisdiction. The courts have poor physical plants.
Rhode Island	Unified and is a separate specialized court rather than a division of the highest trial court. The courts are generally placed in poor physical plants.
Hawaii	Family courts are on the same level as the highest trial court.

2. JURISDICTION

Standard Act: Children: delinquency, neglect, injurious environment or behavior, ungovernability, custody or guardianship of person, adoption, termination of parental rights, commitment of mentally ill or defective and Inter-State Compact for Juveniles.

Adults: offenses against children by parents or legal custodians, criminal non-support, non-felonious offenses against immediate family members, civil action for support, alimony, divorce, separation, annulment, paternity proceedings, and commitment of mentally ill.

New York — Most juvenile cases are heard, but certain aspects of some cases may be heard in other courts as well. There are wide gaps in the handling of adult cases. Domestic relations and criminal family matters are heard in other courts.

Rhode Island — Juveniles are handled the same as in the Standard Act with the exception of guardianship of children. Commitment of mental cases are excluded from the adult category.

Hawaii — Closely follows the Standard Act.

3. GENERAL ADMINISTRATION AND MODE OF OPERATION

Standard Act — Full powers are vested in a "board of family court judges" to prescribe rules, policies and forms on a uniform basis, to prepare an annual budget, and to publish annual reports. The board annually elects a chairman who serves as presiding judge of the family court that year.

New York — This system differs radically in that it places responsibility for overall administration in a body outside the family court altogether. The Administrative Board of the Judicial Conference, an independent body composed of the chief judge of the highest court and four presiding justices of the intermediate appeals court, is responsible for preparing uniform rules, collecting statistics and submitting an annual report. The Board also has power to recommend changes in the budget estimates of each court, although it does not prepare them, and to set standards for non-judicial personnel. The Board is empowered to designate a committee of family court judges to help it in exercising its rule-drafting function.

Rhode Island — The legislators, probably influenced by the small size of the state, vested administrative responsibility in one judge. The chief judge supervises and controls calendars, assigns justices and clerical personnel, and is charged with gathering court statistics and making recommendations for improvement to the legislature. These duties may be delegated to a court administrator, who also prepares an annual budget for the court. The justices, together, make rules for regulating practice and conducting business and setting qualifications for the family counselors.

Hawaii — A board was created, but its function is limited. There is some attempt to reach agreement on rules. The board has no responsibility for a budget, annual reports or duties. Some standards are set, but the board seldom meets.

4. PERSONNEL:NON-JUDICIAL

Probation Officers - As a minimum, all three family courts have probation officers at their disposal, whose function generally is to investigate cases for background information, adjust or screen out cases unsuited for court action, and provide supervision after disposition for persons placed on probation. Only Hawaii, however, following the Standard Act, provides that probation officers be hired as part of the family court's staff. In Rhode Island, the officers are assigned to the family court by the Social Welfare's Corrections Department, and New York's staff is derived from local county or city probation departments servicing local family courts. Problems have arisen in New York and Rhode Island because of divided loyalty and, of course, time limitation. Rhode Island's Act also calls for three "intake superiors" who are direct employees of the court and perform screening functions relative to juvenile matters.

Marriage Counselors - Whether marriage counselors should be formally part of a family court's staff is subject to some controversy. Without disclaiming the value of marriage counseling itself, it has been suggested that an aura of judicial sanction or compulsion may not be conducive to successful therapy. Where the court can compel attendance at counseling sessions, as it can in New York, some questions of the constitutionality of the legislation may be raised. Among the Standard Act contributors, the Children's Bureau opposed court-sponsored marriage counseling as "not related to the judicial function," and urged that courts refer couples to appropriate outside agencies. As a result, the Standard Act ultimately equivocated, leaving the question of staff marriage counseling up to the individual family court judge. Hawaii and Rhode Island both positively place marriage counselors as part of the court's auxiliary staff. But with the exception of a few individual courts in each state, insufficient funds have been provided for this service. Rhode Island uses five "divorce investigators" who are nowhere mentioned in their Act. The divorce investigators provide a kind of private detective service for the judges.

New York has not been very decisive in providing marriage counselors. Their Act makes no provision for specially trained marital counseling staff, so it is undertaken by existing probation personnel or by "such other auxiliary services" as the courts can obtain within their authorized appropriations.

Hawaii actually has some social workers who do marriage counseling and have had experience in that field.

Probably the degree of experience and training that a family court can reasonably expect to find in its marriage counselors is directly proportional to the salary it is willing to pay. Hawaii's salaries are high in comparison to New York and Rhode Island, but not competitive with most private agencies.

MENTAL HEALTH SERVICES - These services can play two parts in a family court.

Psychiatrists and psychologists may be called on purely for diagnosis, helping probation officers reach decisions at intake and aiding judges in arriving at informed dispositions. They may also be used for providing therapy directly as part of the disposition process itself. Since family courts have broad power to conduct physical and psychiatric examinations, it seems only logical to furnish the court with staff for conducting such diagnostic tests. Whether treatment should be a court function is more debatable.

Standard Act — There is no position on the proper role of psychologists and psychiatrists in the family court. It provides that the judge may appoint physicians, psychologists and psychiatrists to carry on the professional work of the court.

New York — Appointment is not mandated. Permissive hiring power is granted under the general power to appoint "such other auxiliary services" as the court can obtain within its authorized appropriations. The upstate counties rely on outside help such as local mental health clinics, school psychologists and state hospitals. The power to refer persons needing testing is frequently used. Psychiatrists, psychologists, physicians and psychiatric social workers serving in New York's family court are directly employed by the court. Because of low salaries, these positions are frequently unfilled.

Rhode Island — Mental health services are provided on loan from other state agencies. The Department of Social Welfare is required to furnish services that are necessary to accomplish the court's purposes. However, because of the court's dissatisfaction with the testing routine of the welfare department, a small budget has been set aside for hiring from private agencies especially for examining children subject to institutional commitment.

Hawaii — The Act varies only slightly from the Standard Act by saying judges may appoint or may make arrangements for services. The Division of Mental Health furnishes the court with some services.

OTHER AUXILIARY PERSONNEL - Hawaii's family court judges have the power to appoint or make arrangements for the services of other professionally competent persons, to carry on the work of the court. New York judges also have the same powers. Rhode Island contains no such enabling provision, but this has not prevented expansion of the originally authorized staff.

As evidenced by the judges' direct appointments, informal arrangements for services, and expressed wishes, more help is needed in two major areas: (1) legal services for judges to help research legal issues arising in a case, and also to assist intake workers who may need legal advice on such questions as to whether certain facts constitute [illegible] jurisdiction or whether the evidence seems sufficient to establish that an act was committed, and (2) collection of money for support payments. The judges have appointed some lawyers and payment collectors to comply with the courts' needs.

STAFF SELECTION - Experience demonstrates that the procedure for selecting staff can be as important as the kinds and numbers of workers a court is authorized to employ. The Standard Act specifically provides that all mandatory and permissive appointments shall be made through a state merit system, or alternatively through a system of competitive examinations based upon merit with qualifications fixed by the family court administrating board. Hawaii and New York have followed this line of reasoning closely. Rhode Island has not, and has had a number of unqualified political appointees as divorce investigators, family relations aides and other non-clerical positions.

5. JUDICIAL PERSONNEL - It is generally agreed that selection of a competent judge who can give leadership is of the greatest importance to the family court. Standards for Juvenile and Family Courts suggests that the judge be a member of the bar in the state where he is to serve and that he have prior experience in the practice of law. Further, he should be deeply concerned about the rights of people, keenly interested in the problems of children and families, aware of the contribution of modern psychology, able to evaluate evidence and situations objectively, eager to learn, a good administrator, and able to conduct hearings in a kindly manner, talking to children and adults sympathetically and on their level of understanding without loss of the essential dignity of the court.

Standard Act — The selection of judges permits states to carry on their existing methods.

New York — A "grandfather clause"* was included, but now a judge must be admitted to practice law in the state for at least ten years. New York City judges are appointed, upstate are elected for ten years. The mayor of New York City is supposed to look for "character, personality, tact, patience and common sense" in making his appointments.

Rhode Island — The five family court judges, organizationally separate from the rest of the judicial system, are appointed by the governor for life, and confirmed by the senate. No special qualifications or payment are prescribed.

Hawaii — Existing circuit court judges are used for three of its family courts. In the second, third and fifth circuits and "any other circuits hereafter created by the legislature," judges of the general trial court are designated as family court judges when exercising jurisdiction under the Family Court Act. In the first circuit (Honolulu) where the volume of judicial business calls for two full-time family court judges, a different method is used. The chief justice of the supreme court designates the judges to serve. Special qualifications, training or compensation are nowhere written in the Family Court Act, but the Constitution requires all judges at the circuit court level to have been admitted to practice law in Hawaii for at least ten years. The judges are appointed by the governor for six year terms.

*Existing judges of the domestic relations courts in New York City and children's court judges outside New York City continue by law for the remainder of their terms.

REFEREES - or masters are sometimes used in civil cases to expedite the business of the courts. The appointment of referees to juvenile court staffs is authorized in approximately one-third of the states. Basically referees are non-judges acting in a semi-judicial capacity, saving judges' time by hearing cases and making findings and recommendations to the court. These the court usually adopts as its decree. Parties reluctant to use referees may usually demand a full judicial hearing, and where a referee hearing has been held, various safeguards are extended concerning matters of notice and appeal.

Standard Act — Some of the draftsmen did not unanimously favor using referees; some of them felt that judges should hear all cases and that efficient screening procedures could adequately reduce the number of cases requiring judicial attention. A compromise was reached. If referees are used, they are to be appointed by the judge through a merit system, and are to hold office at his pleasure. Referees must be "suitable persons trained in the law."

New York and Rhode Island — do not provide for referees in their Family Court Acts.

Hawaii — Follows the Standard Act, but non-lawyers are apparently permitted.

POWERS AND PROCEDURES (BEFORE ADJUDICATION)

PRE-HEARING PROCEDURE

1. INTAKE - Investigation and adjustment prior to petition is called "intake". As we recall from the juvenile study, 'intake' is not a legal term, but a general term used for preliminary case processing to determine whether court action should be taken or a matter should be adjusted informally, referred elsewhere, or dropped. Intake in a family court serves the same basic function, adding the screening of adult cases within the court's jurisdiction.

CHILDREN -

Standard Act — The Act explicitly calls for only "preliminary" investigations at intake to determine whether the interest of a child or the public requires court action.

New York — The Act speaks of "conferring with complainants and interested parties" but only cursory investigations are contemplated in children's cases. For children's protection it also provides that no person may be compelled to attend an intake conference or produce papers, and statements made during investigation or adjustment are inadmissible evidence during later court hearings.

Rhode Island — This Act contemplates the entire social investigation of a juvenile matter at the beginning of the case. The law calls for a "thorough investigation" of complaints relative to juvenile matters before formal petition is filed.

Information on the home and environmental situation of the child, his previous history and the circumstances which were the subject of the information are called for, the kind of material other courts gather only after a petition has been filed and a hearing held. Probation officers do not inform children of their right to an attorney. In rare cases, where children or their parents ask to have a lawyer, the practice is to halt investigation until counsel is obtained.

Hawaii — The Act does not provide for right to silence or counsel, but an elaborate warning system is used, and children are advised of their rights.

2. ADJUSTMENT - Although it gives extremely broad investigatory powers at the pre-petition stage, the Rhode Island Act is unusually limited in its failure to grant informal adjustment powers. The other three acts permit informal adjustment of cases with certain limitations: adjustment efforts may not continue beyond specified time limits without judicial review; and under the Standard Act and Hawaii, parental consent must be obtained.

3. SUCCESS IN SCREENING CASES - Rhode Island has no statistics. In Hawaii, exact statistics have not been kept, but the administrator of the service estimates that approximately one-third of all cases are informally adjusted or screened out without court action. Exact figures are not kept in New York, but it has been estimated that for New York City possibly 50% of juvenile cases have been informally settled at the intake stage.

INVESTIGATION AND ADJUSTMENT : ADULTS

Standard Act — Intake personnel have authority in any adult case to inquire into the interpersonal relationships of the members of the family, to ascertain the causes of the conflict, and to extend or secure "suitable measures of help and conciliation...prior to the filing of formal proceedings."

New York — The probation service is authorized to "confer" and "attempt through conciliation and agreement to adjust suitable cases" of support or family offenses. Cases are limited as to time, no person can be compelled to appear at a conference or produce any papers, and statements are inadmissible in evidence. Comparable protection is not extended in cases of support.

Rhode Island — Pre-petition investigations do not take place in adult cases.

Hawaii — The same as the Standard Act. Although Hawaii limits investigations to cases where a judge or one party requests it, in the first circuit intake services are freely offered- even advertised- to the general public. "Take your troubles to the family court; make a phone call or drop by the office, " is the title of an article in a local paper.

SUCCESS IN SCREENING ADULT CASES - There are no statistics for adult cases.

PROBLEMS OF INVESTIGATION AND ADJUSTMENT - It should be noted that informality of a good intake service can pose certain dangers. Broad powers to make preliminary investigations and effect informal adjustments can be easily abused. The initial inquiry into the background of a case may become an unwarranted invasion of privacy of persons not to be tried in court at all. Informal probation may be unjustifiably imposed on a child who has never been adjudicated delinquent. An intake worker may be tempted to coerce a client into accepting some community service - "unless you regularly attend A.A., I will file a petition against you for berating your wife."

Hawaii, on the surface, has made a careful attempt to ensure children's awareness of their rights. The question arises as to how many children will remember later, at crucial points in the judicial process, all the statements that were made to them at intake. They are not repeated again.

Safeguards have been written into the acts which protect an adult's rights to bypass conciliation efforts, if desired, by providing that no adult may be deprived of the right to file a complaint.

POWERS OF COURT AFTER PETITION AND BEFORE HEARING

1. TRANSFER TO OTHER COURTS: CHILDREN

Just as some juvenile court acts empower judges to waive their jurisdiction in extremely serious cases and to transfer certain children for trial to adult criminal courts, the Standard Act and the family court acts of Hawaii and Rhode Island provide that children sixteen or over may discretionarily be transferred to criminal courts that would have jurisdiction over the offense if committed by an adult. New York approaches the "juvenile felon" from the opposite direction. Proceedings involving anyone 15 or older committing a crime punishable by death* or life imprisonment do not originate in the family court at all; only if the criminal court that has jurisdiction makes an order removing the case from its own docket and transferring it to the family court, may the latter assume jurisdiction.

ADULTS

Standard Act — Permits criminal trials in the family court, but if a jury is claimed the Act permits the trial to be shifted to an ordinary criminal court. This is intended to protect the court against having to give an undue amount of time to criminal cases.

New York — There is no criminal jurisdiction, and family offense cases must be transferred to criminal court if the family court concludes that its conciliation procedures would be ineffective.

Rhode Island — The family court judge has discretion to transfer adult cases arising under the juvenile code to regular criminal courts. If jurisdiction is not waived, juries may be imported into the family court. In practice, family court jury trials are seldom heard.

*Depends on whether or not the State will re-instate the death penalty.

Hawaii — The Act follows the Standard Act. In practice, criminal cases are almost always waived to adult criminal court when the charges cannot be resolved by the intake and counseling service at the pre-trial stage. A referee who has been with the family court since its inception could not recall a single criminal trial ever held in the family court.

2. PHYSICAL REMOVAL FROM HOME

Probably the most sweeping power a family court can have, prior to actual disposition of a case, is the power to remove children from their parents' custody and to commit them elsewhere pending court disposition. Juvenile courts have always had such power, usually without attendant bail rights, and family courts, without exception, continue the practice under statutory sanction. Removal is generally permitted in two kinds of cases: where a child has violated or is about to violate some provision of law such that his own or the community's safety requires that he be physically confined, and where a child is living in such dangerous conditions that his own protection calls for temporary care in physically unrestricting facilities. It sould be noted here that detention and shelter care may be authorized under certain conditions before a petition is filed, but the longest period of altered custody for a child usually occurs between the filing of a petition and the hearing, so the subject seems most appropriately dealt with here.

Rhode Island's Act is the only one that bestows absolute power in detention. The Standard Act and New York's Act guarantee the right to counsel and require that the child or his parents be informed of the right. There are also specific time limits except in Rhode Island: detention for one or two months is not uncommon without adjudication, purely for studying a child.

NEGLECTED CHILDREN

The doctrine of parens patriae - the state acts in place of the parent--reaches its purest form in the family courts. When the state intervenes in the lives of such children, it purports to do so to save them from immediate danger or harm. The following statement is in no way meant to deny that some children must be removed from their homes (or be permitted to leave), but there are indications that in some cases, removal might be more harmful than good.[8]

Constitutional limitations on the power to remove children from "harmful" surroundings have not yet been articulated by the courts, but there have been some court cases in the country determining whether heresay evidence can be used and when, etc., and will be interesting to watch.

FURTHER INVESTIGATIONS

In Rhode Island, we saw, complete social histories are collected prior to petition in juvenile cases, and they suffice as background during the rest of the case unless the judge specifically orders further study. In the other family courts more revealing background studies are supposed to be conducted after a brief preliminary investigation determines that a petition should be filed.

1. The General Social Study - The Standard Act says that, "The investigation shall cover the circumstances of the offense or complaint, the social history and present condition of the child or litigants and family, and plans for the child's immediate care, as related to the decree; in cases of support, it shall include such matters as earnings, financial obligations, and employment."

The timing for conducting social studies vary among the three states. New York mandates that the social study be conducted only after a fact-finding hearing in all adult and children's cases except those of support. These provisions complement New York's scheme of separating the judicial process into two parts: first a fact-finding to determine if an act has been committed, then a dispositional hearing to determine the best disposition once the court has made a positive finding of fact. The purpose of barring social studies prior to the first hearing is, of course, to ensure that the judge considers only whether an act has been commited, not whether a person needs treatment, in making his findings of fact. This situation contrasts sharply with the practice in children's cases in Rhode Island, where the judge may see a child's complete probation investigation even before he decides whether a petition should be filed.

2. Mental and Physical Examinations: Children and Adults
Mental and physical examinations are authorized by all the Family Court Acts, though not in every kind of case.

Standard Act — Broad testing powers for children have been enacted. The Act sanctions placement in a hospital or other suitable facility for such examination. Mental or physical examination of adults is confined to cases where "ability to care for a child before the court is at issue," and presumably the court has no power to commit an adult to an institution for the testing it has ordered.

New York — Careful to limit the family court's power in most instances, New York gives sweeping powers for physical and mental examinations in both juvenile and adult cases. Courts have their own mental health services, and can usually rely on their own regular staff for the diagnostic services they need. As a result of a study as to how best to utilize the services of a court psychiatrist, a program was set up in one of the court's juvenile sessions. Psychiatrists were brought onto the premises to be made immediately available to probation officers and to judges during the entire time the court was in session. Intake evaluations were done "on the spot", through psychiatric interviews of children and their families at the court. Questions posed to consulting psychiatrists had to be precisely formulated in order to assure that the problem was indeed a psychiatric one rather than a social or administrative one. It was required that the referring probation officer or judge meet with the consultant both prior to referral to talk over the question being asked, and after referral to discuss the implications of the psychiatrist's evaluation.

At least three positive gains were recorded from the experiment. Contacts between psychiatrists, probation officers, judges, clients, lawyers and others were measurably increased. Consultations could usually be provided on the same day requests were made, and the number of children sent to detention was much reduced. Finally, perhaps most important of all, introducing psychiatrists at the initial stages of cases promoted more accurate and sensitive diagnoses.

This is also apparently the only state where the staff meets on a regular basis.

Rhode Island — Testing power is almost without limit: "any party within the court's jurisdiction may be examined...and additionally children and adults within the purview of the juvenile code may be ordered to be examined." The court uses its powers of examination mostly in children's cases. Adults are almost never ordered to submit to the broad powers of testing that the court possesses. In actuality there are few adequate resources available for psychiatric testing.

Hawaii — The Act reads the same as the Standard Act with one difference. "No child under the age of twelve shall be adjudged to come within the provisions of...(the section concerning law violators) without the written recommendation of a psychiatrist..." This provision was written in the Act to protect against attempts to incarcerate young children.

3. Special Investigations in Divorce and Custody Cases
The Family Court Acts refer to special investigations in divorce and custody as family counseling services. This service is to "investigate the circumstances as directed by the court." In domestic relations cases, Rhode Island has a special form to fill out. Most questions are designed to yield biographical, historical and financial information. If marriage counseling is ultimately sought by the parties to the action, the aides' reports are used as guides by the marriage counselors. If divorce is finally pursued instead, the financial information collected is taken into account by the court.

4. Custody Cases
These cases are handled in much the same way as in our own state.

5. Conciliation Proceedings
Court-sponsored marriage counseling is very much in vogue. All the Family Court Acts except the Standard Act reflect its current popularity. A report from the American Bar Foundation shows that in 1970 there were at least 154 marriage counseling services which had a formal connection to courts exercising divorce jurisdiction.

Statistics given by the three family courts under consideration are estimates, and possibly imprecise and inaccurate. In any case "reconciliation" statistics are inherently misleading, since reconciliations are often only temporary, and follow-up studies are seldom if ever done. Figures in this area have to be critically examined. What kind of clients were selected for counseling? How long have the alleged reconciliations lasted? Is there any way to distinguish these cases from the large percentage of divorce petitions that are voluntarily dropped by the parties without counseling?

Aside from the significance of reconciliation figures, the view that the success of a marriage counseling service is measured by the number of reconciliations effected is not one with which all professional marriage counselors agree. Some see their chief function as getting parties to understand themselves and the problems they would have to conquer if they stayed together; others tend to concentrate on individual therapy designed to eliminate personality problems causing break-ups of the marriage; still others focus primarily on the adjustment problems that may be encountered after divorce.

Althouth marriage counselors do not always agree on the extent to which they are morally responsible for trying to preserve a marriage, most of them feel their goal is helping two people to maintain personal integrity --even if it means helping them to separate more gracefully from each other. This last point was specifically mentioned by Judge Riggs of the Johnson County District Court, John Johntz (an Olathe attorney), and Professor Schulman in his report,

To the extent that family courts expect a major emphasis from counselors on merely lowering the divorce rate, there have been conflicts of philosophy between judges and counseling staff.

PROTECTIVE POWERS BEFORE HEARING

Pre-hearing protections against publicity for children are included in some of the family court acts; where they are not provided for by statute, protective practices have nevertheless developed. These protection measures are: forbidding childrens' names to be published in the newspaper, juvenile police photographs, fingerprinting, etc.

HEARING PROCEDURE (DURING ADJUDICATION)

It may seem surprising that the family court acts contain fewer procedural directives for the trial of adults than for the conduct of children's hearings. Historical roots of the family court acts provide a partial explanation. Basically the acts consolidate "adult" jurisdiction, formerly scattered in a wide variety of courts, with "juvenile" jurisdiction formerly vested in juvenile courts. In the pre-existing juvenile courts, procedure was often lax or not prescribed at all, so that some of the recently written family court acts attempt to cure that deficiency in line with modern thinking on juveniles' rights.[9] Family cases involving adults have always been governed by more or less fixed procedural rules, and these have been carried over into family court procedure unless specifically changed or repealed.

There are some special provisions applicable in adult cases. The Standard Act and Hawaii Act avoid the necessity for choosing among applicable criminal protections since they bestow criminal jurisdiction outright. The procedure and disposition applicable in the trial of such cases in the criminal court are made applicable to trial in the family court. Rhode Island's court is given criminal jurisdiction, the right to trial by jury applies, and such trials shall be held in the same manner and subject to the same provisions as jury trials in criminal prosecutions in the superior court.

Despite the restriction of the New York's Family Court to civil cases only, certain cases have a quasi-criminal flavor. The legislators saw fit to extend some protections traditional in criminal cases: the court must advise adult defendants of the right to counsel in neglect, support, termination of parental rights, and family offense cases, and the respondent in a paternity case cannot be compelled to testify against himself. On the other hand, the ordinary criminal safeguard of trial by jury is specifically withdrawn in support and paternity cases.

Special provisions have been provided in children's cases because some of the more relaxed practices of juvenile courts have recently been held unconstitutional in certain delinquency cases. (See In re Gault).[10]

1. Notice Of Charges - Petitions under all four acts must outline the facts that bring a child within the purview of the family court act. But none of the acts requires that a petition name the specific rule of law alleged to have been violated.

This deficiency should be remedied, for without this requirement, it is questionable whether family court petitions will sufficiently assure respondents of "notice", in advance of the hearing, of the specific rule of law invoked against them in order to prepare an adequate defense.

2. Privilege Against Self-Incrimination - The Standard Act fails to extend the privilege against self-incrimination though it does say that the judge should explain to the child that he need not be a witness against himself. New York and Hawaii guarantee the right to remain silent, but Hawaii does this only at the intake stage. Rhode Island, although not required to do so, informs children of the self-incrimination privilege at all hearings.

3. Right To Counsel - Children and their parents must be informed, under the Standard Act and the Acts of Rhode Island and New York, that children have a right to be represented by counsel and that the state will furnish an attorney if they cannot afford one. Hawaii's Act fails to require the court to inform children of the right to state-supplied counsel if they cannot afford a private attorney, thus falling short of the requirements of Gault.

Family court clients are quite likely to be ignorant of the advantages of having an attorney. If the judge is luke-warm or noncommittal on the advisability of obtaining a lawyer, clients may be reluctant to ask for one. For just such reasons, the National Crime Commission recommended that "counsel...be appointed as a matter of course where coercive action is a possibility, without requiring affirmative choice by child or parent."

Court-appointed lawyers, as has been pointed out in numerous research studies, leave much to be desired. Typically the lawyer has not met his client before the court hearing, knows nothing about the child's social history except what is contained in the probation report, listens to the judge's interrogation of a child, asks one or two questions, and agrees with whatever the judge decides. This may not be so much the fault of the lawyers as it is the system under which they work.

Real pioneering in legal representation is being done in New York City, where the legal aid society's permanent law guardian staff has had a chance to develop and refine its philosophical approach and techniques. One-fifth of the staff are recent graduates from law school; a nucleus of four or five attorneys remains with the society year after year to train and indoctrinate new young attorneys. Salaries are low, but the staff directors say that the society has no trouble in attracting top students from the best law schools. These lawyers are called law guardians, and have adopted a policy of advocacy to insist on all available rights and privileges unless it seems unwise for tactical reasons, and maintain complete independence of identification from the court. As lawyers defending a client, they identify with the child, and being trained in adversary proceedings, utilize techniques to the fullest.

Judges found the presence of law guardians difficult to accept at first, not to mention other court personnel. For example, when law guardians first started invoking the right to remain silent, some judges accused them of teaching children to lie. Indeed, the attorney in charge of the program still considers one of the most important qualities of the good law guardian to be able to stand up under judicial pressure.

Law guardians also take part in dispositional hearings, much to the disgust of the judges, probation officers and clinical staff. They have compiled their own manual of agencies and institutions, and have taken the position that their duty in delinquency cases is to keep children out of institutions at all costs.

4. The Other Side - The presence of counsel in the courtroom introduces a novel question as to the conduct of proceedings. Before, the judge asked all the questions, acted as prosecutor, defense attorney and ultimater trier of fact. Now, with an attorney by the child's side, the hearing takes on more of the flavor of a true adversary proceeding. Who now represents the state?

Only one of the Acts attempts to answer this question. New York provides that the judge can request counsel or the county attorney to represent the state when requested. Other courts rely on county attorneys' offices, etc. Without someone to represent the state, the duty falls on the probation staff, at least in Hawaii. Rhode Island used the city solicitor or the police who appear in the prosecutors' shoes.

PROCEDURE AND PROTECTIONS BEYOND THE REQUIREMENT OF GAULT

The family courts under study all carry on the practice of conducting children's hearings in an informal way. Rhode Island is the only state that does not specifically sanction such informality, and in none of the states does the judge wear robes. The very informality of the hearing may well tempt the judge or referee to slur over certain procedural requirements imposed by the governing Family Court Acts. This has certainly happened in New York where appellate courts have had to reverse family court decisions on the ground that certain statutory procedures were not observed.

Many procedural questions not answered by some of the family court acts and not yet dealt with by the Supreme Court, with the exception of trial by jury, are: limitations on hearsay and other evidence, applicability of the fourth amendment, prohibition of involuntary confessions, and standard of proof in juvenile proceedings. How are these problems dealt with in the three Family courts?

1. The Right To Trial By Jury - As in most juvenile courts, no statutory right of trial by jury is extended to children in family courts. This right was not extended in Gault or was it deemed necessary by the U. S. Supreme Court in a later case. Juries are specifically abolished by Hawaii and the Standard Act, they simply are not used in New York, and Rhode Island's statutes are silent on the issue.

2. Limitations On Hearsay And Other Evidence - Whether and to what extent the states may admit hearsay or other testimony normally inadmissible under the rules of evidence is left unclear by the decision in Gault.

Standard Act — There is no explicit provision on evidence admissible in childrens' cases. Presumably the traditional latitude of juvenile court judges to admit all evidence remains.

Rhode Island — Great laxness of rules of evidence remains. The initial referral of a child's case, which is customarily read aloud at the beginning of a hearing, contains the entire probation investigation. The judge hears the case with hearsay material through-out.

New York and Hawaii — "Competent, material and relevant" evidence may be admitted. "Evidence admissible under rules applicable to the trial of civil causes" only may be heard. The latter is used when the judges in both states are deciding whether an act or condition occured. However, once the facts have been found, more latitude is given at the dispositional phase. Then probation reports or other hearsay-filled documents may be introduced.

If an adjudication of delinquency rests solely upon materials drawn from the probation report, it may well be unconstitutional under the holding of Gault. This is not so much because the hearsay rule has been raised to the status of a constitutional requirement in a delinquency case, but because of the holding in Gault that a finding of delinquency, in the absence of a valid confession, can rest only on evidence given under oath by witnesses subject to confrontation and cross-examination.

3. Applicability of the Fourth Amendment and Mapp Vs. Ohio*

The Gault case does not indicate whether the fourth amendment's right to be free from unreasonable searches and seizures and the exclusionary rule barring evidence unreasonably seized, are applicable to children's cases. Nor is the problem dealt with by the Family Court Acts. Because children's proceedings are civil in nature, a preponderance of the evidence** rather than proof beyond a reasonable doubt, is all that is needed by the terms of two Acts, New York and Hawaii, to establish that an act was committed.

The U. S. Supreme Court, in 1967, did make it clear that the fourth amendment extends a general bulwark of privacy which is not necessarily tied to criminal law. If adults are protected by the fourth amendment in civil as well as criminal cases, then the mere denomination of juveniel proceedings as "civil" cannot decide the question of fourth amendment rights.

4. Prohibition of Involuntary Confessions

With regard to involuntary confessions, the Gault case leaves little doubt that the constitutional prohibition will be applied eventually to juvenile delinquency proceedings. The U. S. Supreme Court emphasized its distrust of the reliability of children's "confessions," and cited approvingly recent cases holding that involuntary confessions must be excluded in delinquency proceedings.

Only the family court judges in New York have actually begun to bar children's confessions taken in violation of standards applicable to adults. Decisions to the contrary have been reversed by appellate courts.

5. Standard of Proof

The law guardians in New York City have gone one step beyond seeking to protect children with all procedural safeguards constitutionally required for adults.

* Mapp v. Ohio, 367 U.S. 643(1961). Exclusionary rule barring evidence unreasonably seized.

** Preponderance rests with that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

They have attacked the Family Court Act provision that determinations of fact need only be based upon "a preponderance of evidence" in delinquency proceedings. The U. S. Supreme Court has never held that "proof beyond a reasonable doubt" is constitutionally required in adult criminal trials, but every jurisdiction in the country uses such standards. Whether or not a more strict standard of proof will eventually be imposed by that court in delinquency proceedings, some commentators have advocated the more strict standard on policy grounds.

DISPOSITIONAL POWERS OF THE COURTS (AFTER ADJUDICATION)

ADULTS

Since family courts are designed to alter jurisdiction and procedures more than to change a state's existing substantive law, dispositions previously applicable in adult cases (e.g., divorce granted, support order imposed) logically fall within the dispositive powers of the family court judge.

Standard Act — Explicitly empowers the Family Court to make "any order or judgement authorized by law" including criminal penalties where appropriate in adult cases. The Family Court may also fashion protective orders with conditions of behavior attached in support of any order or decree for support, and the court may order any adult who is contributing to a child's unlawful behavior or neglect to cease such acts.

New York — There is no provision vesting existing powers "authorized by law" in the Family Court Act. The Act enumerates the court's specific powers: the court may order the custodian of a neglected child to observe reasonable conditions of behavior; the court may impose orders of support in paternity and support cases, and may issue orders of protection with reasonable conditions of behavior in support cases; the court may order an absent defendant's property in a support case sequestered and sold to support the defendant's family; and the court may issue protection orders in family offense cases, or may suspend judgement for six months in such a case or put the defendant on probation for not over a year. The order of protection might include: staying away from the home, visitation rights or to give proper attention to the care of the home.

Rhode Island — For adult cases brought under the juvenile code, the Family Court has the power to impose such sentence as the law provides, suspend sentence, place on probation, revoke or continue suspension and exercise such additional power over the defendant as is exercised by the Supreme Court in other criminal cases.

Hawaii — Same as the Standard Act.

CHILDREN

The powers of intervention in family life sanctioned by the family courts are broad. All the acts permit some dispositions beyond probation and commitment. The Standard Act and Hawaii allow medical and psychiatric treatment to be ordered for children adjudicated by the court. Rhode Island allows the court to order medical or surgical care for children before the court. New York's Act says that clinic attendance and therapy are permissible terms to impose on probation orders.

Despite the broad dispositions available in children's cases, most of the theoretical possibilities are limited by practical considerations. The inadequacy of local resources for children with problems (or problem children) that has long plagued juvenile courts persists for the family courts. A New York judge has said, "The lack of appropriate services and facilities has contributed more than any other single factor to negating the purpose of the court".

POST-HEARING PROCEDURES

1. Enforcement - Enforcing children's orders by means of ordinary contempt* machinery would belie the non-criminal approach of the family court, so orders directed at children are usually enforced informally by the threat of further court action. Orders concerning adults are, however, characteristically enforceable by invoking a contempt order. New York and Rhode Island also specify additional criminal sanctions. New York leans heavily on imprisonment for willful failure to obey a probation or protection order in a neglect case; for willful failure to obey a support order, etc. Rhode Island provides for fine or imprisonment for willful failure of a child's legal custodian to obey a court summons.

2. Judicial Review - Although all the family court acts guarantee a right of appeal, the pendency** of an appeal generally does not stay a family court order unless a higher court so directs. Because of the law guardian system in New York City, that seems to be the only place where cases are appealed.

   Financial limitations of family court clients may effectively nullify the theoretical right of appeal. Though all the Family Court Acts, except Hawaii's, guarantee a lawyer at public expense for children at the family court hearings, only New York provides that a law guardian's appeal costs may be charged to the county.

   In order for the right to judicial review to be meaningful, there must be some form of record of the proceedings. Stenographic notes or mechanical recordings are always taken in adult and children's hearings in Rhode Island and New York. Hawaii's Act, in which the above is also mandated, does not always carry it out. During referee hearings, the record in the ordinary child's case consists simply of the referee's handwritten notes.

PROBLEMS AND SOLUTIONS

At this point, the reader might weigh the evidence as to whether there are more problems than solutions or vice versa.

In Rhode Island and Hawaii where nearly total family jurisdiction has been bestowed, jurisdictional disputes have practically disappeared.

As for elimination of conflicting decisions, experience demonstrates that judges in a given family court system do not achieve harmonious results any more than do judges of totally different courts.

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* Contempt of Court - defiance of a court order, punishable by the court without trial of jury

** Pendency - The state of an action after it has begun, and before the final disposition of it.

Unity of practice and procedure seems to be a function of the administrative scheme under which a family court operates. In New York, distant as the family courts are, one effective means of unification has been supplied in the rule-making powers of the Administrative Board of the Judicial Conference, which is advised and kept informed by the Family Court Rules and Advisory Committee.

There is no evidence to say whether supervision, training and recruitment of staff have shown any improvement attributable to the establishment of family court fiat. Significant changes and new categories of auxiliary personnel have failed to materialize. Hawaii on the other hand, seems to have efficiently functioning programs for supervision and training of staff, but it should be noted that prior to the family court, Honolulu's juvenile court already had very much the same standards and training policies.

Thus it seems that family courts have led to some improvements in judicial administration, but not to all the improvements that have been broadly claimed. Moreover, family courts still labor under many of the problems faced by most juvenile courts: lack of status, inadequate financing, lack of staff, poor physical facilities, lack of dispositional resources. Solutions to these problems are not easily found.

Family court clients in the three courts under discussion do not voluntarily solicit services. This might be because lower income groups constitute the family court's largest group of clients.

Judge Riggs, in an interview, mentioned other problems concerning judges. He said that if a judge presided over a family court for more than a year or two, he might tend to lose his expertise by specialization. He might also become tyrannical or calloused, and the stress could possibly make him become emotionally ill. A solution to these problems was suggested by Judge Riggs. Family court judges could be assigned or appointed on a rotating system. Finally, the judge said that unless family courts are adequately funded and staffed, it might be better not to have them at all.

Much could probably be accomplished to improve family courts. A sensible framework for efficient and humane processing of human problems does exist in family courts where the concept of integrated jurisdiction is fully realized. If family court goals were realistically limited to providing better judges, better investigative services, speedier access to the courts, and more protection of litigant's rights, family courts could become more dignified and respected institutions. That much alone would be important, especially for those in our society whose contact with the law has already been disillusioning. These goals could be applied, as well, to all courts in our state.

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GLOSSARY OF TERMS

ADJUDICATION - A judgement or decision of a court.

ADJUDICATOR - A judge or arbitrator.

ADJUSTMENT - Arrange or settle before adjudication. There seems to be no legal definition of the word as used in this study, but might be compared to informal adjustment of some juvenile matters in the Kansas juvenile court.

CONCILIATION PROCEEDINGS - Court-sponsored marriage counseling.

CONCURRENT JURISDICTION - The jurisdiction of several different courts (tribunals) each authorized to deal with the same subject-matter.

DISPOSITIONAL POWERS - In general, family courts are designed to alter jurisdiction and procedures more than to change a state's existing law. These powers depend upon the jurisdiction conferred upon the court or the judge by the State.

EXCLUSIVE JURISDICTION - The term exclusive may be interchanged with special. This means that a court has special jurisdiction for a particular purpose.

FAMILY MATTERS - As used in this study, the phrase "family matters" means legal controversies in which a person is before a court for some offense or problem arising out of his status as a member of a family unit.

FOURTH AMENDMENT - Search and seizure- "The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT - Equal protection - "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

INTAKE - The process of examining and evaluating the circumstances of every case brought before the family court in order to determine the course of action in the case with particular reference to the persons involved. Such action may involve referral to another agency, mental treatment, judicial action, or release with no action taken. It demands broad knowledge of community resources, ability to gain new client's confidence quickly and the ability to make sound decisions on the basis of short contacts.

JURISDICTION - The power and authority constitutionally conferred upon a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or admitted, referred to the court for decision, and authorized by law to be the subject of investigation or action in favor of or against a litigant.

LITIGANT - A party to a law suit. One engaged in litigation.

PETITION - A written application for an order of court or for some action by a judge. It also is the same as filing a charge.

REFEREES - Referees or masters are sometimes used in civil cases to expedite the business of the courts. Basically they are non-judges acting in a semi-judicial capacity, saving judges' time by hearing parties' cases and making findings and recommendations to the court. The court usually adopts the findings as its decree. Various safeguards are extended where referees are used. The appointment of referees to juvenile court staffs is authorized in approximately one-third of the states. California is one of these states.

SCREENING - There is no legal definition of the word, but it is used in the same manner as the word 'adjustment'.

STANDARD OF PROOF - The Supreme Court has never held that "proof beyond a reasonable doubt" is constitutionally required in adult criminal trials, but in fact every jurisdiction in the country uses such a standard in criminal trials.

BIBLIOGRAPHY

1. See League of Women Voters of Kansas : Study of Family Courts, Sept.1964.
2. Ibid.
3. Ibid.
4. The Judicial Article of the Constitution of the State of Kansas.
5. See R. E. Schulman, Incompatibility: A "New" Approach to the Dissolution of Marriage. An Adaptation of Professor Schulman's address delivered at the Kansas University School Of Law. 1972.
6. See Judicial Council Bulletin, Summary of District Courts By Counties, Table A-5. -Types Of Civil Cases Commenced-Year Ending June 30, 1966.
7. See League of Women Voters of Kansas, Juvenile Services And State Facilities In Kansas: A survey of the Kansas Juvenile Code, Aug. 1972, pp. 16-20.
8. See Journal of Columbia Law and Social Problems, The Relationship Between Promise and Performance In State Intervention In Family Life.Vol.9-No.1, Fall, 1972.
9. Jonathan A. Weiss, The Emerging Rights of Minors, Toledo Law Review, Vol. 4,No. 1, Fall, 1972.
10. See League of Women Voters of Kansas, Juvenile Services and State Facilities In Kansas: The Legal Status of Juveniles - August, 1972, p.2.

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