THE FAMILY COURT

by

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Judge Alexander is right when he says that establishing family courts in the United States resembles an obstacle race But he underestimates the number and difficulty of the obstacles. His concept of a family court is not only inconsistent with traditional legal doctrines of divorce but faces other problems that may prove more foreboding. Serious obstacles are to be expected whenever drastic changes are sought in legal institutions, and he proposes drastic changes.

The Alexander version of a family court is a trial court, or division of such a court, with exclusive jurisdiction over substantially all types of family disorganization cases within a county or judicial district; and approaches its cases with an interprofessional attitude reflecting the aims and methods of the legal profession, social work and psychiatry. In addition to adjudicating disputes, it seeks to determine the real causes of family problems in cases before it, and help work out permanent solutions to them. Legal standards of fault and punishment are subordinated; and the court does what appears to be best for the parties considering all aspects of the problem, their capacities to solve it, and the resources of the community that might be of aid. The advocate system and formal rules of evidence and procedure are de-emphasized, and the fact finding process is supplemented by reports of factual investigations made by neutral court employees. Family court personnel includes, among others, investigators and probation officers who make independent investigations for the judge in all kinds of cases, counselors that do marriage counseling and child guidance in cases be-

fore the court, and custodial personnel for children temporarily being cared for by the court.

In the United States, family court procedures and attitudes have long been common in dealing with dependent, neglected and delinquent children ,and to a considerable extent with adoption. But for other kinds of family law cases they substantially depart from firmly established institutional and doctrinal patterns. The departures are most striking in divorce litigation.

Great popular and professional interest in the family court idea has developed in recent years. These courts seem to offer more hope for furthering family stability than such current recommendations for modifying formal legal doctrine as a uniform national divorce statute, stricter marriage laws, cooling-off periods, and changes in divorce grounds and defenses. There are limits to the effectiveness of formal legal doctrine, and in marriage and divorce law these limits are narrow. Stricter statutes are likely to be ignored or circumvented, as are many existing statutes, particularly those pertaining to divorce. Demands for easy marriage at a relatively early age, and for divorce to anyone who wishes are too strong for formal legal doctrine to forestall. Counseling, guidance, and understanding — attributes claimed for family courts — have greater appeal. Also, it is quite evident that there is life left in many marriages even after divorce proceedings have been started. Frequent divorce suit dismissals due to reconciliation are proof of this. If these reconciliations occur without aid from the courts or anyone else, would not there be more of them and would not more of them be permanent if the parties had the help of skilled counselors?

Despite the interest in the family court idea, slight progress has been made in establishing such courts. Little has been done to provide courts with the added personnel necessary to make the family court idea work. Integrated jurisdiction has been the most widely adopted family court feature ; marriage counseling, the least widely adopted, only a few courts having trained marriage counselors on their permanent staffs. Data on the success of family court innovations where adopted are meager, consisting of limited statistics and the sketchy impressions of observers. The outstanding

impressions are of understaffing, but of considerable enthusiasm on the part of judges and court personnel where a sincere attempt has been made to carry out family court objectives.

The hesitancy that legislators and judges have shown to creating family courts is due to many factors in addition to the disregard of orthodox fault concepts in the family court idea. An important factor in this hesitancy has been suspicion and opposition from within the legal profession. Many lawyers and judges believe that social workers, psychiatrists and marriage counselors are a dubious or even evil influence on our society and that they certainly have no proper place in the judicial system. Generally such beliefs are based on uninformed prejudices, as these other disciplines are outside the ordinary lawyer's and judge's realm of training and experience. In addition, most lawyers consider the advocate system an essential element of the judicial process, and react unfavorably to proposals that will eliminate or reduce its significance. Where this is accompanied by a possible decrease in the role of lawyers in profitable areas of practice such as divorce and child custody, opposition is heightened. Another obstacle to adoption of family courts in the shortage of competent investigators, probation officers and counselors. This is largely a problem of appropriations. If local and state governments were willing to pay adequate salaries, such personnel would become available. But the prospects of this are discouraging. The lack of competent personnel is related to another major family court obstacle — cost. An adequately staffed family court staff is expensive. Demands for increased local and state government services of all kinds are great, resistance to increased local and state taxation is tremendous, and the chances of federal grants-in-aid for family courts are slight. Inflationary wage scales and pressures for better schools, roads, police protection, mental hospitals and public assistance care make it extremely difficult to finance new government services such as family courts. And if the government does increase its efforts to improve marriage stability, there are institutions other than the courts that contribute to marriage stability and are in need of added funds. It is arguable that if government resources for aiding marriage stability are limited, more will

be achieved by channeling these resources into school and college instruction in marriage and the family, pre-marital counseling, and child guidance than allocating them to the courts. Still another family court obstacle is the questionable constitutionality of some family court procedures, including required submission to marriage counseling, use by the courts of investigators' reports in deciding family law cases, weakening of the advocate system, and extended discretion of judges. Appellate judges often come from that segment of the legal profession with the least experience in family law administration and the greatest suspicion of family court innovations. Constitutional rulings are likely to reflect this background. Lastly, an obstacle to creation of family courts is the lack of proof that family courts can be established that would be an improvement over presently prevailing methods of dealing with family law cases. Its superiority can be convincingly proven only by more intensive experimentation with the family court idea.

Family courts offer so much promise that they merit wide adoption in the United States, at least on an experimental basis, and greater efforts should be made to overcome obstacles to their adoption. Obstacle removing steps that should be taken and that those favoring family courts could force through in the immediate future if they made a concerted effort are these:

(1) Where support for family courts is strong, greatly increased coordination should be developed between courts with jurisdiction over family disorganization cases and public and private social agencies that do marriage counseling, child guidance, and social casework. Some family court functions might be put into effect with little cost to the courts if existing local facilities were made available to the courts. This would require careful liaison and a willingness on the part of the agencies to surrender to a court some control over their procedures.

(2) In a few well-suited and willing localities, carefully controlled family court experiments should be conducted, financed by private foundation grants if possible, with the results and

methods closely observed, and with a full report eventually published.

(3) A training program for family court personnel should be developed by some American university, preferably a combined program in which the faculties of law, medicine, social work, sociology and public administration cooperate. It could be for the full academic year, but would probably be more successful if offered as a two or three week summer workshop.

(4) Materials on family courts should be prepared for use in law school courses on family law. These would be most effective if included as part of a family law casebook. The law schools have neglected to prepare their students for intelligent evaluation of family courts or participation in much of the work of these courts.

(5) An American Bar Association section on family law should be established and should act as a forum for the interchange of ideas on family courts.

(6) A professional association of juvenile, domestic relations and family court employees should be formed by proponents of family courts to develop and improve these courts. It should operate similarly to such organizations as the National Legal Aid Association and the National Association of Housing and Redevelopment Officials.

Family stability is an acute problem in most parts of the world; and in most countries the courts are important institutions for maintaining family stability. Other countries besides the United States are seeking to make their courts more effective in dealing with family problems by experimenting with new procedures and personnel. In some of these countries, conditions appear to be more favorable for the development of family courts than in the United States. The obstacle race may be easier to run, and they may far outdistance the United States in their success with these courts. We should folow closely the progress of family court movements abroad.