

THE CASE FOR THE FAMILY COURT

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Students of juvenile delinquency for many years have advocated and urged the establishment of the family court, and both the National Probation Association and the American Institute of Criminal Law and Criminology have recommended its introduction. This advocacy has been based on the conviction that the family must be made the unit of study in any investigation of juvenile delinquency. Family courts are at present in operation in a number of places in the United States. Notable among these are the courts in Cincinnati, Ohio; Detroit, Michigan; Portland, Oregon; and Norfolk, Virginia.

In any discussion of the family court it is well to have in mind the modern point of view regarding juvenile delinquency. The principal elements in this point of view may be briefly summarized as follows:

(1) The term *juvenile delinquent* merely denotes a child who has been acted upon officially by a public agency, and does not signify a type of child fundamentally different from non-delinquent problem children, or from those children whose problems have not been officially recognized. No one has a monopoly on goodness or badness. No sharp line of cleavage can be distinguished between the delinquent and the non-delinquent. Those children whose problems are most conspicuous and who, therefore, are quickly brought to the attention of the court, may be far less serious cases than those who are unobtrusively developing deeply embedded pathological tendencies.

(2) Juvenile delinquency is a natural product. It results from the operation of causes in the child's heredity and environment, and, as such, it involves the adjustment of a person in a situation. This adjustment may be looked upon as an educational process during which habits are built up. As an educational process it depends upon instruction, approval, companionship, and discussion, in which relatives, friends, and companions participate, encourage, stimulate, praise, and blame. Like all education it begins in a small, trifling,

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playful way, usually in group activity, and becomes progressively more serious as attitudes harden and skills develop.

(3) Juvenile delinquency involves psychological processes which are not different from those of non-delinquent behavior. Through delinquency the child seeks to satisfy the urges that every child has, wishes for recognition, security, affection and adventure. However, unlike the non-delinquent child, the delinquent expresses these wishes in terms of a set of values which society has stigmatized as unacceptable. Change a boy's surroundings and he may find recognition and excitement in stealing second base instead of pilfering trinkets from the "five and ten."

(4) The vital importance of care and skill in the handling of juvenile delinquents is clearly recognized. Clumsy apprehension and blundering imprisonment may so dramatize the delinquency of a child that his whole life will be permanently changed. By publicly branding him as "evil," society may cause the delinquent to associate himself with the very gang whose influence it is trying to destroy. Human life is group life. Make it difficult for a child to live in law-abiding groups by tagging him as criminal and he may be driven into the comradeship of law-violation groups. This, of course, is exactly what society should be striving to prevent.

Furthermore, every time the apprehension of a child throws him into unregulated contact with others who have violated the law, there is an increased stimulus in the education for crime. The mere assembling of young delinquents, each with different experiences, each having just been through the harrowing and dramatic processes of arrest, trial and conviction, brings to a focus the most vivid aspect of their recent life. Crime becomes the thing to talk about. The young delinquent becomes acquainted with new crimes. Stupid herding in institutions may thus cause a concentration of experiences which further stimulate delinquent interests.

(5) It follows logically from the preceding points that the most fruitful approach to juvenile delinquency is through the various groups in which children are introduced to the customs and morals of their country. It is in such groups as the family, the playgroup and the neighborhood that the child's basic behavior patterns are acquired. Of these the family is by far the most important. In the intimate give and take of family life, bonds of sympathy are created which form the foundation of a child's character. Given a wholesome and enriching family experience, a child becomes well fortified against

the perplexing problems that will later confront him during adolescence and adulthood.

It is in accordance with this point of view that the most progressive juvenile courts strive to function. Since the family court is no more than the juvenile court with an extended jurisdiction, anyone interested in the establishment of the family court should have a clear understanding of the characteristics of the juvenile court, in its ideal form, which give it superiority in the handling of children's cases. Such characteristics may be described as follows:

(1) All hearings are private and informal, and conducted in special closed chambers. This keeps curiosity seekers from complicating the trial, tends to prevent contentiousness, and eliminates the dramatization of the child's offense. The procedure is intended to approximate the conduct of a wise parent dealing with his child, and every attempt is made to prevent the child from thinking of himself as a criminal.

(2) The purpose of the court's investigation is to determine the general condition and character of the child and not merely to ascertain whether he is guilty of an offense. Emphasis is thus placed upon the causes of his delinquency.

(3) This information is made the basis on which the decision of the court is made. A course of individual treatment and re-education is in this way made possible whenever the existing conditions show the need of such action. Every child is considered as a potential asset to the community, and the state assumes a responsibility for him. Treatment in a specific case is determined by the needs and problems of the particular individual without reference to other actual or potential delinquents.

(4) Elaborate machinery is provided for securing and utilizing the necessary information regarding the character of the child. A special judge is selected to conduct the hearings of the court. He must have not only a knowledge of the law, but also a clear understanding of the principals of psychology, sociology, and mental hygiene. In addition, there are regular probation services supplied by carefully trained probation workers, both for investigation and supervisory care, detention quarters separate from those provided for adults, special court and probation records, and mental and physical examinations.

It has already been explained that the family court is the juvenile court implemented with additional power and a larger area of activity.

This means that the family court might be given the power to handle not only cases of dependency, neglect, and delinquency (already within the jurisdiction of juvenile courts) but also (1) cases of adults contributing to dependency, neglect, and delinquency, (2) cases of desertion and nonsupport, (3) paternity cases, (4) all matters pertaining to adoption and guardianship, (5) divorce and alimony matters, and (6) minor offenses committed by a person against another member of his family.

Those that have advocated the extension of the juvenile court's jurisdiction, and thereby the establishment of the family court, have argued that:

(1) The creation of the family court is in keeping with the modern point of view regarding juvenile delinquency causation. It has been pointed out how important the family is in the moulding of a child's character. He tends to reflect the forces that operate in the family situation. In order to understand his behavior, one must understand his family. In order to re-educate the juvenile delinquent, one must re-educate his family. The family court makes this possible for under its jurisdiction the family, not the child, becomes the unit of study and supervision.

(2) Moreover, the establishment of the family court has deeper meaning than merely the treatment of delinquency. The family is potentially a most effective agency in training responsible, loyal, and industrious citizens. However, the family, like other parts of our culture, has been subjected to severe strains as a result of rapid social changes, and its influence in our national life has declined. The family court, through its supervision and guidance, is in a strategic position to strengthen the institution of the family and to aid in its reorganization.

(3) The family court makes possible a unified policy of dealing with all phases of domestic relations. There is not one theory or line of procedure regarding adults which is nullified by another concerning juveniles. On the other hand, since the family is treated as a unit, all methods reinforce and strengthen one another.

(4) Much overlapping in court procedure is eliminated in the handling of cases in a family court and through this centralization is achieved greater efficiency. Whatever information has been obtained regarding the problems of a particular family is immediately available for utilization in one court, and, consequently, whatever decision is made in a given case benefits by the direct knowledge of what has

been done before. To have all data concerning a family assembled in one court and all activities regarding that family coordinated under the jurisdiction of that court, enables the judge and the probation officers to work with an intelligence, economy and unity that would not otherwise be possible. The family court thereby establishes a stronger basis for the treatment and prevention of family problems.

That such a court would greatly facilitate the handling of family cases in the City of Wilmington is evidenced by the fact that three of the city's courts at the present time may be simultaneously hearing cases involving one family. The father may be on trial for non-support in the Court of Common Pleas; the wife may be having a hearing on a sex offense charge in the Court of General Sessions, and their child may be in the juvenile court as a result of some delinquency.

In opposition to the foregoing arguments it has been contended that:

(1) Those advocating the creation of the family court assume that the juvenile court is an accomplished fact. This is not true and it may be questioned whether the time, effort and money devoted to "domestic-relations cases" should not be directed first to the improving of the service rendered in children's cases. It is a mistake to regard the juvenile court as a solid foundation upon which to rear the structure of a family court before the juvenile court has been given sufficient attention and intelligent criticism to enable it to fulfill its aims.

In answer to this argument, it can be easily shown that the family court is not a new structure at all, but merely the strengthening of one already in existence. One reason why the juvenile court has not rendered a greater service is due to the very obstacle which the family court would remove, that is, a limited jurisdiction. The juvenile court can become a task accomplished through its enlargement into the family court.

(2) It is evident that the procedure of the family court is in opposition to the earlier demand for separate hearings for children. The purpose of the separate hearings was not merely to keep the adult audience from the court room during the hearing of children's cases, but also to produce a complete separation in the mind of the child and the public between juvenile delinquency and adult offenses.

When the child is taken into a family court, this separation is destroyed.

This argument can be quickly disposed of by explaining that the procedure of the family court can be made as flexible as may seem to be desirable. Separate hearings can easily be arranged, and it is no more necessary for adults to be present during children's hearings in the family court than in those held in the juvenile court.

Furthermore, the establishment of the family court does not involve the re-introduction of criminal court procedure into children's cases, but, on the contrary, means the extension of the informality and privacy of the juvenile court into the study and treatment of all family problems. There is, therefore, no reason why the distinction between juvenile delinquency and adult offenses should in any way be disturbed.

(3) The establishment of the family court will increase public expenditures.

Much of the force of this point is lost when one realizes that the amount of money spent in operating the family court does not necessarily represent an additional expenditure. The cases that would come before the family court are already being handled in existing courts, that is, in such courts as the Juvenile Court, the Court of Common Pleas, the Municipal Court, the Court of General Sessions and the Magistrates' Courts. Consequently, society is already spending money on the trial of such cases. It is apparent, therefore, that the only additional expense involved in the establishment of the family court is the difference between what is now being spent under the present set-up and what will be expended in the administration of the family court.

Moreover, since the family court can supply a more efficient basis for the treatment of family problems, the number of such cases coming before the court, and the number of persons being referred to other agencies and committed to institutions, may be reduced in the future. Furthermore, the court is a very effective agency in the prevention of domestic problems and in fortifying the family as a social institution. The court's influence, therefore, should result not only in the reduction of public expenditures, but also in the building up of a more responsible and loyal citizenry.

The latter contribution is especially important since the mental, physical and spiritual strengthening of its citizens is the most profitable investment that any nation can possibly make, one that in the long

run will pay the largest dividends. In the balancing of a nation's budget, human values, as well as property values, must be listed among the assets.

When one carefully weighs the foregoing arguments, it becomes apparent that the balance is decidedly in favor of the further application of the modern point of view regarding juvenile delinquency, and the extension of the jurisdiction of the juvenile court, and, therefore, in favor of the establishment of the family court.

At the present time, about 4,600 juvenile and "domestic-relations" cases in New Castle County are being handled annually by the Court of Common Pleas, the Municipal Court, the State Probation Office, and the Juvenile Court. On the basis of the available information these cases may be classified as follows:

<i>Type of Case</i>	<i>Court of Common Pleas</i>	<i>Municipal Court</i>	<i>State Probation Office</i>	<i>Juvenile Court</i>	<i>Totals</i>
Non-support.....	77 ¹				77
Bastardy.....	7 ¹	4 ²			11
Domestic-relations.....	16	700 ²	2,240 ³		2,956
Juvenile.....				1,564 ⁴	1,564
	100	704	2,240	1,564	4,608

¹ Court of Common Pleas Docket for 1942.

² Annual Report of Wilmington Bureau of Police for fiscal year ending June 30, 1942. Figures shown are estimates of the number of cases which would be domestic relations cases.

³ State Probation Office Report for 1942.

⁴ Juvenile Court Report for year ending October 31, 1942.

In addition to these cases, there are some "domestic-relations" cases which are being tried in the Magistrates' Courts and the Court of General Sessions of New Castle County, but it is believed that such cases would not increase the foregoing total to any great extent. On the basis of these figures, therefore, it may be assumed that the family court, if it were established in New Castle County, would have to handle between 4,600 and 5,000 cases each year.

The introduction of such a family court would mean the elimination of about \$22,500 in present costs. These are at present distributed about as follows:

	<i>How Paid</i>	
	<i>Total</i>	<i>City County</i>
State Probation Office.....	\$ 8,500 ⁵	\$ 8,500
Juvenile Court.....	14,000 ⁵	\$7,000 7,000
	\$22,500	\$7,000 \$15,500

⁵ Appropriations for 1942-43.

On the other hand, the expenses of the family court, if it is established in New Castle County in accordance with the provisions of the bill that has been introduced into the 1942 Delaware State Legislature will be:

	<i>Total</i>	<i>How Paid</i>	
		<i>City</i>	<i>County</i>
Judge's Salary.....	\$ 5,000	\$ 2,500	\$ 2,500
Chief Probation Officer's Salary.....	3,000	1,500	1,500
Clerk of Court.....	2,100	1,050	1,050
Probation Officers' Salaries.....	12,000	6,000	6,000
Office Workers' Salaries.....	5,400	2,700	2,700
Expenses (estimated).....	4,600	2,300	2,300
Totals	\$32,100	\$16,050	\$16,050

This cost of \$32,100, an increase of approximately \$9,000 over the cost of operating the present Juvenile Court and the Non-Support Agency, both of which will be eliminated by the establishment of the Family Court, will be borne by New Castle County and the City of Wilmington and will not involve the expenditure of any state funds. Furthermore, it should be explained that if the family court bill is not passed, some increase in appropriations for the Juvenile Court and the Non-Support Agency will have to be made to cope with the increasing number of delinquency and domestic relations cases.

The most important provisions of the family court bill now being considered by Delaware's State Legislature may be summarized as follows:

(1) *Jurisdiction.*

The court is to have jurisdiction in *New Castle County* over (a) cases of juvenile delinquency, dependency and neglect, (b) adults contributing to delinquency, dependency or neglect, (c) cases involving the abuse of children, (d) minor offenses committed by one member of a family against another member of that family, (e) non-support cases, (f) paternity cases, and (g) adoption cases.

(2) *Personnel of the Court.*

The personnel of the court is to be composed of the judge, a chief probation officer, six other probation officers, a court clerk, and stenographers. The judge is to be appointed by the Governor for a term of four years at an annual salary of \$5,000, and has to be a member of the Delaware Bar Association and possess an understand-

ing of social problems and child psychology. All probation officers are to be appointed on the basis of competitive examinations. The proposed bill thus provides for an adequately trained and adequately paid staff. The judgeship of the present Juvenile Court pays \$720 per year!

(3) *Custody of Child Pending Hearing.*

If the court finds it necessary to take a child into custody prior to the hearing of a case, the child is to be kept in quarters apart from those used for adult offenders.

(4) *Hearings of the Court.*

All hearings of the court are to be private and informal in nature. Only those who have some connection with the case before the court are to be admitted to the hearing. All cases involving delinquent, dependent or neglected children are to be heard separately from those relating to non-support, domestic relations, and questions of paternity. In no case are children to be brought unnecessarily into contact with adult offenders.

The court's investigations, conducted by trained probation workers, are to seek the causes of family problems and juvenile delinquency, and, when necessary, determine the guilt of the defendant. The information obtained by such investigations is to form the basis on which the decision of the court will be made in each case.

The bill for the creation of a family court for New Castle County has been introduced into the 1942 Delaware State Legislature by the Family Court Committee, representing organizations in the State which have endorsed the measure. Similar bills have been presented to Delaware's lawmakers on previous occasions, but each time they have been defeated. During the latter part of 1940, the advocates of the court labored hard to arouse public opinion in its favor. Meetings were held, the support of influential societies and organizations throughout the State was obtained, and an excellent court bill was carefully prepared.

However, in spite of the most strenuous and praiseworthy efforts of its supporters, this bill, too, met defeat. After some amendments had been made, by which the salary and the term of office of the judge were changed, the bill passed the Senate by a unanimous vote on April 30, 1941. Unfortunately, later it was defeated twice in the House (20 yeas vs. 11 nays, and 20 yeas vs. 12 nays) on the final

legislative day, May 2-3, 1941. Twenty-four votes were required in the House for the bill's enactment.

The Democratic Party had pledged itself in its platform to work for the establishment of a family court, and the court bill eventually received the support of all the Democrats in both branches of the Legislature. Nevertheless, since a two-thirds vote was needed for its passage, there was enough Republican opposition to insure the measure's downfall, even though it had been sponsored by a Republican, Senator Rinard, of New Castle County. On the bill's first test in the House, 13 Democrats and 7 Republicans voted for it, and 1 Democrat and 10 Republicans opposed it. On the second ballot, at which time the bill was finally defeated, 14 Democrats and 6 Republicans favored the measure while 12 Republicans cast their votes against it.

Although another campaign for a family court had ended in defeat, its advocates in Delaware were not discouraged and were more determined than ever to achieve success. It is in this spirit that they are now working for the passage of the family court bill which is before the 1942 Legislature. Together with the most prominent students of crime and juvenile delinquency throughout the United States, they are convinced that the family must be made the unit of investigation in all social problems. The family court creates an admirable channel through which this conviction can find effective expression and provides a splendid instrument by which the institution of the family can be strengthened. At a time when domestic relationships are being subjected to the severe strain of rapid and complex social change, the constructive influence of the family court is urgently needed.