

**Family Cases in Court.** By Maxine Boord Virtue. Durham: Duke University Press, 1956. Pp. xxxvii, 290. \$4.00.

The role of the courts in divorce cases raises troublesome questions concerning which there is much difference of opinion. To what extent should the courts seek to aid divorce litigants in solving family problems beyond mere adjudication of status and property rights within the narrow limits of adversary proceedings? Should such aid be given if one or both spouses do not want it? Is an expanded court role in divorce worth the expense, considering the limited financial resources of local government and the pressures on it to expand other costly services? Should the jurisdiction of divorce courts be broadened to include all legal problems of disorganized families? Should the existing disparity between formal legal divorce doctrine and its judicial application be continued?

The controversy over the role of divorce courts is reflected in the variations among these courts in function and organization. Mrs. Virtue's book illustrates these variations with studies of divorce court operations in some important cities: long studies of Chicago, San Francisco and Indianapolis courts; shorter ones of courts in Toledo, Milwaukee, Cincinnati, Detroit and Ann Arbor. Most of the data for these studies was obtained by Mrs. Virtue from interviews and observations conducted in the cities concerned. The studies show that some courts dispose of divorce cases as they do other kinds of civil litigation—on the pleadings, evidence, stipulations and defaults of the parties. The courts' role is merely that of deciding issues submitted by the parties on evidence they present, and steps are taken to enforce a decree only when a party requests it. But the studies disclose that some courts do more than this, and others do much more. To increase the likelihood of prompt payment and to facilitate proof on the issue of payment, some courts require that all support and alimony first be paid into court and then the court disburses it. Indianapolis courts disburse almost two million dollars a year under this system. In a few areas, the courts even take the initiative in applying sanctions for non-payment. Because of the notorious inaccuracy of evidence presented by parties to divorce cases, some courts supplement this evidence with facts obtained by court employed investigators, a practice most common when child custody is involved. It is common for some divorce courts to advise a divorcing mother on the consequences of not seeking alimony or child support, such as the possible necessity of the mother working or securing welfare assistance. Many judges make efforts to screen-out cases in which there appear to be reconciliation possibilities and encourage reconciliation of spouses by private conferences in chambers or by referral to religious advisors or marriage counselors. Marriage counseling services are offered by a few divorce courts, notably the famous family court in Toledo. The Toledo court's marriage counselors are available to both litigants and non-litigants.

In addition to illustrating variations in the role of divorce courts, Mrs. Virtue's studies contain sufficient data for generalizing as to conditions that tend to re-

strict that role. The most important restricting condition is the mass character of divorce litigation. Everywhere divorce volume is heavy, amounting to over 50 per cent of the cases filed in many trial courts. Thorough individual consideration of the complex behavioral problems inherent in each divorce case cannot be attempted by the courts without very substantial staff increases. Even most urban courts which perform a minimum role in divorce are so understaffed that long delays persist in the disposition of divorce cases. Courtroom facilities in some places, including Chicago and Indianapolis, are so cramped and crowded as to make divorce adjudication difficult. The mass pressure is similar in crime and mental illness, two other behavioral areas in which the courts often play a significant but unsatisfactory part. The nature of the divorce bench is another condition tending to restrict the role of the divorce courts. With occasional striking exceptions, the interests and backgrounds of divorce judges are not conducive to divorce courts assuming broad roles. The Virtue studies show that judges generally dislike hearing divorce matters, and in many large cities divorce court assignments are rotated frequently. In addition, legal training does not always contribute to the judge's understanding of the tasks of social workers, marriage counselors and psychiatrists in the optimum divorce court role.

Of all the divorce courts studied, Mrs. Virtue found those in Chicago least satisfactory. She attributes this primarily to structural and procedural defects in Cook County courts for which a backward state supreme court is partly responsible. More basic to the Chicago problem is the acute and chronic incompetence of Cook County local government that pervades even the courts.

In the last chapter of her book, Mrs. Virtue makes some recommendations for improving divorce court operations. She believes that more judges should be assigned to divorce cases, and that they should be provided proper physical surroundings. Courts with broad jurisdiction over family matters are desirable, but she recommends that these follow the Ohio pattern of divisions of general courts of first instance rather than independent family courts. Courts without administrative employees to focus on non-controversial fact finding and planning should add such employees, experimenting with their assignments until locally acceptable procedures are developed. Separate divorce dockets and calendars should be established to assure that the peculiar timing problems in divorce litigation are adequately controlled. She is uncertain about the need for specialized divorce judges, but thinks that in each large urban center at least one judge should be available who has been assigned to a specialized divorce docket long enough to develop skill in solving the special problems raised by these cases. The decision to use social workers as administrative aids to divorce courts, she asserts, should be made with caution because so few social workers are trained to work effectively in a court setting. On this point she recommends increased cross-professional training in schools of law and social work to develop more persons qualified to bring social work knowledge and experience to the courts. Mrs. Virtue believes that the demand for marriage counseling will increase, but

that marriage counseling by court staff members should be restricted to litigants. These recommendations are all moderate, which is their merit, as they have wide appeal and a chance of extensive adoption in the immediate future.

Sociologists and behavioral scientists have long been interested in problems of disorganized families; but being ill-equipped to explore by themselves the operations of courts, the work of lawyers, and the impact of social conditions on legal doctrine, they have largely ignored these areas in studying the family. Until recently, persons with legal training also ignored them, concentrating family law research on conventional analysis of appellate opinions and statutes. *Family Cases in Court* reflects a small but encouraging trend toward broader research on family law problems by legal scholars. This research is concerned with law in its social setting, emphasizing the interrelationships of legal doctrine, judicial administration and the practices of other social institutions. Research methods characteristic of social science are being used to some extent in these efforts. In addition to the Virtue studies, the new trend is illustrated by the recent Gellhorn report on family law administration;<sup>1</sup> the research on family law currently being conducted by the University of Chicago Comparative Law Research Center, and the research planned at the Yale Law School under a recent grant from the National Institute of Mental Health. Work of this sort is often more effective if done in collaboration with persons from other disciplines. Random examples of problems bearing on divorce law that merit investigation by legal scholars willing to participate in the new trend include: variations in interest-group perspectives on the role of divorce courts; the real standards followed by trial courts in deciding child custody matters in divorce cases and the success of these standards when applied; the influence of the adversary system on judicial determinations in family law litigation; the beneficial effects, if any, of existing divorce grounds and defenses based on fault; the extent to which divorces are denied and the implications of this; the criteria that judges and lawyers should use in screening out cases for referral to marriage counselors; career motivations of divorce judges; handicaps to interprofessional cooperation in family law administration; possible in-training programs for divorce judges and their staffs; and the influence of the lawyer in marital discord cases, with emphasis on the nature and practices of the divorce bar. Research on these kinds of problems gives promise of greater understanding and more useful results than mere conventional analysis of legal doctrine, a type of research that in the family law field has so often been sterile.

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<sup>1</sup> Gellhorn, *Children and Families in the Courts of New York City* (1954).

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