



Gallatin County Conciliation Court : a review
by Loraine Evelyn Barker

A thesis submitted to the Graduate Faculty in partial fulfillment of the requirements for the degree of
MASTER OF SCIENCE in HOME ECONOMICS
Montana State University
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Abstract:

As the Gallatin County Conciliation Court has never been reviewed since its inception ten years ago, an objective of this study was to see if the Court's stated purpose was operationally understandable within the context of current philosophy. The study disclosed that the Court's purpose of preserving, promoting, and protecting the institutions of marriage and family cannot be achieved only or necessarily by keeping together a troubled marriage or family.

A second objective was to determine according to the views gathered from surveys of the Court's clients and counselors, whether the purpose of the Court was being fulfilled. The interpretation of data regarding the Court's success depends on the criteria established.

It must be realized by the Court that genuine marital reconciliation can be achieved in a small portion of the clientele with the limited counseling now provided. Also evident is the fact that divorce counseling needs to be recognized and accepted as part of the Court's services if the well-being of the public is to be provided for. Finally, it depends on the personnel of the Court, using this study as a resource, to either affirm present policy or to implement changes enhancing the effectiveness of the Court, aligning it with current precepts and the realities of the clients they serve and the resources the Court has to meet them.

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July 13, 1973

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A thesis submitted to the Graduate Faculty in partial
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of

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August, 1973

ACKNOWLEDGEMENT

Appreciation is extended from Loraine to---

Those who made the study possible: Dr. Keiser for the assistantship; Judge W. W. Lesley for his permission to survey the Conciliation Court and Byrdeen Warwood, Court Supervisor, whose direct cooperation was essential; and Court counselors and clients who responded to the survey.

Her graduate committee: Dr. Robert Lind, major advisor, for his constructive helpfulness and positive attitude toward student-centered education; Dr. Gordon Simpson whose teaching enhanced Loraine's affective awareness; George Galinkin and Dr. Howard Busching for their readiness to help; and Dr. Clark Swain who made the assistantship enjoyable.

Her parents for their love and support and to her friends for their companionship.

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ABSTRACT

As the Gallatin County Conciliation Court has never been reviewed since its inception ten years ago, an objective of this study was to see if the Court's stated purpose was operationally understandable within the context of current philosophy. The study disclosed that the Court's purpose of preserving, promoting, and protecting the institutions of marriage and family cannot be achieved only or necessarily by keeping together a troubled marriage or family.

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Chapter 1

INTRODUCTION

Conciliation Courts are established by state legislatures and administered by state judiciaries to offer counseling assistance to couples having marital difficulties. Until recently, divorce was the only legal recourse couples had to end marital conflict. An alternative, therefore, to unnecessary divorce is the conciliation court.

Incorporating the concepts of therapeutic and preventative law embodied in the family courts and juvenile courts, courts of conciliation provide a non-punitive, humanistic atmosphere in which a couple can resolve some of their marital problems. Through counseling they may discover ways to improve their marriage. If it is their decision to divorce they are helped in that process.

The Gallatin County Conciliation Court was established July 1, 1963 as a result of Judge W. W. Lessley exercising his legal option as presiding judge of the 18th Judicial District to formulate such a court. It is presently located in the Gallatin County Courthouse, Bozeman, Montana. Its staff includes an office supervisor and five counselors.

The Conciliation Court was specifically established to combat the rising divorce rate in Gallatin County. "The Conciliation Court is based on the theory that proper counseling by trained counselors

may avert the final step in a divorce court (Conciliation Court Report, 1972)." Undergirding this goal of helping people avoid needless divorce is the Court's stated purpose:

. . . to protect the rights of children and promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies (Conciliation Court Report, 1972).

In 1972, 25 couples used the services of the Court and prior to 1972 the number of couples referred was 261. To receive the confidential marriage counseling, couples complete a petition for conciliation counseling. The first session is paid for by the Court's funds--subsequent sessions necessitate other financial arrangements being made by the couples. Any couple wishing counseling may petition and they need not have filed for divorce. Each couple filing for divorce in Gallatin County also is sent a letter of invitation explaining the Conciliation Court's services.

The July 1973 date marks the end of a decade of the Court's operation. Since the initiation of counseling services no study has been made concerning persons referred to the Court. Just as scientists and operations personnel never cease monitoring and redirecting the paths of rockets and space capsules, especially those carrying astronauts, neither can a conciliation court which affects the lives of persons function safely without continual observation.

The justification for this study lies in this need for evaluation.

This study also has the approval of Judge W. W. Lessley.

The objective of the study is to examine the theory and purpose of the Gallatin County Conciliation Court and to provide a description of what actually is happening within the Court as experienced and reported by its clients and counselors. Within this background, the questions that need to be answered are: 1) Is the Court's stated purpose operationally understandable and congruent with contemporary attitudes toward marriage, family, and conciliation court counseling; 2) Is the service established by the Court fulfilling its purpose?

If it appears that modifications in the Court's philosophy or procedure would enhance the effectiveness of the Court, suggestions for change from the Conciliation Court's clients and counselors will be presented. In addition, pertinent revision considerations will be offered as a starting point for those wishing to make alterations in the Court's present policy.

Chapter 2

THE CONCILIATION COURT WITHIN THE CONTEXT OF CURRENT LITERATURE

The Court's Purpose

Upon first reading of the Conciliation Court's purpose the meaning may appear to be perfectly clear: protect the rights of children, promote the public welfare by preserving, promoting, and protecting family life and matrimony, reconcile spouses, and reach an amicable settlement of their differences. Perhaps the Colonial writers of the Declaration of Independence thought such precepts as "all men are created equal" and "the inalienable rights of life, liberty, and the pursuit of happiness" were incontrovertible. Yet, the Supreme Court is continually called upon to interpret their meaning and Congress has added amendments for further clarification. It is imperative that the purpose of Gallatin County's Conciliation Court and its intent be explicit, relevant, and operationally definable.

Rights of Children

Cadwallader (1966) believed that children need to have the enduring emotional support of loving, healthy, and friendly adults. For the development of a child to emotional maturity, an environment of love, approval, security and reasonable control, given normal

physical health and intelligence, is essential (Herbert & Jarvis, 1970).

This healthy environment may or may not exist within each family. "We conclude that children from happy marriages are better adjusted than children from divorced marriages, but those from divorced parents are better adjusted than those from parents whose marriages are intact but unhappy (Udry, 1971, p. 458)." It is not legal divorce per se that harms children so much as the hostile atmosphere in a home generated by marital conflict. "But it is before the divorce, and often for a long time before, that the children have been hurt (Despert, 1953, p. viii)."

It is evident then that emotionally healthy children may come from broken homes. Yet, Margaret Mead (1968) described Americans as still holding to the belief that the biological tie of a child to his parents is unbreakable regardless of the state of the marriage or the competency of the parents.

Presently there is a shift in family law toward equalization of spouses' rights, men to women, but parents still have legal dominance over their children (Kay, 1965). "There are indications however, that the future path of legal development will be directed toward the emergence of the child as a person in his own right (Kay, 1969, p. 266)." This means that the court would award the custody of

a child to the adult best able to fulfill the best interests of the child, regardless of the biological parental tie.

Promotion of Public Welfare

The Court's purpose stated that this is carried out by the preservation, promotion, and protection of family life and matrimony. To understand the intent here, one needs to know what marriage, a family, and the public are.

"Public" has been defined as the people as a whole (Webster's, 1964). It is apparent that the Court believes its function is to insure the perpetuation of family life and marriage as that is inseparable from the well-being of the populace. The public is comprised of individuals as a forest is comprised of single trees. The American public is an abstract like the number three is a concept when it is the average of two and four. The purpose must then refer to the well-being of each individual.

The Family Institution Described

The word "family" is used when referring to a particular group of persons commonly consisting of a man, woman, and children legally related by blood or adoption. When an American family is visualized, the picture arises of a family of four living in a white, two-story house with green shutters and a two-car garage surrounded by a well-manicured lawn. The dominant ideal of the American family

is more representative of dreams, wishes, and strivings than of the prevailing pattern of family life in the United States as it actually exists (Feldman & Schertz, 1967).

The ideal family comprised of a dependable and employed father and husband; a capable and attractive mother and housewife; and two healthy, happy, affectionate children, is not to be found in all American homes. Divorces, desertions, juvenile delinquency, poverty, unemployment, ghettos, and illness are grim realities for many families in the United States.

Unrealized by many is the fact that one out of ten families is headed by a mother with no husband present and that in nearly half of these one-parent families there is at least one child under 18 (Feldman & Schertz, 1967). Also little known is the fact that one of every nine children is a step-child (Feldman & Schertz, 1967). Although the potential within families to develop healthy personalities is great, the potential for maladjustment is also great (Leslie, 1964).

The Conciliation Court's purpose of the perpetuation of family life refers to the positive, socially acceptable and desirable aspects of families. As Kohut stated, "The family, pure and simple, is not the basic unit of society. The stable family is the basic unit (1968, p. 40)." The purpose does not imply saving families so that child abuse, assault, and other negative family patterns may continue.

In economically poor societies, strong family units are necessary for the survival of individuals as the State is unable to directly provide for its members. In affluent societies though, the State is able to contribute considerably to the well-being of family members medically, educationally, recreationally, and physically (Nye, 1967). When the State is strong it shares with the family the functions of rearing children and performing other psycho-socio-economic functions associated with family living (Nimkoff, 1965).

The purpose for which the family unit is strengthened needs to be determined. Is the family to be saved for the sake of the institution or for what the particular family unit is able to do for its members and society? As differentiated by Nye (1967), the family could be preserved for its instrumental value, what it can do for individuals and society, or for its intrinsic worth, that which accrues from the family group itself.

"Strengthening the family must be evaluated not only in terms of what it provides, but in what it may take from family members (Nye, 1967, p. 317)." The stronger the family the more members may lose their freedoms. For example, the familial value gained from insisting that all meals be eaten together is counterbalanced by the child's loss of freedom and peer companionship experienced by eating at a friend's house.

Understanding Marriage

The institution of marriage, like the family institution encompasses a myriad of surprising aspects and contrasting actualities. There are legal and sacred concepts of marriage. A demographer looks at marriage statistically; a sociologist concerns himself with roles, norms, and expectations; an anthropologist is aware of the universality, variety, and adaptability of the institution of marriage and its attendant values, attitudes, and beliefs.

Also interested in matrimony is the businessman. Each marriage may mean to him money as houses and household appliances are sold. Marriage involves the mass media as radio, magazines, newspapers, and television have a topic of interest for the public be it news, true life, or a soap opera.

American men and women may see marriage as being the answer to their needs and wants: economic, affectional, sexual, child-rearing, status, security, etc. Marriage and parenthood represent maturity and adulthood in American society. It is within the institution of marriage that individuals are permitted to fully experience intimate and interpersonal growth and satisfaction free from social censure (Goodwin & Mudd, 1961).

What aspect of the institution of marriage is to be preserved, promoted, and protected: the legal, social, economic, religious, romantic, mythical, or actual? The actual conventions of marriage are

not the same as the conventional goals of matrimony. "One does not preserve the values of marriage merely by preserving the form (Mudd, Stone, Karpf, & Nelson, 1958, p. 28)."

The form of marriage and its concomitant values are the reflection of a particular society at a point in time. Permanence and duty were necessary aspects of family life in rural societies. Even in societies becoming industrially strong the family was immediately responsible for the survival of its members (Benson, 1971). The orthodox American marital format became, as described by Toffler (1970), two people finding one another and meeting the other's needs until death. American cultural soil still produces orthodox marital values, beliefs, laws, and attitudes despite layers of twentieth century asphalt and concrete. Though traditional views concerning marriage exist, industrial development, urbanization, the computer age, and affluence are creating a different contemporary marital format.

The format of the modern companionate marriage has personal happiness as its main goal (Benson, 1971). The accent is on individual freedom, pleasure, the here and now, and in being oneself (Nimkoff, 1965a). This contrasts with the earlier utilitarian goal in which the welfare of the family came before that of the individual (Nimkoff, 1965b).

Today's goals of realizing one's own happiness and personal fulfillment are not antagonistic to the institution of matrimony.

Most Americans still believe in marriage above all as a source of their greatest satisfaction in life. They marry earlier, remain unmarried less often, and remarry after divorce more frequently and rapidly than people of other industrial nations (Udry, 1971). "The wide use of divorce today is not a sign of a diminished desire to be married, but of an increased desire to be happily married (Hunt, 1966; p. 233)."

It must be recognized that the institution of marriage is no more than the individual couples who have been or who are now married. Beneath wedding rings and marriage certificates each marriage is different. The institution of marriage may be looked at generally, but a marriage is a unique interaction pattern between two people. Also, a marriage is the dynamic relationship of mates which is more than and different from each individual spouse (Rutledge, 1963).

It is impossible to describe the infinite variety of marital relationships that exist within the institution of marriage. The succeeding classifications of types of marriages are presented to yield an appreciation of the diversity of relationships that counselors of a conciliation court may confront.

Bernard (1968b) saw marriages as either being predominantly parallel in which husbands and wives had clear-cut, segregated roles to perform, or interactional in which spouses experienced more interpersonal, shared activities and feelings. Another way of labeling such marriages is to refer to them as being either strongly

institutional to which traditional roles and mores are adhered, or highly companionate where the emphasis is on affective and expressive personality interactions (Hicks & Platt, 1970).

Within the two basic types of marriage mentioned previously, Cuber and Harroff (1965) saw five marital life styles:

1) conflict-habituated, in which much controlled tension exists; 2) devitalized, characterized by a lessening of close identification; 3) passive-congenial, where there is an absence of conflict and excitement; 4) vital, in which mates are closely bound to each other; 5) total, describing marriages in which every aspect of the mates' lives are tied to the other, neither experiencing his own separate existence.

It is interesting to note that separation and divorce were found in all five types of marriage. Also, in all categories, couples were found who were adjusted, content, and happy. (Cuber & Harroff, 1965).

Defining Reconciliation

Providing the means for reconciliation connotes a resolution of marital tension and conflict, and significantly improved relations between the spouses within their marriage. Reconciliation per se can also be understood to mean: to become friendly again; to settle an argument; to become content; to submit or become acquiescent to (Webster's, 1964). Therefore, reconciliation or the resolution of marital conflict could occur via separation or divorce. Additionally, it could be a result of a spouse resigning himself to the status quo.

By definition of the Gallatin County Conciliation Court, a couple remaining together after counseling is reconciled. Future

discussion, therefore, of marital reconciliation will refer to the settlement of conflict within the marriage.

When examined carefully, reconciliation is not easily denoted. Johnson (1953) made the distinction between mere reconciliation where divorce is avoided, and reconstruction of the marriage, where the causative factors of divorce are effectively changed. Pilpel and Zavin (1953) stated that mending a marriage involved a careful examination of the causes of marital conflict and a careful evolution of a new and improved relationship. The degree of reconciliation possible is related to the seriousness of the conflict, the resources spouses have in resolving their difficulties, and the level of satisfaction they expect to reach (Beck, 1966).

The preceding discussion has focused in interpreting the stated purpose of Gallatin County's Conciliation Court according to current literature. In summary, the protection of the rights of children may or may not be guaranteed by their biological parents. Public welfare is no more than the well-being of each citizen. The preservation, promotion, and protection of family life refers to the ideal family situation. The institution of matrimony is comprised of all marriages--the unhappy and happy; the unsatisfying and satisfying; the destructive and productive. Reconciliation of marital and family controversies implies a solving of the problem within the marriage.

Preventing Unnecessary Divorce

Synchronized with the stated purpose of the Gallatin County Conciliation Court is the goal of reducing the divorce rate in its county. The Court is established to provide counseling that may avert unnecessary divorce (Conciliation Court Report, 1972). An unnecessary divorce is a divorce a couple may actually not have wanted or it may be the couple wasn't aware counseling was available that possibly could reconcile their marital trouble. Filing for divorce in such situations, like suicide, may be a urgent plea for help.

The succeeding discussion concerns the institution of divorce. In a discussion of conciliation courts divorce as well as marriage has to be understood in relationship to the individual, the couple, and the socio-cultural context of today.

Divorce--an Institution

"With very few exceptions, any discussion of divorce in this country, whether of a professional or non-professional nature, states or implies that divorce is bad or undesirable (Bell, 1971, pp. 516-517)." Despite the negative connotation of divorce, divorce per se is the legal termination of marriage allowing each spouse to remarry and the provision for disposition of property and care of children.

An attempt to describe the institution of divorce begins with the realization that it exists in all cultures of the world (Bell, 1971). Goode (1956) described divorce as being an outlet existing in

kinship systems to siphon off marital conflict. As noted by Udry (1971), with one or two possible exceptions, no society has held a positive attitude toward divorce. The extent of negative feeling may vary from indifference to complete condemnation.

Despite the fact that divorce is a part of American folkways, mores, and legal system, divorce for many may not be personally and socially an acceptable, legitimate, moral way of resolving marital difficulties (Bell, 1971). People often consider divorce to be abnormal or they ignore its existence. Ironically a hasty, mismatched marriage is a sacred unbreakable bond whereas divorce is regarded as a social disorder indexed on a par with alcoholism, suicide, and drug addiction, etc. (Mead, 1968).

"Divorce is a measure of failure, yet the fact remains that the average marriage lasts longer today than ever before (Landis, 1972, p. 45)." Because people are living longer, couples staying together average longer marriages. Udry stated that with only one out of five first marriages ending in divorce, Americans are either very successful at marriage or are willing to settle for poor marriages (1971).

Factors Associated with Divorce

The attitude toward divorce is a reflection of factors interacting in the United States and the divorce rate is also

associated with these factors. The decision to divorce is not a quick, careless, callous choice but embodies the real strains experienced in a marriage.

One of these strains is that the nuclear family is badly handicapped organizationally (Hill, 1965). Because of its variable composition sexually and age-wise, the number of dependents, and its involuntary membership, it is an awkward decision-making body and a poor working body (Hill, 1965).

The nuclear family is expected to meet all the needs of its members on its own without the aid of close-by relatives or the support of the community (Cadwallader, 1966). The expectations mates have initially concerning marriage may be in conflict and these may continually change and may exacerbate the strain within the structural organization of marriage (Cuber & Harroff, 1965).

The organization and structure of families today are not the only factors associated with present rates of marital instability, breakdown and divorce. Statistically, marriage tends to be more stable for those who are white, well-educated, well-paid, white-collar workers (Hicks & Platt, 1970). Those divorcing are relatively young and have only been married a short time (Bell, 1971). More divorces occur in the third year of marriage compared to any other year (Hicks & Platt, 1970).

"Divorce, like marriage, closely follows the business cycle. It is low in periods of depression and correspondingly high during periods of prosperity (Bell, 1971, p. 495)." Divorce rates are also associated with geographic areas. They are highest in the Mountain Division of the Western states which includes Montana (Fong & Hanson, 1968).

Many other factors such as religion, family background and happiness, and the number of previous marriages can be statistically related to marital instability and divorce. Because of these previously mentioned factors not every married couple has the same probability of experiencing divorce.

In addition to demographic descriptions of divorce, there are theoretical aspects related to marital breakdown.

With ties of economic interdependence weakened, there is greater reliance on ties of psychological interdependence. These sentimental ties are, however, more volatile and less enduring than those of economic and religious interdependence (Nimkoff, 1965a, p. 339).

Cavan (1969) stated that higher divorce rates are related to increased tolerance toward divorce.

Bernard (1968a) referred to the existence of a team factor which explained divorce as being associated not with neurosis or psychosis or lack of positive marital attitudes, but as mismatching, or being married to the wrong mate. Cuber (1965) reported that Americans profess to believe that right mating is the key as the

marital relationship depends on the reaction of the spouses to each other. Any given person may show radically different behavior with various members of the opposite sex (Cuber, 1965).

"One point about divorce in the American middle class which needs to be emphasized is that divorce is causally related to the social framework of mate selection (Bell, 1971, p. 518)." Finding the right mate can be likened to bargain-hunting: the "deal" made one day may not look as good the next morning. Bell also stated that it is socially naive to expect a low divorce rate within the American marriage complex of romantic love, idealization, hopes, and high expectations (1971). "Marriage was not designed as a mechanism for providing friendship, erotic experience, romantic love, personal fulfillment, continuous lay psychotherapy, or recreation (Cadwallader, 1966, p. 62)." More and more is being asked of modern marriage-- more than perhaps marriage can yield.

When spouses find that their marriage does not provide these socially established criteria for successful marriage, they believe they have a right to terminate the marriage (Goodwin & Mudd, 1961).

If a culture makes happiness the goal of marriage it must grant the right of divorce to those who fail in its attainment. Only by this means can they be freed to seek fulfillment in another marriage or to return to the single state (Landis, 1972, p. 54).

Benson (1971) and Mudd et al. (1958) discussed the fact that American

marital and family value systems are in a period of transition. This void or vortex of values also affects the stability of married life.

A given couple with any or all of the factors previously discussed may or may not divorce. It is impossible to predict which couple experiencing marital discord will divorce and who will not.

Whether people will select divorce rather than some other way of dealing with marital unhappiness depends on a number of factors, namely: 1) cultural provisions, 2) social milieu, and 3) personality orientation (Bernard, 1961, p. 339).

As pointed out by Udry, "The problems of divorcing couples are not different from those of couples who do not divorce, they are only more intolerable to the persons concerned (1971, p. 466)."

Benson (1971) saw divorce or life-long marriage as being a result of the balance between a couple's resources and the demands or problems they have to face--if their resources are sufficient to cope with their conflicts no divorce will result. Levinger (1970a) and Udry (1971) referred to marital stability as a function of rewards, attractions, and barriers holding a marriage together from within. It is also a function of the attractions and barriers attached to outside relationships. An example of this concept is the wife who finds the rewards of motherhood and the barrier of social disapproval not strong enough to prevent her from abandoning her husband and family. The outside attractions of a career and a life of her own were stronger.

Emotional Divorce

In the preceding discussion of divorce, the comments referred to actual, legal divorce. That divorce is, however, a reflection of an earlier, psychic breakdown of the emotional bond of the marriage.

It cannot be said too often that the filing of a divorce petition is only a symptom of an underlying family problem which must be understood and treated if we are ever to have prevention and cure of the evils now involved in so many marriage failures (Chute, 1953, p. 49).

As Despert (1953) believed, divorce is not the problem as it is a symptom of the illness within the marital pair.

Divorce is much more than its legal concept. Harper and Harper (1961) pointed out that legal grounds for divorce may exist in a marriage but the couple may choose not to divorce. On the other hand, no legal grounds may exist but a dissatisfied couple chooses divorce as that may seem to be the best solution for their empty and unfulfilling marriage. Legal divorce may have little to do with the actual relationship between spouses (Bernard, 1961).

"The legal start, and eventual finish, of marriage coincides with the social view of start and finish (Bell, 1971, p. 486)." This socio-legal aspect of divorce, however, does not necessarily coincide with the mental-emotional aspect of the relationship between two spouses. "Some couples know soon after marriage that the relationship cannot endure, others come to this realization only slowly after years of effort and desperation (Bernard, 1961, p. 341)."

In referring to the process of psychological divorce, Cox (1972) used the term "dissolution" and Hunt (1966), used the word "disengagement." Dissolution or disengagement may be a gradual, steady process or it may be characterized by halting separations and returns. Even though statistics deal with the number of legal divorces at any given time, it is important to realize that the number of unrecorded separations and desertions represent the personal-emotional aspect of divorce and yield an overall greater number of non-legal, but nevertheless, divorces (Alissi, 1969; Baber, 1953).

In spite of their frequent identification not only in popular opinion but also in learned writing, marriage breakup and divorce are two different phenomena. The former belongs to the world of fact, the latter to that of law (Rheinstein, 1965, p. 645).

Kohut discriminated between legal breakdown of marriage and therapeutic breakdown, that which is within the couple's ability to repair (1968). Legal divorce is publicly indexed but it is impossible for an outside observer, or even a mate within a marriage, to state when the psychic bond of marriage began or ended.

Divorce per se is not necessarily good or bad. "We have seen that marital dissolution can of itself have results ranging anywhere from profoundly beneficial to the profoundly harmful (Hunt, 1966, p. 227)." Cuber and Harroff delineated between the successfully divorced and the defeated divorced (1965). Those remarrying successfully or finding single life after marriage to be satisfying

have benefitted from divorce. Those who regret their decision to divorce, remarried unsuccessfully or remained single and bitter can be classified as defeated divorced.

"Divorce is not automatically a destructive experience. It may also be a cleansing and healing one, for the child as well as you (Despert, 1953, p. 2)." Divorce is not easy or painless because it involves breaking up marriages and families. In the long run, however, it may be better for the persons involved and for society.

The real problem is unresolved strife, not divorce and not conflict (Sprey, 1969). Conflict itself can be healthy and growthful. "Health is to be found not in escapes from conflict, but rather in making certain that the conflicts which do engage our attention and energies move onward to higher planes (Lindeman, 1952)." Americans tend to believe that family conflict is undesirable, abnormal, and a serious problem. Conflict is not the problem that caused divorce, but the couple's inability to resolve that conflict (Beck, 1966).

Conflict cannot be avoided on any level of human experience: intrapersonal, interpersonal, or international but costly and ineffective means of resolving conflict can be prevented. The real concern for troubled marriage is the resolution of visible and invisible conflict, not necessarily trying to avoid conflict, or trying to avoid divorce.

The Conciliation Court Movement

Contemporary conciliation courts are part of a relatively new movement. They are an indirect outgrowth of efforts of church leaders, lawyers, and sociologists who publicly began to acknowledge the realities of the divorce dilemma and to demand reform (Freed & Foster, Jr., 1969). They are the direct result of the efforts of legislators and the judiciary. Three factors characterized the movement: increased public acceptance and demand for marital and family counseling; emergence of professional marriage and family counselors; and laws which included the establishment of conciliation courts and supplantation of the adversary-trial aspect of divorce proceedings with no-fault grounds. No-fault grounds are established by separation or by the existence of irreconcilable differences leading to irremediable breakdown.

Prior to the fifties, marriage counseling services had existed virtually unobserved. In 1914 the first family court was established in Cincinnati, Ohio which dealt with the problems of family members within the framework of the family as a whole (Kephart, 1966). In 1929 the first official marriage counseling agency was established by Drs. Abraham and Hannah Stone. The American Association of Marriage Counselors was founded in 1946, and in 1970 its title was changed to the American Association of Marriage and Family Counselors.

Olson (1970) reported that most of the extant material on marriage and family therapy has been published since 1960.

Despite the increase in public acceptance, the demand for marriage counseling, and the increasing number of professionals in the field, Udry (1971) reported that only one or two adults in one hundred have ever consulted any professional other than a clergyman or physician concerning a marital problem. Only the states of California, Michigan, and New Jersey license or certify marriage counselors (Nichols, Jr., 1973).

As discussed by Despert (1953), the 1947 Smith Report of the American Bar Association gave impetus to the reform of divorce laws. The report described the then present (and in most cases still present) divorce laws that purport to strengthen the institution of marriage by making divorce difficult. States still treat divorce within the legal philosophy in which two adversaries (husband and wife) have to prove their innocence and the other's guilt on grounds that are just short of criminal (Sherwin, 1969).

The emerging attitude toward divorce seeks to lessen the trauma experienced by couples having marital conflict.

Conciliation courts have translated the age-old principle of the States' interest in family life into a dynamic program of providing counseling help in a setting where such help usually is not available--the court itself (Elkin, 1973, p. 71).

As explained by Seidelson, conciliation courts are a result of legislative compromise (1967). Liberal divorce laws imply a higher

divorce rate which is undesirable in the eyes of many. The solution is to provide counseling aimed at saving threatened marriages. The following descriptions present a picture of some conciliation courts.

The Los Angeles Conciliation Court has been compared to a hospital for receiving sick marriages, in that treatment is offered for immediate relief of pressure and pain (Elkin, 1973).

The authority of the court enables the counselor to surround a collapsing marriage with some external structure--much like a splint on a broken arm--which permits healing to take place (Elkin, 1973, p. 66).

The counseling offered is directive and short-contact. The average number of sessions is three per family. It is also crisis oriented and comprised of individual and conjoint sessions with the counselor. The clientele are for the most part normal people with problems and have come voluntarily (Elkin, 1973).

Counselors focus on the marital relationship rather than the individual. The goal is not to save all marriages but to avoid unnecessary divorce, and if that is not possible, to constructively help a family through the divorce (Elkin, 1973).

In Toledo, Ohio, the Family Service Department of the Family Court is authorized to require divorcing couples with children under 14 to meet with the Court's counselors (Bridgman, 1961). This Court also accepts for counseling those referred from other sources or those who apply voluntarily.

It is the philosophy of the conciliation court in Great Falls, Montana to offer more than preliminary counseling. If couples commit themselves to counseling, they participate in a series of sessions averaging ten in number and lasting more than an hour each (Annual Report, 1969).

Considerations Concerning Conciliation Courts

As conciliation courts are part of a relatively new movement, there is a dearth of research data regarding clients and the court procedures best able to help them. A review of the Gallatin County Conciliation Court needs to be placed in the perspective gained from a discussion of current concepts and unresolved questions associated with conciliation courts today.

Clientele

The first consideration concerns the clientele of the conciliation courts. The typical clients may have deeply rooted psychological problems or their marital conflict may be merely a misunderstanding that can be resolved smoothly and simply.

Some believe that most clients coming to marriage counseling can be considered to be normal--not psychotic or severely neurotic (Leslie, 1964). Klemmer (1964) felt because of the popularization of marriage counseling within the mass media that normal people sought help concerning normal marriage difficulties (normal statistically).

Other writers have stated unequivocally that most clients are not normal, well-adjusted, emotionally healthy people. "It has been estimated that two-thirds of those requiring counseling need long-term assistance (Foster, Jr., 1966, p. 378)." Bodenheimer reported that 20 per cent of the clients in the Utah Conciliation Court experiment were considered to have had normal problems but two-thirds of them needed long-term psychotherapy (1961).

It would appear, on the basis of recently published cases of marital counseling, as well as on the basis of the writer's own counseling experience, that a great many of the individuals who come for counseling are more or less emotionally disturbed individuals, that their problems cannot be adequately handled in merely two or three sessions (Ellis, 1969, p. 25).

The seriousness of an individual's emotional problems and the seriousness of marital conflict are limits to marriage counseling success.

Not all persons or marriages experiencing difficulty and discord can be assisted by marriage counseling anymore than all individuals experiencing difficulty can be helped by personal psychotherapy (Nichols, Jr., 1973, p. 5).

"Marriage counseling," stated Hunt (1966, p. 222) "though it can often heal a sick marriage has little chance of saving a dying one and almost no chance of bringing a dead one back to life." Both Hunt (1966) and Bernard (1961) believed that for couples who have already seriously considered divorce, few will be able to reconcile their troubled marriages.

Short-term Counseling

It is unnecessary to discuss aspects of long-range counseling as the Gallatin County Conciliation Court only offers its clients one or two sessions. That service actually is more similar to a screening interview than even short-term counseling. Such limited counseling may be able to help particular clients at particular times with particular problems (Udry, 1971). David Mace stated that for one-interview marriage counseling sessions to be successful the clients must not be psychotic, must be able to gain insight quickly, and must be autonomous and motivated enough to carry on their own recovery program (1970).

It is for such situations involving marriages with no fundamental problem that courts of reconciliation, marriage counselors, 'cooling off periods,' and interlocutory decrees may serve some function in salvaging the relationships (Udry, 1966, p. 466).

A factor discussed by Elkin (1973) and Bridgman (1961) allowing for success in short-term counseling is the crisis-like nature of marital conflict. After divorce has been discussed, appropriate action needs to be accomplished quickly if clients are to be helped. In some cases clients are highly motivated to learn new ways of interaction with their mates in order to resolve the serious problems that have developed between them. "We have seen couples who have materially benefitted from as few as three to ten sessions although by and large substantially more are required (Lederer & Jackson, 1968, p. 447)."

Divorce Counseling

A conciliation court cannot delude itself by believing that it just offers a marriage counseling service. Fisher (1973) said that after the possibility of divorce is discussed, or actions are taken toward divorce by one or both mates, one must think in terms of divorce counseling as well as marriage counseling.

If divorce is decided upon by clients, counseling serves two functions. The first need is to help the clients in adjusting psychologically, socially and culturally to divorce.

Husbands and wives tend to divorce from each other using the same negative patterns of interaction that existed in the marriage. The goal of divorce counseling is to reduce these negative patterns and minimize the feelings of guilt and revenge (Fisher, 1973, p. 58).

As Bohannan (1968b) stated, divorce breaks the legal tie of marriage, but it cannot sever the feelings and thoughts of a family--ex-familial ties have to be satisfactorily worked out. Lindsley (1968) and Rutledge (1963) have mentioned the need for divorce counseling as it can help the divorcing couple to work out cooperatively a comfortable interaction pattern for themselves in the future and a plan for the welfare of their children.

Many writers have commented on the existence of lack of norms, prescribed behavior patterns, to guide couples, their children, and friends and relatives in reacting to each other before, during, and after divorce. "Neither the participants nor their close friends

and relatives have been taught to react in culturally approved fashion with respect to divorce (Goode, 1956, p. 11)." Bohannan (1968a) has pointed out that with death there are prescribed ways of releasing feelings. When one loses a mate through divorce there is no socially approved way to respond. As Goode (1956) realized, there are no ethical socio-cultural imperatives for friends and relatives to furnish any sort of support for the ones divorcing. This hands-off policy still embodies the moral censure and punishment accorded those divorcing by society.

The second service performed by divorce counseling, actually an outcome, is that society in general is benefitted by therapeutic divorce. Kay (1968) remarked that the insight a divorcing couple can gain during counseling can enable them to avoid the same disastrous marriage pattern in the future. "The effects of a satisfactory marriage are self-perpetuating. From it develop the individuals who are likely in their turn to marry happily and create successful families (Herbert & Jarvis, 1970, p. xii)." This comment could apply equally well to a successful second or third marriage.

Other Counseling Services

A conciliation court has value in areas other than the reconciliation of spouses or helping them adjust to divorce. Foster, Jr. (1966) noted that despite the fact that conciliation courts in

Ohio, Maine, and New Jersey failed to reconcile all couples, they expressed satisfaction and a sense of accomplishment in the fact that they were able to change contested divorce cases to uncontested, that plans for visitation and companionship were arranged, and that child custody and support arrangements were amicably settled. Regardless if a couple were reconciled or not, Furman, Strickland, Surdock, Jr., and Toppenberg (1971) reported that 46 per cent of the clients of the Maricopa County Conciliation Court, Phoenix, Arizona had less conflict with their spouse after counseling.

When it is realized each couple coming for counseling is unique and has different needs, goals may be set for them realistically and individually in terms of what help can be offered and utilized. Socio-economic factors, as well as occupational, educational, racial, cultural, and religious needs have to be considered.

In general, the evidence indicates that spouses in the middle class marriages were more concerned with psychological and emotional interaction, while the lower class partners saw as most salient in their lives financial problems and the unsubtle physical actions of their partner (Levinger, 1970b, p. 129).

When counseling, consideration also has to be given and expectations adjusted accordingly, concerning the duration, complexity, and depth of marital trouble. Some families seem to be plagued generation after generation with marital and familial problems. Treatment of their situation may be different than that accorded a couple experiencing their first difficulties.

As can be seen, no one standard of success can be applied to every couple coming for conciliation court counseling.

In a real and changing world, families who are troubled--or who trouble the community--can truly be helped only if the goals for improvement of their social, economic, and psychological competence are realistically rather than idealistically conceived as acceptable both to the family and to the wider community (Feldman & Schertz, 1967, p. 8).

This is in reference to both short-and long-term goals. As Birdwhistell (1970) stated, if goals are set too high and inappropriately for a couple or family, they can only continue to experience failure.

Perhaps goals more modest than reconciliation of marital discord, goals that can be reached, are more sensible. "While change may be the goal, it should be made clear that it is not the purpose of marriage counseling to bring to each and every couple ecstatic marital bliss (Staniec, 1963, p. 16)."

The Legal Context

For maximum effectiveness conciliation courts need the acceptance, agreement, and support of local citizenry, judiciary, lawyers, and counselors. This consensus must also be congruent with the dictates of marriage and divorce laws. Alexander (1958) stated that the purpose of family courts must be undergirded with power to implement its goals. His comment also applies to conciliation courts.

Though conciliation courts are therapeutically and humanistically oriented to help people with their psycho-social problems, laws in most states still require couples in marital discord, contemplating or seeking divorce, to become legal adversaries. Legal controls still are more stringent concerning divorce than marriage as divorce is considered more harmful than a poor marriage (Hunt, 1966).

Did it ever strike you as at least mildly absurd that the law should proclaim its interest in the preservation of the family unit and express its desire to see the disunited united, and then when the parties go to law for relief the law, instead of helping them reunite, forces them to fight each other (Alexander, 1953, p. 101)?

Conciliation courts are small, though perhaps significant, services established to mitigate the destructiveness occasioned by legal divorce proceedings. It must be realized, however, that the therapeutic efforts and attitude of conciliation courts are not yet part of the mainstream of the American legal system.

The law, though, is only a reflection of the people who legislate it--it embodies the ambivalence society has toward divorce. As Gough (1972) stated, the people (as individuals) want the right to dissolve their unhappy marriages, but the people (as the State) want the right to refuse divorce as the State becomes responsible for the welfare of the individual family member. To those concerned with the positive effect of conciliation court's, they have to be aware that the service functions in an ambivalent society with anachronistic laws.

The mixed feelings people have toward divorce and the fact that marriage and divorce are state concerns, not national, in part explain the family hands-off policy of the federal government. In the United States there is no family law (Lindsley, 1968). As Leslie remarked, "We lag behind most other modern nations in the services and the aid offered directly to families (1968, p. 16)."

Even if model marriage and family laws were part of the legal structure in America, the effect of such laws might be slight for families whose standard of living is low. Landis noted that the material standard or environmental circumstance of a marriage is important to its success (Cox, 1972). Marital and family conflict cannot help but be exacerbated by ill-health, unemployment, poverty, and sub-standard living conditions.

The future survival of the institutions of marriage and the family as we know them today will not be just a result of legislative action and conciliation courts. Emily Mudd (1953) warned people not to expect that the helping professions can solve the problems of divorce just by working with the couples experiencing conflict. The problem is more complex and pervasive.

Lindsley (1968) stated that satisfying married and family life will be a result of the coordinated efforts of the judiciary, legislatures, local citizenry, education, social welfare and private agencies, research, business, and every aspect of a community affecting

the welfare of people and the families of which they are a part. This coordination will be a cause and effect in attitude change on the part of people concerning counseling in personal and marital problems.

Clinging to the profession of counseling is the connotation that only mentally ill people need counseling. In the future perhaps people will come to realize that counseling can also benefit those who are emotionally healthy by enriching their personal and interpersonal lives.

Three Future Decisions

Three legal issues are now being discussed by professionals in the field of family law and its associated services. Each conciliation court will have to make its own decision regarding these items.

The first concern is whether conciliation court counseling ought to be mandatory. Foster, Jr. (1966) has reported that mandatory counseling has been found to be desirable. Some professionals believe that because people in personal and marital trouble are unaware of, or do not understand conciliation court counseling, it should be required.

Benson (1971) said in a more moderate opinion that ". . . it should be noted that few people argue that counseling ought to be required. Most proponents feel that couples should have to make a conscious decision not to use it if that is what they want (p. 296)."

Apropos of this, Angela Reed commented, "Many of us are very reluctant to seek help from anyone at all. We put off going to the doctor until the very last minute. . . (1970, p. 35)."

In pointing out some adverse effects of mandatory counseling, Rheinstein (1956) warned against counseling becoming just a useless formality; that clients were under coercion; that attempts to reform or change personalities were evident; that privacy was invaded; and that at present, counseling staffs are not able to predict which marriages can or ought to be reconciled.

The second issue revolves around the establishment of family courts rather than conciliation courts (conciliation counseling would be a part of the family court). Such concerns as adoption, abuse, juvenile delinquency, desertion, divorce, property settlement, and other problems experienced by family members are considered by the court within the context of the whole family.

The third issue to be determined is whether courts of the law can best handle the socio-emotional aspects of an individual's, a couple's, or a family's problems. Perhaps the legal aspects of a problem are best handled by the judiciary and lawyers and the psycho-social therapeutic aspects of a problem are best handled by a non-partisan counseling service.

