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Frank J. Montemuro

*Court of Common Pleas of Philadelphia*

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## THE FAMILY - 100 YEARS OF NEGLECT

Frank J. Montemuro, Jr.  
Administrative Judge  
Family Court Division  
Court of Common Pleas of Philadelphia

### ABSTRACT

The following address was made at an All-Day Institute convened by the Family Court Division of the Philadelphia Court of Common Pleas in conjunction with the Family Institute of Philadelphia to explore issues and new responsibilities faced by public and private agencies dealing with the myriad changes in family life in this last decade of social upheaval.

The Family Court concept is of recent vintage. It was shaped by the experiences of the Juvenile Court and by a long history of social welfare and educational reforms. In the first half of the last century, humane treatment and management of behavioral and mental health problems were being given special attention. By the end of that century, individual psychological treatment became the focus of concern in a culture pressing for individualism and driving for personal achievement. Concentration on the single individual was a tribute to this social attitude. Changes in people were sought by exploring the historical recesses of the mind through the private interactions of the patient and doctor. In the case of children, as well as adults, parents and other members of the family were excluded. According to the historical genesis of personal difficulties, the family was one of the prime culprits in damaging the growing child. So, countless mothers and fathers endured this great guilt for their alleged failures as parents while their children underwent individual psychotherapy that laundered the effects of bad parenthood.

It is within this context that the Juvenile Court movement developed. The purpose of the Court was to protect the child from society and its deleterious influences. The effect of experiences rather than some inner evil became important ever since John Locke described the mind as a tabula rasa - a blank tablet or clean slate - on which life was etched.

When the Juvenile Court took hold more than a half century ago, it relied heavily on these principles. The child was provided with a probation officer who took responsibility for supervision and the Court was the *parens patriae* acting in place of parents. Removing children from the home and community and placement in institutions took on the humane form of rehabilitation not penalty. We do not deceive ourselves that there was no penalty because there was restriction of liberty, one of our most cherished values.

Chief Justice Horace Stern, speaking for the majority of the Court in In re Holmes, 379 Pa. 599 (1954) cert. denied by the U. S. Supreme Court 348 U.S. 973 (1955) stated: "Their purpose (Juvenile Courts) is not penal but protective, - aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the state acting as *parens patriae*. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life.

"The conception that children are regarded as wards of the State is not one of recent origin; indeed from the very earliest times children in England were regarded as the wards Chancery, and the Chancellor exercised the privileges of the Crown in acting for the care, treatment and protection of unfortunate minors and placing them under proper guardianships."

We know of course that Justice Michael Musmanno's dissent in In re Holmes was adopted as the law of the land in In re Gault, U.S. Supreme Court, October Term, 1966, No. 116 in a majority opinion written by Justice Abe Fortas. Justice Musmanno's assertion that "what a child charged with crime is entitled to, is justice, not a *parens patriae*," and the Court, in Gault, laid to rest the theory that a juvenile was not entitled to "due process of law" because of the anachronistic theory that the State was now acting in the place of his parents.

The Juvenile Court programs consistent with the growing field of behavioral science found the parents, at best, only a peripheral ally. Yet, no one denied that the family was nuclear in the formation of the child's character and behavior. Treatment, however, was largely directed toward intra-psychic conflicts and aberrations in an individualized approach. Unfortunately an important study found the individual counseling approach was not significantly superior to simple supervision and discipline.

Group social treatment was relatively slow in appearing as a therapeutic modality. In the field of delinquency, we were well aware of the impact of associates on adolescent behavior. Only in the last 25 years were group counseling and group psycho-therapy considered a possible procedure for adolescent treatment. The group psycho-therapy field offered promise. We at the Family Court in Philadelphia pioneered in these efforts. For several years, we have been training probation officers to conduct Correctional Group Counseling. We are pleased with the results of a recent study by an outside evaluator indicating that this is an effective procedure with first and second offenders. We are not at all satisfied with such success. It appears that all of us may have been victims of a prevailing trend of thought, the myth that permeated the mental health field, excluding the family from joint participation in the treatment process. We are seeking remedies to this serious exclusion of the family. Not until the appearance of dynamic systems therapy applied to the family was there a truly practical opportunity to direct ourselves toward a family therapy approach. Once this breakthrough had occurred, we found ourselves with a new horizon of opportunity spanning more than the field of delinquency and involving all aspects of our Family Court effort including domestic relations, family strife and separation, and custody and visitation for children.

Having assured ourselves that we have a new set of principles with which to work, we have a problem of convincing the families that their total participation in treatment and in rehabilitation is important. We know the difficulties other agencies have in this regard, and we share your concern. A convincing argument to help families accept the family treatment is to be found within the concept of family therapy itself.

Family therapy teaches us that we are not concerned with establishing who is to blame in the family for the malfunctioning but what steps might be taken to change family relationships through recycling and developing a more harmonious pattern that will allow for individual growth and self-fulfillment. We ask what can be done to develop a more family oriented approach in the remediation of children's difficulties.

Our recent Family Court experience with drug detection and referral service stresses this point. We obtained urine specimens of virtually every youngster who came to the Court averaging a thousand a month. When laboratory reports were positive, we contacted the family to give them this information confidentially and to make referrals for treatment. Family resistance was high. We found that only a small percentage of the families would voluntarily participate in discussing the drug issue or accepting a referral. When referrals were made, only a fraction kept

the appointments. During the two year period of this study, the incidence of drug abuse among juveniles was found to have increased some 50%. We concluded that families were already so burdened that they could not assume additional responsibilities but instead rationalized for drug usage of their children. Many resigned themselves to drugs as a fact of life.

The Family Court is mandated to look at families carefully. The recent Juvenile Court Act that took effect in February, 1973, repealing the Juvenile Court Law of 1933 states as its purposes: (1) to preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this act; (2) to achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interests of public safety. The law further differentiates between the delinquent and the deprived child, recognizing a heavy share of family responsibility in both instances. A deprived child is defined as one who "(i) is without proper parental care or control, subsistence, education as required by law or other care or control necessary for his physical, mental or emotional health, or morals; or (ii) has been placed for care or adoption in violation of law; or (iii) has been abandoned by his parents, guardian, or other custodian."

The Act determines our direction. It charges us with explaining what can be done within the family to create greater cohesiveness, to achieve genuine mutuality of relationship, to provide for more effective controls, to reduce disruptions, to facilitate communication, to solve the problems of everyday living and contribute to the growth and individualization of each member of the family.

In each instance cited in this Act, parents are involved in the determination of a deprived child. Children who are truants are considered to be without proper parental care and so the school and the Court must direct their attention to assisting the entire family. We cannot remove the child from the home and conclude that the educational needs of the child will be met. Fracturing the family and removing the family from the educational process runs counter to primary goals of education. There is certainly an underlying mandate for the schools to develop a program for parents and children to work toward a successful learning experience. This necessitates a shift for the school that suffered from the same child-parent detachment observed in the rest of the behavioral science field. Can the parent share with the school the responsibilities for the educational program? If so, how is this to be developed?

Another issue of grave concern is the child subjected to physical abuse by parents. It is often the first reaction of the community that such parents receive maximum penalties for victimizing their children. A more reflective view and a more careful study of the families of abused children reveal that these are complex issues necessitating a family approach in the correctional process. If the Court seeks to secure family treatment in such cases, how effectively can such a recommendation be implemented?

It is our opinion that if we can deal with the deprived child early enough, the more serious delinquencies will be prevented.

We, as a Court and a community, have been distressed by the acts of violence and destruction. We want our citizens to feel free to move about safely and our homes to be secure from intrusion. The fact that young people are involved in these anti-social acts in such large numbers while they are still living under the supervision of their parents supports our hope that parental participation in the remedial processes can be found. There is some irony that family treatment has developed at a time when we are undergoing a most rapid change in families. The 700% increase in divorces over the last 50 years tells that there are major changes occurring in American family life. Twenty-five years ago only one child in fourteen under age six was being brought up by a single parent. Today, one child in seven under the age of six has but a single parent in the home. Furthermore, there is the economic problem. Single parents are more likely to be in the lower income bracket and are less likely to have schooling. Suicide rates have increased among young children. Since 1963, the crime rate for juveniles has been escalating at a rate higher than the juvenile population. If children are to meet the requirements of a nuclear propelled society, then we must certainly look to our own nuclear personal resource--the family--for some answers.

The Family Court has special concern for children and for parents where there are issues of parental separation, child custody, visitation privileges and basic rights of the child to live with a measure of stability that will allow personality to grow and achieve adult status. Judges know the impact of parental battling for the child. Children become sounding boards for the hostilities of each of the parents. Children are asked to take sides and often do. The result is that they alienate one parent in order to please the other. Many times the child is subjected to the skewed judgments in each of the parents. We look to develop programs that will be less destructive, that will allow children to grow up feeling a measure of harmony with

their parents, despite differences the mother and father have between them.

In Ford v. Ford, 371 U.S. 187 (1962), Mr. Justice Black stated: "Unfortunately, experience has shown that the question of custody, so vital to a child's happiness and well-being, frequently cannot be left to the discretion of the parents. This is particularly true where, as here, the estrangement of husband and wife beclouds parental judgment with emotion and prejudice." In Children in the Courts - The Question of Representation, Institute for Continuing Legal Education, No. 19 (1967), it was correctly and succinctly stated that: "In few situations is the child more vulnerable than when the legal and emotional ties between his parents are severed by a divorce decree. The court is seldom in a position to know whether the best interests of the child have indeed been served by the award of custody, or whether the custody agreement submitted by the parties was entered into with one eye on the tax code and the other toward vindication." What is or should be the legal status of children in a divorce case? Should children be considered as possessions of their parents and dealt with in terms of the wishes or rights of the spouses? Should they be considered as merely the subject of one aspect of the litigation, i.e., custody, and proper subjects for the court's concern? Should they be considered as parties to the divorce action with rights that must be considered regardless of the wishes of the parents? Are not each of these questions just as relevant in deprived cases? How can the rights of children in a divorce case or a deprived case best be protected? Should counsel be appointed in every case and, if so, who would bear the expense? In lieu of counsel being appointed in every case, would a professional child advocate or advocates in divorce and deprived cases be the more pragmatic and effective method. These questions merely serve to suggest the serious nature of the problem; questions the answer to which must be found by our citizens, our representatives, our judges and concerned community agencies acting in concert.

There are some parents who come to Court, as well as to social and mental health agencies, asking that their children be admitted to institutions. These are parents who may not feel able to cope with their responsibilities. The children in such instances clearly feel the rejection and helplessness that comes from being removed from those whom we expect to be closest to us; the children are the family scapegoats. It has been noted that children who experience rejection in one form or another and are forced to separate from one of their parents develop a superficiality that prevents them from becoming close, loving and adequate parents themselves. What steps can

be taken to reduce or prevent rejection of children? How can we lessen the impact of parental separations on children? Do we require additional assistance in reaching more equitable determinations in the matters of child placement, custody and visitation rights?

There are issues that go beyond the organized social agencies to the total community itself. How resourceful are our communities, our neighborhoods in developing programs to assist each other? Can we expect families to join in mutually supporting each other during crises and turmoil? How is this to be done? What strengths are there for the vitalization of community spirit toward these ends?

Current literature makes a strong argument for the continuity of life experience for the child. A differentiation is made between the biological parent and the one who gives actual care to the child. It is argued that children who are placed in foster care for an extended period of time should remain and that the rights of parents to custody in such cases should be relinquished. This is an issue that is by no means settled.

The Family Court decides each case on its own merits. It relies on its ancillary services, including psychological and psychiatric reports. It depends heavily on its able probation staff for support. Where possible it utilizes its own Counseling and Referral service to divert families from the justice system process. These are resources within our own Family Court. Obviously we require the assistance of the entire community and its social and mental health agencies. We have come here today to discuss how closer cooperative effort can be achieved. We truly look forward to your sharing our concerns.