The Economics of a Divorce: A Pilot Empirical Study at the Trial Court Level

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THE ECONOMICS OF A DIVORCE: A PILOT EMPIRICAL
STUDY AT THE TRIAL COURT LEVEL

Dan Hopson, Jr.*

The news value of the large divorce settlement produces the American
myth of the "bleeding" husband and the successful peroxide blond who now
can vacation in Miami. Articles in popular magazines\(^1\) sometimes fortify the
myth and protest the cruelty of judges and the nineteenth century orientation
of our divorce and alimony laws. Yet the specter of the "run-away pappy" and
aid to dependent children\(^2\) is also now well known.

Although much has been written concerning the legal, social, and psycho-
logical problems of divorce, very little is actually known on the economics of
a divorce. Paul Jacobson's 1959 book, *American Marriage and Divorce*, is with-
out doubt the most comprehensive statistical treatment of the subject in exist-
ence. As he and others\(^8\) have pointed out, accurate statistics are almost com-
pletely unavailable. In his section on alimony,\(^4\) which covers only two and one-
half pages out of a 151 page book, Mr. Jacobson laments that information on
alimony is lacking. He reports that until 1922 the Bureau of the Census pub-
lished some data showing that around the turn of the century alimony was re-
quested in 13.4 per cent of the cases and granted in only 9.3 per cent. In 1922
alimony was decreed in 14.7 per cent of the cases. Since then there has been very
little information obtainable. He sets out a table showing "alimony or property
settlement awards" in terms of the percentage of divorce cases in 13 different
states for 1939 and 1950.\(^5\) In 1950 the figures vary from 7.2 per cent in Florida
to 48.4 per cent in Kansas.\(^6\) He offers the opinion that "alimony or property
settlement awards are now made in about one-fourth of the marriages dis-
solved in the United States."\(^7\) He mentions agreements or property stipulations
only in passing, saying that financial arrangements are often made apart from
divorce proceedings.

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Kansas; LL.M. 1954, Yale Law School. Much of the interviewing was conducted by the following former
or present K.U. law students: Edward G. Collister, Jr., D. Allen Frame, Dick Jones, Donald H. Loudon,
and Edwin D. Smith. Their help is gratefully acknowledged.

\(^1\) See, e.g., Lobseng, *Are Divorce and Alimony Unfair to Men?*, Reader's Digest, Oct. 1959, p. 193;
Afford A Divorce*, Saturday Evening Post, April 20, 1957, p. 31.

\(^2\) See, e.g., Subcommittee on National Divorce Statistics of the U.S. National Comm. on Vital and

\(^3\) *Jacobson, American Marriage and Divorce* 126 (1959).

\(^4\) He cites as the source of his data, "Published Reports and Surveys by the Author."

\(^5\) The Kansas figure is obviously taken from the Kansas Judicial Council statistics published each year
in the fall issue of the Kansas Judicial Council Bulletin. On the reliability of the Kansas figures, see dis-
cussion circa note 13 infra.

\(^6\) *Jacobson, op. cit. supra* note 4, at 127.
On the question of the size of the award or how the property is divided he draws an almost complete blank. He is able to cite two figures: that one-half of the alimony and child support awards in Maryland and Ohio around 1930 totaled less than thirty-three dollars monthly and that in New Jersey in 1949 one-half of the payments for alimony and support were less than seventy-four dollars monthly. He says that 10 million dollars per year is paid in Wayne County, Michigan, and that in several cities payments rose substantially. In effect, the most comprehensive treatment of statistics in this area shows nothing of significance.

For his Maryland and Ohio data, Jacobson cites the two volumes of Marshall & May, *The Divorce Court*. Under the auspices of the Institute of Law of the John Hopkins University these two investigators made a monumental study of the divorce cases on the trial court level in Ohio and Maryland during 1929 and 1930. They examined the court records in 3,306 actions in Maryland and 9,237 actions in Ohio and from the data collected published two lengthy books giving almost every conceivable type of statistic about divorce in those two states. However, their data on the economics of the divorce is quite weak qualitatively, even though quite extensive in quantitative terms. In other words, they are able to report in detail the number and amount of alimony, child support, and counsel fees awarded and the number of property division awards. They also reported that there were formal agreements filed in twelve per cent of the cases that came to hearing in Baltimore and eight per cent of those that came to hearing in Ohio. But they added that they would guess that there were many more “informal” agreements, perhaps up to forty per cent. They suggested that one major problem was that in discussing property division, “except in a few cases, we have no definite idea of what the property consisted. It may have been a kiddie kar or an estate of $20,000.” Despite the extensive-ness of this study, the material on the economics of a divorce was incomplete since only the formal records were examined and these too frequently did not reflect the actual financial adjustment between the parties. Nevertheless this study is by far the most extensive examination into economics that exists.

Kansas lawyers have another source of data on alimony and division of property. Each fall the Kansas Judicial Council publishes a summary of the work of the district courts. In fiscal 1942 and 1943, data was collected on the number of cases in which child support and permanent alimony were awarded and the number in which a property settlement was approved. In fiscal 1944

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11 This data normally appears in the October issue. The data here reported is taken from each year’s report.
they combined the alimony and property settlement classifications. The data on
the economics of a divorce was then not reported from 1945 to 1955. From fiscal
1956 until 1961 the data was reported by combining alimony and property
settlement awards. This data shows that in a little less than one-half of the
cases the court awarded alimony or a property settlement, and that in about two-
fifths of the cases the court awarded child support.\textsuperscript{12} In the 1942-1943 period,
when alimony and property were distinguished, the court awarded alimony
in about one per cent of the cases and property in about ten per cent. The com-
plete listing appears below.\textsuperscript{13}

However, this data offers little help to the attorney or other researcher. First,
no amounts or values are given. Second, even as an indication of the number of
awards the information is misleading. The combining of alimony and property
awards prevents a determination of whether one or both was given. The prop-
erty classification itself is meaningless. According to a local clerk of the district
court, no instructions are given to the clerks on how to compile the data for
this classification. She said that she listed any case where there was real property
awarded by the judgment, but did not include cases involving personal prop-
erty only. She doubted that there was any consistent practice among the clerks.

Supreme court opinions are one other source of data for the attorney trying
to negotiate a settlement. There is a large body of cases in most jurisdictions
laying down the proper standards that a trial court is to use in granting alimony,
dividing property, and providing child support.\textsuperscript{14} One almost invariable stand-
ard is that of the discretion of the trial court.\textsuperscript{15} In reviewing the exercise of this
trial court discretion, supreme courts talk in terms of the propriety of the award
in light of the financial facts of the marriage. A detailed review of these cases
would probably give, in any particular jurisdiction at least, a fuzzy picture of
how that supreme court looked at the break-up from the dollars and cents
viewpoint. An attorney could review these cases and attempt to draw the out-

\textsuperscript{12} Note that the wife received the children in around 2,200 cases each year since 1956, while the child
support awards averaged around 1,850.


\textsuperscript{14} See, e.g., Rolmer v. Rolmer, 373 P.2d 55 (Okla. 1962) for a recent case. See also 2 Nelson, Divorce
and Annulment §§ 14.26-14.33 (2d ed. 1961); Cooney, The Exercise of Judicial Discretion in the Award
of Alimony, 6 Law & Contemp. Prob. 213 (1939); Daggert, Division of Property Upon Dissolution of
Marriage, 6 Law & Contemp. Prob. 225 (1939).
side limits of the trial court's discretion. But this information is of little help; usually the limits are far apart. The discretion is broad. Furthermore, the supreme court cases available to the attorney almost always involve a considerable amount of property and normally constitute an extreme case with special circumstances. There is little "law" to guide the attorney trying to pin down the trial court as to how he should exercise his discretion. The trial judge is faced with the same problem. Other than "what's fair," his supreme court will only give him the roughest type of broad principles as guide lines for the exercise of his discretion.

As a practical matter, an attorney who handles a large number of divorce cases soon learns the views of his trial court judge as to what is "fair" and handles his case accordingly. But new attorneys and attorneys with few divorce cases are forced to negotiate blind. Even the experienced attorney may, on occasion, wonder whether his trial court judge is exercising his discretion in about the same fashion as trial court judges in other parts of the state.

**THE PILOT PROJECT**

The only possible place to obtain the answers to the attorneys' questions is by an examination of the divorce cases at the trial court level. While an examination of the files in divorce cases in the state trial courts would give some basic information on what was requested and the courts formal judgment, it would actually give but scanty information on the value of the property divided. The files would tell nothing of the property not disposed of in the divorce proceedings.

This information might exist, however, with the judges and attorneys who handled the cases. So I attempted to contact them. Since it was impossible to know whether the information was obtainable by direct investigation of the court records and through attorney interviews, the University of Kansas granted a small amount of funds for a pilot or "sensitivity" study. With the staff and funds available it was impossible to use a proper statistics sample of the divorces granted in the United States or even in the State of Kansas. Therefore, I deliberately picked four Kansas counties for study. In picking the four counties, I tried to obtain a relatively representative cross-section of Kansas counties. Cases were studied from one of the four large metropolitan areas of the state, from a county in eastern Kansas with a little higher than average population,

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18 One attorney interviewed in this study specifically mentioned keeping a memoranda of such cases. Such a case as McCraw v. McCraw, 373 P.2d 667 (Ore. 1962) would certainly help the Oregon lawyers guess the Oregon Supreme Court's views on the importance of the wife's contribution to the parties' assets. 17 "To cite decisions of the appellate courts holding a certain sum excessive or inadequate as an allowance of permanent alimony is of practically no value because each case depends so largely on the circumstances involved in the particular case." 2 Nelson, Divorce and Annulment § 14.50 (2d ed. 1961).
18 But even an experienced lawyer may have actually litigated few, if any, divorce cases. Consequently, he may actually have little knowledge of his trial judge's "true" feelings.
from a county in central Kansas that was about average, and from a small county in western Kansas. Each county then supplied 10 divorce files. I picked the 10 cases by taking the last 10 cases decided by the judge prior to June 1, 1961, in which a journal entry had been filed. The 40 cases thus obtained constitute the sample and give the basic information upon which this study is based.

The four judges who decided the 40 cases were all interviewed, and an attempt was made to interview all of the attorneys who participated. Fifty-eight attorneys appeared of record in the 40 cases. Since several attorneys handled more than one case, 36 different lawyers constituted the sample. All except 4 were interviewed.

The judges were asked to explain their views of alimony, division of property, child support, and the relation of the separation agreement or property stipulation to these factors. They were also asked to comment on each case. The attorneys were asked for information concerning the value of the property involved and their techniques of solving the economics of a divorce. Both were asked some general questions concerning the state of the law and the need for changes.

As might be expected, complete data was not obtained on every case, and in some cases the attorneys could not remember, or never knew, the extent of the property. The value placed on the property by the attorneys is usually only an educated guess. But would the parties themselves know the value of a 1952 washing machine?

To put the data from the 40 cases into proper perspective, a word on Kansas law relative to alimony, division of property, and child support is necessary. KAN. G.S. 1949, 60-151122 is the basic alimony and division of property section,
while Kan. G.S. 1961 Supp., 60-15102 covers child support. Although the Kansas Supreme Court, in interpreting this section through the years, has evidenced a vacillating approach, the court in Garver v. Garver set out rather specific rules for cases in which the divorce was granted for the fault of the husband. The trial court shall: (1) restore all of the wife’s property owned prior to or acquired in her own right after the marriage; (2) grant reasonable alimony either as a gross amount of money, payable in installments, or by setting aside property of the husband; and (3) divide the property acquired jointly during the marriage.

If the divorce is granted for the fault of the wife, the statute provides that the court shall follow (1) and (3) above, but it shall not grant alimony. However, the court may award her a share of the husband’s property, which the supreme court, in Savage v. Savage, said was intended to provide the same function as that of alimony.

The above rules apply when the parties ask the court for a decision. But the parties have a second choice. They may enter into a separation agreement, or as it is sometimes called, a property stipulation, fixing their property and alimony rights. If the court finds it fair and not arrived at through fraud or overreaching, it must approve the agreement and the rights of the parties are as they have contracted. The court cannot change it. However, the parties may not bind the court on questions of child support. Even if the parties agree, the court may ignore their agreement in setting the amount. Absent an agreement, the court may only make a gross sum alimony award, although the amount may be ordered to be paid in installments. However, the parties may provide for variable alimony in their agreement. If the trial court does not merge the

lands of which her husband may at any time have been seized. And to such property, whether real or personal, as shall have been acquired by the parties jointly during the marriage, whether the title thereto be in either or both of said parties, the court shall make such division between the parties respectively as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof. But in case of a finding by the court, that such divorce should be granted on account of the fault or aggression of the wife, the court may in its discretion set apart such a portion of the wife’s separate estate as may seem proper for the support of the children, issue of the marriage. When a divorce shall be granted on account of the fault or aggression of the wife, the wife may be restored to her maiden or former name."

"When a divorce is granted the court shall make provision for the guardianship, custody, support and education of the minor children of the marriage, and, except as by this section limited, may modify or change any order in this respect whenever circumstances render such change proper." [The rest of this section concerns child custody.]

For a more detailed analysis of the cases see Hopson, Property Rights in Divorce and Separate Maintenance Cases, 30 Kan. B.J. 302 (1962).


agreement into its decree, but merely “approves” it, the agreement is valid and binding.\(^3\)

Kansas also follows the general view in allowing wide discretion to the trial court as to the proper division of property and the amount of alimony.\(^2\) The trial court has been given some instruction on the proper criteria, but it is meager. Often quoted by the court is the statement from Carlat \(v\). Carlat:\(^2\)

There is no hard and fast rule in this jurisdiction for determining the amount of an alimony award where a wife is granted a divorce for the fault of the husband. Generally speaking it can be said to depend upon the facts disclosed by the evidence in the particular case involved. However, it is true we have repeatedly held that in fixing its amount a trial court is required to take into consideration the conduct of the parties, the needs of the wife, the earning capacity of the husband, the amount of property owned by the parties and, under certain conditions . . . how and when that property was acquired. [Citing cases.] It may also take into account future earnings of the husband. [Citing cases.]\(^3\)

This standard apparently applies to a division of property, and the court is frequently unclear, as suggested earlier, as to the distinction between alimony and a division. However, the court has said on many occasions that while giving one-half of the assets of the parties to each is a proper award, a different division does not require a reversal.\(^4\) In fact, a reversal of a trial court award is quite rare in Kansas, although there are a few examples.\(^5\) There are, of course, many cases where particular divisions or alimony awards are approved. It would unduly extend this article to review them. That task will be undertaken in a separate article.\(^6\)

THE DATA

The data obtained from the 40 cases could be approached in either of two ways—clinical or statistical. In the text of the article I will try to point out the common factors among the cases. However, there is merit in the clinical approach since it gives the total perspective of each case. Consequently, I have set out a vignette of each case in the appendix. In discussing the cases generally,
I will, on occasion, cite the case number so that the reader may examine the entire case.

Before turning to the 40 cases I should first define several terms that I will use throughout the rest of this paper.

**Asset—no asset:** From the data I tried to determine how much real and personal property the parties had acquired. On a rather arbitrary basis I classified asset cases as those involving more than 2,000 dollars. If the parties owned real property, I tended to include that case as an asset case unless I knew for sure that there was no equity in the property. A case involving a car (usually mortgaged) and a few household items was classified as no asset.

**Agreement—no agreement:** The cases in which the parties entered into a property settlement, either written or oral, and which was presented to the court, were classified as agreement cases. Cases in which the court “pressured” the agreement during the course of a trial and cases where the parties agreed, although they did not inform the court, are also included in the agreement category.

**Default—Litigated:** Since a divorce may not be granted without proof, no divorce is granted on the plaintiff’s petition. Therefore, there are, technically, no “default” cases. But “default” is here used to include cases where the defendant did not answer, or cases where he did answer but did not participate in the trial except to the extent of being present. The term litigated is used in reference to property matters and involves actual litigation.

**Alimony—Division of Property:** Alimony, in Kansas, may consist of a gross amount of money paid by the husband to the wife, in a lump sum or in installments, or may also include real or personal property owned by the husband and set aside to the wife. The word alimony will be used, herein, to show a sum of money to be paid by the husband to the wife. If “alimony” includes property, I will specifically so designate. Under division of property, two items are included: (1) the division of the jointly acquired property, and (2) the setting aside to the wife in the first instance of her separate property. When relevant, I will designate the two classes.

What conclusions, then, concerning the economics of a divorce can be drawn from an examination of these cases as a group? What variations occur among the counties? In 1961 in Kansas, the key factor seems to be the agreement.

The Kansas attorney no longer leaves to the trial court, especially where there are any assets, the decision on how to divide the property. In 17 of the 40 divorce cases there was a definite fixed agreement determining the economic economics.

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87 KAN. G.S. 1949, 60-1509.
88 There was only 1 case where the grounds were contested, and in that case the property problems were also litigated.
rights of the parties. In 2 other cases the parties agreed, but did not inform the court. Rather the prevailing party merely asked for what was in the agreement. In 2 cases the husband's attorney agreed as to the division and child support in open court without, apparently, consulting his client. In 2 other cases the parties apparently agreed, but the attorney for the plaintiff had no sure knowledge except that the personal property had been divided. In 3 cases the parties agreed to a settlement in the judges' chambers under pressure from the court. In other words, out of 40 cases, the parties entered into some sort of an agreement in 26. The importance of the agreement is even more striking in the asset cases. In the 17 asset cases, the parties agreed and presented their agreement to the court in 8 cases. Twice they agreed without telling the court and three times the judge "pressured" the parties into an agreement in his chambers. In only 4 of the 17 asset cases did the court decide the matter. In 2 of these 4 cases, the wife had run off and the court awarded the husband all of the property except her personal things that she took with her. In 1 case, the husband drank and the wife was awarded almost all of the property. In all 3 cases the defendants did not want any of the property except what little they had taken with them. In effect, the defendants agreed to the result. Actually only 1 of these 4 cases presented a situation for agreement, but the parties were unable to agree and consequently litigated the case.

The surprising fact was the number of agreements in no asset cases. In these 23 cases the parties have from 2,000 dollars in assets down to "nothing," with the bulk of the cases showing that the parties had accumulated furniture and an equity in a car with a total value of 300 to 800 dollars. Yet, even here, in 9 cases there was a formal agreement; in 2 cases the attorney agreed in open court without consulting his client and in 2 the parties had apparently divided the personal property without any "agreement." Of course, this does not mean that in the other 10 cases the parties actually fought over the furniture and car. In only 1 of the 10 cases was there even an answer filed. These last 10 cases would seem to present the typical no asset, default divorce case. One or both spouses want out and there is nothing but a little personal property to divide. One spouse sues for divorce, asks for what he or she wants, and the other side does not bother to show up. The parties may have agreed, but the

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30 In 3 cases the parties entered into an agreement but left the child support, which was granted, to the court.
31 Marshall & May found formal agreements in 12 per cent of the cases in the City of Baltimore and 8 per cent in the State of Ohio. It was estimated that agreements existed in 40 per cent of the cases in Baltimore. See MARSHALL & MAY II, at 352.
32 See Appendix, Case 2. In 2 of the 3 cases where the court "pressured" the agreement, the parties had introduced evidence concerning the assets of the parties.
33 In Case 20 the wife had "inherited" some property. Its value was unknown, but from the other assets it appeared to be small.
34 It was filed only because the plaintiff's attorney feared that the defendant might be in military service.
attorney does not even know or care. The court’s judgment frequently says that each party shall keep the personal property in his or her possession.

Why then do we have 9 formal agreements? What was to be gained? In looking at the 9, it appears that perhaps the answer lies in the custom of the local bar. In the Metropolitan County there was 1 agreement in 5 no asset cases. In the Western County there was 1 in 4 cases. In the Central County there were only 2 formal oral agreements out of 8 no asset cases. But in the Eastern County there were 5 formal—3 written, and 2 oral agreements—out of 6 cases. Actually then, 5 out of the 9 formal agreements come from 1 county!

Even in the asset cases the Eastern County stands out. There were 4 asset cases, all with written agreements. In the Central County, for example, there were 2 asset cases. In 1 there was no agreement; in the other the parties agreed to divide the property, but left the matter of child support to the court. In other words, in the Eastern County there were formal agreements in 9 out of 10 cases, and even the 10th could be classified as an agreement case; while in the Central County there was only 1 written agreement in the 10 cases, and it was an asset case. But the Central County’s figures are probably deceiving. The judge in that county, in discussing the 10 cases in the sample, remarked that he really did not have to decide any property issues in these cases since the “attorney or attorneys” had “agreed” on what was to be done. The 10 cases show that in addition to the 1 written agreement there was 1 case with a formal oral agreement between the attorneys in open court, 1 case with the parties agreeing on property, but not on child support, 1 where the parties may have agreed, and 2 where the attorney consented in open court without consulting his client. There existed an agreement of sorts in 6 out of the 10 cases.

An examination of the cases in the Eastern and Central Counties does not show any marked difference in the property involved or in the number of cases where one of the parties had taken off. Perhaps there is a little more personal property involved in the Eastern County in the no asset cases, but this may be nothing more than the attorney having better knowledge of the assets since he drew up an agreement. The attorneys in the Eastern County do express a greater preference for an agreement, but this is merely consistent with the greater number of formal agreements in the county. The Eastern County

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44 Even in the 6th case, both the husband and wife came in to see the attorney. There was no property at all involved. See Appendix, Case 28.
45 Ibid.
46 In the Metropolitan County, in the no asset cases, the attorneys saw no need to enter into an agreement, formal or otherwise. There was only 1 agreement in 5 cases. In Case 9, the parties had already agreed to split about $800 in assets, 50-50. The attorneys in the Western County took the same position. In 4 no asset cases, the parties agreed in only 1 case, and that was before they saw the attorney. In Case 13 the husband agreed to let the wife have a $900 car and child support.
47 See discussion circa note 50 infra.
lawyers file more answers and cross-petitions \(^48\) than do their brethren in the Central County, but this may be nothing more than a desire to “be in court” while negotiating a formal settlement.

In effect you have one set of attorneys establishing a formal agreement while in the other county there are “agreements,” but they are arrived at more informally, frequently by one attorney assenting to what the other asked for in open court. A colleague suggested that perhaps the one set of attorneys were trying to justify their fee in the no asset, default cases. But the bar minimum and the amount normally charged—150 dollars—in the Eastern County is less than the bar minimum and amount normally charged—200 dollars—in the Central County. I would guess that local custom probably explains the difference, but it is possible that the attorneys in the Central County have a closer working relationship and are more informal than in the Eastern County. Of course, with only 10 cases in each county, the result may be pure chance.

Additional information on agreements was sought from the attorneys and judges. The attorneys were questioned on their preference for an agreement, how often they entered into agreements, on what basis, and on how often the court upset an agreement once entered into. The courts were questioned on how often the parties agreed, and whether and on what basis they upset an agreement.

The guesses on the number of agreements fluctuated highly by county. \(^49\) The attorneys in the Eastern County were more unanimous in answering with phrases like “very common,” and “about seventy-five per cent.” On occasion the attorney would qualify by saying that it was common if property was involved. The judge guessed that there were agreements in at least one-half of even the default cases and an “understanding” in the others. On the other hand, in the Central County, the 2 lawyers interviewed on this problem both remarked that it was not common unless a substantial amount of property was involved. The judge agreed. He said that in most of the cases there was no formal agreement since in most cases there was but little property. In the other 2 counties the reaction was mixed. In the Metropolitan County 1 attorney said that it was “not uncommon,” 1 said “not too often,” and 1 said that “it depends.” The judge, however, said that there was an agreement in “a big share of the cases.” In the Western County, the attorneys gave as a percentage of cases with an agreement, fifteen per cent, twenty-five per cent, fifty per cent, and fifty per cent. The judge felt that 7 out of 10 cases had a property agreement. These views on the number of agreements seem to correspond rather

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\(^48\) See discussion circa note 62 infra.

\(^49\) Since only attorneys who had a case in which there was an agreement were questioned, there were only 18 attorneys interviewed on these problems.
well with the number and type of agreements entered into in the respective counties.\textsuperscript{60}

Even on questions as to whether the attorneys prefer to work out an agreement, the answers vary. In the Eastern County all 9 attorneys interviewed were unqualifiedly in favor. Less work for court and lawyers (absence of litigation), better results, and more certainty were the reasons offered. In the other 3 counties the reaction of the 9 attorneys was mixed. Only 4 of the 9 were unqualifiedly in favor. Two said it was up to the parties, and 1 added that an agreement was better if the parties were content. One said he preferred an agreement if the other side would agree to the basic idea that a wife was entitled to one-half of the assets. One Western Kansas attorney was definitely opposed. He said he would rather fight it in court since he felt that he could obtain more for his client that way. He added that he disagreed with the court attempting to "force" an agreement. He felt the court should hear the evidence and decide the case.

Not only do attorneys prefer the agreement, but once they have the parties agreeing, the attorney knows that it will not be upset. All but 1 attorney said that they had never had an agreement disapproved by a court. One said that sometime back a judge in another county would upset one on occasion due to his "temperament." A couple of attorneys mentioned that the court would ask questions and assumed that it would upset the agreement if found to be unfair. But disapproval was not within their experience.

The judges' experience followed that of the lawyers. While all of the judges felt that they should upset an agreement if there was overreaching, the Eastern and Central County judges said that they never had exercised this right. The Metropolitan judge said that he had never thrown out an entire agreement, although he had induced the parties to change certain clauses in a few agreements. The Western County judge said that except for child support provisions,\textsuperscript{51} he had disapproved a mere handful.\textsuperscript{52} The Western County judge added that if the agreement was negotiated between experienced attorneys, he would not upset. He and the Metropolitan judge suggested, however, that in

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
 & Metropolitan & Eastern & Central & Western \\
\hline
Default & 62\% & 30\% & 73\% & 49\% \\
\hline
Agreement & 27\% & 52\% & 19\% & 29\% \\
\hline
Litigated & 11\% & 18\% & 8\% & 22\% \\
\hline
\end{tabular}
\caption{Percentage of cases in different counties.}
\end{table}

These figures, in general, agree with the attorneys' answers on the number of agreements in the respective counties.

\textsuperscript{60} Another question was asked all of the attorneys, but the answers were not too satisfactory since there was some overlapping due to the poor wording of the question. Each attorney was asked to give a percentage figure for: (1) What per cent are default cases with no property worth mentioning? (2) In what per cent are property matters agreed to? and (3) What per cent are litigated? The trouble lay in the fact that in many cases a default, no property case would also have an agreement. With this limitation, the answers showed:

\textsuperscript{51} See discussion circa note 90 infra for the judges reasons on child support.

\textsuperscript{52} This judge had served for more than twenty-five years.
cases of a young inexperienced attorney, or in cases where the wife had no attorney, they would turn a "skeptical" eye on the agreement.

The 40 cases also reflect the attorneys' and judges' experience that agreements are not upset. In only Case 24 did the court disapprove any portion of an agreement. The agreement provided for fifty cents every two weeks as alimony. It was inserted by a non-Kansas attorney, apparently on the theory that the court needed it for continuing jurisdiction. The court disapproved it as being meaningless in Kansas.

Although the courts have not disapproved these agreements, they will, on occasion, go beyond the agreement. In 3 cases the court granted both child support and attorney fees, and in 3 others it granted attorney fees alone. In none of these 6 cases did the agreement so provide. But these agreements did not prohibit child support or attorney fees either. The parties could not, or did not, make any provision. Consequently the courts' judgment is not a disapproval, but only an addition to the agreement.

In approving these agreements, the courts are prone to "merge" them into their decree. In only 6 of the 22 agreement cases did the court merely "approve" the agreement. Although the difference is of some general importance, it becomes crucial when a provision for variable alimony exists in the agreement. A "merged" agreement that provides for variable alimony renders both the judgment and the agreement void. Since only Case 3 involved variable alimony, the courts were safe, whatever their language. In Case 3 the court acted properly; it merely "approved" the agreement.

I also sought some information on when the agreement was entered into, and I wanted to know whether the parties themselves agreed or whether the attorney was a necessary participant in the agreement making process. In none of the cases did the parties come into the attorney's office with a "separation agreement" which had been written up sometime in the past when the parties separated. The closest to this stereotype occurred in 1 case where the parties had lived apart four years and had divided the personal property when they split up. In all the other cases, the parties agreed in contemplation of a divorce.

In a surprisingly large number of cases the parties reached an agreement on their own. In 5 of the formal agreement cases, the parties had already contracted on how they wished to handle their economic relations prior to one of them coming to see the attorney. He merely formalized it. In 11 cases the

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1 KAN. L. REV. 199 (1953) for a discussion of what language constitutes merger.


55 Actually the language is that of the attorney representing the winning side. As a matter of practice he draws the journal entry. There is some evidence that the court does not check the language too closely.

56 In 2 no agreement cases, the attorney said that property was not discussed and he assumed that the parties had agreed.
attorney helped the parties reach a settlement. In 1, the husband's attorney let his client negotiate with the wife's attorney. The husband's attorney did not participate. In 6 of these 11 cases the agreement was entered into prior to the hearing. In 2 of the other 5, both from the Central County, the attorneys agreed during the hearing. In the other 3—1 from the Metropolitan County and 2 from the Western County—the agreement was entered into after the court called the parties into chambers and “pressured” them into agreeing.

Litigation

It comes as no surprise that almost all of the 40 divorce cases are “default” matters. But as discussed in the definitions, the word default in divorce cases can mean either that no answer was filed or that no evidence was produced by the defendant. But it cannot mean, as in other cases, that the petition of the plaintiff was taken as true. The plaintiff must produce evidence.

Do defendants file answers and cross-petitions to protect themselves prior to agreement? Do they show up to see that the agreement is presented to the court? Apparently not. In the 40 cases, there was no answer filed in 27 cases. In 9 out of 13 asset, agreement cases, in 3 out of 4 asset, no agreement cases, in 3 out of 9 no asset, agreement cases, and in 12 out of 14 no asset, no agreement cases, the defendant did not bother to file an answer. In other words, only in the no asset, agreement cases did a majority of the defendants file a pleading.

Of the 13 cases in which a pleading was filed by the defendant, 7 of the defendants merely filed an answer while 6 filed an answer and cross-petitioned. But this does not mean that in the 13 cases the defendants showed up. In the no asset, no agreement cases 2 formal answers were filed, with the attorneys agreeing to the plaintiff’s requests in open court without consulting their clients. In the no asset, agreement cases, 3 cross-petitions and 2 answers were filed, but after the agreement the defendant offered no testimony. In the 6th case, the cross-petition was withdrawn in court after an agreement was arrived at by the attorneys in the court. In the asset, agreement cases, 4 answers were filed, but no evidence was offered in 1 case. The other 3 cases and the 1 asset, no agreement case need special mention. These 4 cases, numbers 15 and 18 from

\[\text{Note 59 supra.}\]
the Western County and numbers 2 and 4 from the Metropolitan County, are discussed in the appendix and will not be reviewed here. However, in Cases 15, 18, and 4, the court, by calling the attorneys and parties into his chambers, was able to pressure the parties into an agreement. In Case 4 the parties apparently agreed before offering evidence. In Case 15, involving an insane husband, the parties also agreed without actually litigating the property, although some evidence of "fault" was apparently introduced. But in Case 18 the parties could not agree on the division of property and spent considerable time in court showing values and the "fault" of the other side. After the evidence was presented the court suggested what it might do and the wife's attorney made a counter-offer which was accepted by the court and the husband's attorney. In Case 2 the parties could not agree and litigated both the grounds for divorce and the extent and values of their property. In only 2 or perhaps 3 of the 40 cases was there evidence presented to a court which was disputed by the other side.

There is one interesting point about the cases in which an answer or cross-petition was filed. When discussing agreements, particularly in the no asset cases, I pointed out that the Eastern County had 5 agreements in 6 cases while in the Central County, there were 2 agreements in 8 cases. In the Eastern County there was an answer in 2 cases and a cross-petition in 2 of the 5 cases that reached agreement. In the Central County 4 of the 6 cases with no agreements had no answer filed. The Eastern County lawyers filed answers and then agreed. The Central County lawyers did not file answers and at most orally agreed.

**Alimony**

Turning to the "merits" of the cases, what did the parties agree to or what did the court award in these 40 cases? In terms of the popular myth about alimony, Kansas women are not very demanding, although the courts seem to be quite willing to accede to what the wife wants. In the 18 no agreement cases (4 asset and 14 non-asset) the wife could have asked for alimony in 11 or perhaps 12 of them as a practical matter. But in only 1 no asset case out of the 11 did she so pray. In Case 11 the court heard her prayer and awarded a lump sum of 500 dollars. The attorney, who was the county attorney at the time,

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62 This "fault" evidence was not offered for purposes of divorce in either case 15 or 18. In Case 18, at a prior hearing the court had granted the divorce on the grounds of the husband's fault. The judge had postponed the hearing on the property matters to a later date. In Case 15 the court had agreed to grant a divorce on the grounds of the husband's insanity, but the husband's attorney introduced some evidence on the fault of the wife.

63 In theory, any wife, whether plaintiff or defendant, could have filed a petition or cross-petition asking for alimony. However in 5 cases the husband was the plaintiff and in 4 of these the wife did not file an answer. In the 5th case there was publication service only and a formal answer was filed by an attorney appointed by the court. In 1 case the wife was granted a divorce but had publication service only. She asked for alimony, but did not press for it at the trial and the court did not award it. She would have to have either personal jurisdiction over the husband or some of his property to be successful.
said that he could have brought a criminal non-support charge, but decided to try to get 500 dollars to pay off the husband’s debts in the community. Actually, the wife was not going to get the money so it could hardly be considered alimony in the normal sense.

In the 12th case, Case 2, the parties could not reach a settlement because they could not agree on whether the home belonged to them as she claimed or to the husband’s parents as he claimed. The trial court found both the parties at fault and awarded him the home because it felt that the home did belong to the husband’s parents. Yet she had worked and put the husband through school. In addition to 1,000 dollars worth of furniture and 400 dollars attorney fees, the court gave her a judgment for 2,750 dollars and made it a lien against the property. The court did not label this amount alimony, and the attorney for the wife had not asked for alimony in her petition. Yet it could hardly be a division of property since the court found the real property belonged to the husband’s parents, and she received almost all of the personal property. There was no “joint property” to divide. Both the judge and the attorneys for both sides told the interviewer that they considered the lump sum award to be “alimony.” Surely, in effect, it was alimony since it would have to come out of his future earnings.

Neither the judge nor the attorneys mentioned the problem of Kan. G.S. 1949, 60-1506, which the Kansas Supreme Court has interpreted to mean that when a divorce is denied because of fault on both sides, the trial court may award only a division of property and may not award alimony. In Biltgen v. Biltgen, the court said, in dicta, that a divorce might be granted for the fault of both parties. But neither in that case nor subsequently has the court said whether alimony may be awarded where both are at fault. Kan. G.S. 1949, 60-1511 allows alimony when the divorce is granted for the fault of the husband, and in the case before us the husband was at fault. But the divorce was not granted for his fault; it was granted for the fault of both. This case perhaps illustrates the futility of trying to separate alimony and division of property in terms of fault and the type of action.

When the husband and wife and their attorneys sat down and worked out an agreement, alimony was used more frequently to bargain with and to equalize the division of assets. In the 22 cases in which there is a basic agree-
ment, the wife could have asked for alimony in 21 cases. She did so in 13 cases. Breaking down the agreement cases into the asset-no asset category presents a better picture and one that can be compared with the no agreement cases. In 9 no asset, agreement cases, the wife asked for alimony in 7 cases compared to asking for alimony in only 1 of 10 no asset, no agreement cases. Why the difference?

It is not that she obtains the alimony. In only Case 22 did the parties agree to alimony. Both parties worked. He gave her the furniture and each took their own car. The husband paid 150 dollars attorney fees to the wife and agreed to 600 dollars in alimony at 60 dollars per month. The attorney said that the alimony was to be used to pay off debts. Here, then, the alimony was not support, but merely a way of dividing the assets. The parties could have directly agreed that the husband should pay the debts.

As a guess, the attorneys might have felt that if they asked for alimony it would improve the wife's bargaining position. One attorney specifically said that he asked for alimony for this purpose, but none of the other 5 attorneys commented. Whether the request actually improved the bargaining position is impossible to tell. Perhaps the answer lies merely in the fact that the attorney asks for alimony as a matter of form in any case where he assumes that the husband might want part of the assets.

In the 12 asset cases the picture apparently changes. Six times the wife asked and 5 times she obtained an agreement on alimony. In Case 30, where she was unsuccessful, the wife received eighty per cent of about 10,000 dollars in assets and the attorney remarked that he really didn’t think she could get any alimony even though he asked for it. "She was subject to a cross-complaint and her husband was a student." He added that he had asked for alimony as a bargaining device.

Of the 5 successful wives, 1 had the provision for alimony thrown out by the court in Case 24. Here, as discussed above, a non-Kansas lawyer had inserted a fifty cents every two weeks provision. The court threw it out as being meaningless and then refused to grant alimony when the wife said that she really did not desire it. In 2 of the cases the court “pressured” the agreement.

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69 I am here including 17 cases where the agreement was presented to the court, the 2 cases where the parties agreed but did not tell the court, and the 3 cases where the court “pressured” the parties into an agreement. I am omitting the 2 cases where the attorney agreed in court to the child support without consulting his client and 2 cases where the parties may have agreed on their own, but the attorneys had no real knowledge of any agreement.

70 In 1 case the husband obtained a divorce after the wife had left. She did not file an answer.

71 See Appendix, Case 29.

72 In the 6 cases the wife received child support. As pointed out, circa note 93 infra, there is no indication that she was able to trade alimony for a larger child support agreement. It is also impossible to tell if she received any larger share of the property. In 2 cases the wife got 100%, in 2 she got 50%, and in 1 there was no property. In the 6th case she got the $600 in alimony, plus 75% of $1,000 worth of assets.

73 Her Kansas attorney remarked that alimony was discussed and added: “But she got a property settlement instead.”
In Case 18 the parties divided about 65,500 dollars in assets on a fifty-five per cent to the husband and forty-five per cent to the wife basis. The journal entry reads that the award is made “as permanent alimony and an equitable division of property.” In Case 4 the parties had about 6,200 dollars in assets and the wife’s attorney hoped to get 3,000 dollars worth of assets and 3,000 dollars in alimony. At the court’s insistence the husband and wife settled on the wife getting 5,700 dollars in property and 1,200 dollars in alimony payable 600 dollars down and 50 dollars per month. In the 4th case, Case 16, in dividing up 25,000 dollars, the husband took about 20,000 dollars and gave the wife 5,000 dollars plus a cash settlement of 7,500 dollars which he had to borrow. Finally, in Case 3, the parties actually agreed to what is normally considered alimony, and they agreed to it prior to the wife’s coming to the attorneys’ office. Here the total assets figure is unknown, but it was probably not too large. The wife, according to the attorneys, got the bulk (perhaps eighty-five per cent) of the assets plus 5,000 dollars alimony payable 50 dollars per month, but all payments to cease if the wife remarried. Despite the importance of variable alimony for income tax purposes, Case 3 is the only example of a variable alimony provision. In all the other alimony cases, the husband will not be able to deduct the payments.

Looking at the alimony problem in terms of the 40 cases, the actual result is that something called alimony existed in only 6 cases. In 2 of the 6, 1 of which was for 500 dollars and the other 600 dollars, the money was to pay off debts. In 1 case there was a cash settlement which actually was considered by the parties and the court to be a part of the division of the assets. In another the division of property was also labeled alimony. In 1 the court “forced” 1,200

Ten to twelve thousand dollars might be a fair guess. The husband was a promoter and was currently down on his luck.

See Hopson, supra note 54. For a good discussion of the Oklahoma law on alimony, which closely parallels Kansas law, and the income tax problems, see Whinery, Tax and Non-Tax Negotiations in Alimony and Support After the Lester Case, 15 OKLA. L. REV. 1 (1962).

Not only did the attorneys not include variable alimony in their settlements, but they seemed blissfully unaware of the income tax problems. The 17 attorneys handling agreement cases were asked if variable alimony was discussed and if there were any income tax problems. Several attorneys obviously answered the question in terms of whether the parties discussed alimony, not variable alimony. Only 1 lawyer admitted discussing variable alimony. It was his case in which the parties agreed to a variable amount.

On the income tax question all but 1 lawyer said that it was not a problem. Several volunteered, however, that it only came up in terms of who could use the children as an exemption. One lawyer said that it cost the husband $300, but it was taken care of in the property division. His answer is not clear since no alimony, variable or otherwise, was agreed to. One attorney did mention income tax on alimony, but indicated that the payments would have to be over ten years to allow the husband to deduct the payments. No attorney, at least from the answer given, seemed to realize that variable alimony in an agreement would allow the husband to deduct all of the payments even where they were less than ten years duration. See 2A Nelson, Divorce and Annulment §§ 18.01-18.41 (2d ed. 1961). Even the attorney whose client agreed to variable alimony said that there were no tax problems in his case. This is not to suggest that none of the attorneys understand the law. The wording of the question was poor and the lawyer may have merely been saying, quite correctly, that there was so little money involved that income taxes were not a problem in this particular case. One attorney specifically answered in these terms. Yet at least 4 attorneys, when talking about income taxes and alimony, talked in terms of who could take the children as an exemption, and not in terms of the deduction of alimony payments.

In the 7th case the parties agreed to fifty cents every two weeks, but the court threw it out.
dollars in alimony, and in the 6th case the parties, on their own, agreed to 5,000 dollars subject to remarriage. In addition to the 6 agreement cases, the court in the 1 litigated case, in dividing nonexistent assets, gave the wife 2,750 dollars which the attorneys and the court considered, and rightly so, to be alimony. Actually then, alimony in the popular sense existed in only 3 cases!

But do the judges and attorneys when asked about alimony agree with what happens in fact? The 4 judges all express rather negative views toward alimony and certainly have little sympathy for the peroxide blond. When talking about alimony each judge exhibited considerable confusion as to the technical difference between alimony and a division of property, but said that he knew that there was a difference between them. They all said alimony could be granted in terms of property, but that they did not so consider it. Alimony was a lump sum cash payment payable in installments as far as these judges were concerned. It was something extra to the wife after the assets were divided up. As one judge said: "If I grant her some of his property, his separate property, I do not consider it alimony, not really alimony. But in terms of dollars and cents alimony, I consider many factors."

As I pointed out in the first of the article and have argued elsewhere, the trial judge has a right, under the Kansas Supreme Court decisions, to be vague on the exact nature of alimony in Kansas.

Viewing alimony as a "cash" payment, the judges said that women did not ask for it too often, and when they did the court was not particularly receptive. One judge remarked: "I think the property ought to be divided without keeping the parties tied to each other through alimony payments. When alimony is granted, it may lead to future quarrels and unnecessary involvement." He said he doubted if he granted alimony in more than one out of five cases where the wife asked for it, and that usually she does not ask for it. Another said that he did not like alimony and that a wife should not be "making money" off of a divorce. He added that since it is almost impossible to collect there is not much reason to grant it. He has granted alimony in only twenty-five cases in his twenty-eight years as a judge. One judge who seemed to be the most favorably inclined toward alimony commented that unless the wife was ill, he would not grant very much alimony because: "I do not believe in burdening the husband for life." He added that most wives do not ask for alimony. When there are children the wife asks for child support instead. She considers this

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78 This same judge remarked that the confusion in the alimony and division of property statute did not cause any problems since the statute was broad enough for the trial court to handle the case in a practical manner and still stay within the statute.
79 See Hopson, supra note 54.
80 For confirmation of these views see Peete, Social and Psychological Effects of the Availability and the Granting of Alimony on the Spouses, 6 LAW & CONTEMP. PROB. 283 (1939).
Most of the judges gave rather general answers as to what factors they consider before exercising their "broad discretion" when they do grant alimony. However, four concepts seem important. First, alimony must be considered in relation to the property of the spouse and how it was acquired. If the parties have accumulated property that can be divided, alimony is not as important as a separate concept, but may become part of the way of dividing the property. Second, the judges think in terms of a reward. How long has she lived with the husband? Third, they look to her basic needs in terms of an amount of money that will let her get "on her feet and get some more education and a job." The fourth concept is that of fault. Fault presents a special problem. All the judges said, obviously correctly, that alimony could only be granted when the husband was at fault. But a couple of judges expressed the view that "fault" should not play too much of a role since usually "fault" exists on both sides. On the other hand one of the judges, the same judge who generally expressed a more favorable view toward alimony, expressed strong feelings in favor of "fault" as a determining factor. He mentioned that in a case where a husband, who has a wife and a couple of kids, runs off with another woman, he has no qualms about granting alimony. He added that even if the statute were changed he would not grant a wife alimony if she were at fault. "If she runs out, he should not have to pay."

The judges were also asked if the parties ever provided for variable alimony. By and large I received a blank. One judge said that it occurred once in awhile, but the other 3 judges were quick to mention that alimony was to be in gross and not variable. One judge apparently contradicted himself by saying that if the parties do agree to it he will incorporate it into the decree. I would guess, on scanty evidence to be sure, that these judges and their attorneys are not too familiar with the "approval" technique as a way to avoid the Kansas gross alimony statute.

The attorneys, when asked about alimony, were more inclined to talk in terms of fault concepts. Although not specifically asked about their views on alimony, several mentioned that in negotiating the agreement they felt that they could do better for their client, no matter who was the plaintiff, if they could show fault on the other side. One attorney said that one reason no alimony was sought was that the wife, his client, was subject to a cross-petition. He added that if he represented the husband, he would try to show mutual fault

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81 Of course, as discussed circa note 51 supra, when the parties agree, the court approves the agreement. A couple of the judges mentioned that when alimony was included in the agreement they would approve it along with the rest of the agreement.

82 Or "slept with," as 1 judge put it.

83 See discussion circa note 30 supra.
in order to “get the cost down” for the husband. Another attorney mentioned that he always wanted to represent the one not at fault, since it helped on the settlement. But he complained that the judges tended to “crucify” a man if he ran around or if he drank too much. A couple of others mentioned that fault increased your settlement rights. In Case 18, which was litigated before the court forced a settlement, and in Case 2, which was completely litigated, the attorneys pointed out that they wanted to show evidence of fault since it would help influence the court’s decision. The importance of fault was not the only attitude toward alimony experienced by the lawyers. Several remarked that they would try in every case to get the most they could for their client, including alimony. In Case 4 the attorney, in planning his settlement, added extra alimony on the theory that it would be hard to collect. Others remarked that either the wife did not want alimony or she was not entitled to it because of fault problems, as mentioned above, or because: “They weren’t married long enough”; “He was a student”; or “You couldn’t get anything out of him.”

The attorneys did not volunteer any information on how often alimony was requested and granted, nor, except for the attorney who mentioned “crucifying,” how they felt about it.

**Child Support**

Marshall and May, in their study of divorce in Maryland and Ohio, suggested that alimony is granted much more frequently where there are children.\(^4\) One Kansas judge said: “The wife tends to feel that the child support payments are really alimony. She just figures how much she and the kids need and asks for that.” What are the facts in Kansas concerning alimony in terms of children and child support and what is the child support situation in the 40 cases?

In half of our cases there were one or more children of an age where the court could order child support. In all 20 cases the wife had in personam jurisdiction over the husband and could have attempted to have obtained a decree. In the 8 no agreement cases with children, the wife asked for and received child support in 4 cases, all of the no asset variety and all from the middle sized Central County. In 2 cases the husband’s attorney agreed in open court that seventy-five dollars a month for one child (after the husband got out of prison) and fifty dollars a month for two children were “fair” awards. In 1 case with three older children the attorney obtained fifty dollars per month which he said was a mere formality. In the 4th case the wife received seventy dollars a month for one child. These awards averaged thirty-five dollars per

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\(^4\) See Marshall & May I, at 311-312; Marshall & May II, at 340-341. In Ohio they found that the wife would receive some sort of an award four times as often if there were children.
month per child. In every case the court granted the amount the wife’s attorney requested. In the 12 agreement cases, child support was requested in the petition in 10 cases and agreed to in 7 cases. In the other 3 cases where the parties could not agree, the court awarded child support even though the husband did not agree. In the 2 cases where the wife did not ask, the husband agreed anyway. Consequently in all 12 cases child support was provided for. In the 7 no asset cases the parties agreed in 5 cases to 10 dollars a week for one child, 75 dollars a month for one child, 77 dollars and 10 cents a month for two children, 20 dollars a week for three children, and 75 dollars a month for two children. This averages 42 dollars and 50 cents a month per child. In the 2 cases where the parties could not agree, the court awarded 60 dollars a month for two children and 15 dollars a week for one child or an average of 30 dollars a month per child. In the 5 asset cases, the parties agreed in 4 of them to 15 dollars a week, 50 dollars a month, and 25 dollars a month each for one child, and 100 dollars a month for three children, which after one year was to go to 125 dollars a month. This averages approximately 38 dollars per month per child. In the 1 no agreement, asset case the court awarded 25 dollars a week for two children or 50 dollars a month per child.

Looked at another way in the 11 non-asset cases, whether agreed to or not, the average child support was 37 dollars and 79 cents per child. In the 5 asset cases the amount averaged 41 dollars and 88 cents per child. Certainly it was higher, but not greatly so. The examinations of the amounts in individual cases show such a wide discrepancy that a pattern is hard to find.

Nor does any marked difference arise when the four counties are considered separately. In the Metropolitan County there were only 2 cases with children and in 1 no asset case the parties agreed to 40 dollars per month for one child. In the Western County, there were 4 cases with children. In 3 there were agreements and the amount averaged 43 dollars and 75 cents per month. In the Eastern County there were 5 children cases. In 4 cases the parties agreed to an average of 35 dollars and 22 cents per child. In 1 the court awarded 40 dollars per month for one child. This gave an overall average of 37 dollars and 70 cents per child. In the Central County there were 8 children cases, 6 with no agreement averaging 36 dollars and 89 cents and 1 with an agreement for 75 dollars for one child for a total average of 40 dollars per child. Again the four counties average per child—Metropolitan—40 dollars; Western—43 dollars and 75 cents;

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*In an additional case of the asset variety, also from the same county, the two older children were allowed to choose which parent was to receive custody. One child went with his mother. The court ordered that the husband pay “reasonable” child support. The court said: “The wife really wanted nothing from the husband, but the amount of child support was left open so that the husband could contribute to the support of his son.”

*These 3 cases are listed as “agreement” cases since the parties did agree on a division of property.
As discussed below, the judges and attorneys talk in terms of basing the child support award on the husband's ability to pay. The data from the cases shows at least some relationship between the child support award and the income of the husband as set out in the petition. There are 10 child support cases in which the petition stated the monthly wages of the husband. Five cases are in the no asset, agreement category. The husbands were alleged to be making from 275 dollars a month down to 240 dollars a month. The parties agreed to child support from a high of 80 dollars a month to a low of 40 dollars. It averaged 251 dollars in income and 63 dollars in support. Three cases fit into the asset, agreement group. Here the husbands were allegedly making 460, 420, and 300-400 dollars a month. The husbands agreed to 60 dollars, 100 dollars for a year and then 125 dollars, and 100 dollars. In 2 cases, both of the no asset variety, the court awarded child support of 60 dollars and 50 dollars. Both of the husbands were supposed to be making 300 dollars a month. There are too few cases to prove much and certainly the petition is not an accurate guide to the husbands' real income, but at least the figures are consistent. The no asset husbands make less per month and agree to an average of less child support. The asset husbands make more and agree to more. The court's child support awards average less than what the husbands agree to.

The response of the judges and attorneys to the questions on child support present an interesting contrast to what the attorneys are agreeing to and what the court does. For instance each judge was asked how he handled child support matters. All of the judges stressed that each case "varies" with the needs of the children and the ability of the husband to pay. The basic conflict, as seen by all of the judges, was that the needs of the children were usually higher than the husband could afford and consequently his ability to pay was the basic limiting factor. When asked to give an average or "rule of thumb," the Metropolitan judge said 10 dollars per week or 40 dollars a month per child was a minimum; the Eastern judge said 10-20 dollars per week or 40-80 dollars per month per child; the Central judge said that ninety per cent fell within the 50-100 dollars a month per child range; while the Western judge said that it used to be 25 dollars per month per child, but now it averaged 50 dollars per month per child. As can be seen all the judges estimated their awards (and the agreements approved by them) a little on the high side. The Central judge

87 The 5 cases show: 2 of the $240 men agreeing to $40 and $60; 2 $250 men agreeing to $80 and $60; and 1 $275 man agreeing to $75.
was particularly high and, interestingly enough, he particularly stressed the problem of the husband’s ability to pay.88

The attorneys were questioned about child support only in terms of how it was handled in the agreement. Many commented saying, with variations, that they tried to get an agreement with the amount being based on the ability of the husband to pay and the number, age, and needs of the children. One added that the wife’s earning ability was important. Several said a “reasonable” amount. A few commented on how hard it was to collect, and a few did not seek child support on the theory that it would be impossible to collect. Many said that, in general, the amount was too low, but there was no help for it.

Only 4 attorneys mentioned a specific figure. One from the Eastern County and 1 from the Metropolitan County said that the wife agreed to 10 dollars per week, the court’s minimum.89 One Eastern County attorney added that he agreed to 20 dollars per week, about one-half normal, because that was all the husband could afford. Another from the same county said that he tried to get from twenty-five to thirty-five per cent of the husband’s earnings. He did not say how often he was successful!

One interesting contrast developed. Three attorneys and the judge in the Western County mentioned that the parties would agree to child support, but that it would not be included in the written agreement since the court felt that if it were, the court would not later have jurisdiction to change the amount. As 1 attorney said: “We didn’t put it in, but just told the court how much. We wanted it part of his judgment.” In the other 3 counties the attorneys said they put child support into the agreement. One said that the court would have to approve it and this would allow him to keep continuing jurisdiction. Since Bunger v. Bunger,90 holding that a child support agreement is not binding on the trial court, was not decided until March 4, 1961, and since prior to that time there was at least some doubt,91 it is not surprising that there may be a difference of opinion among the judicial districts of the state.

The suggestion in the Marshall and May study92 that alimony and children go together is apparently not true in Kansas. In the 7 cases in which the court granted an award in the nature of or called alimony, it awarded no child support. But this was understandable since in none of the 7 cases were there any minor children! Actually, out of the 16 cases in which the court granted child support, the wife asked for alimony in only 6, and in each of the 6 cases the

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88 Actually the awards per family rather than the awards per child come closer to what they say they do. On this basis the Metropolitan judge averaged $40; the Western judge $50; the Eastern judge $80.42; and the Central judge $69.38.
89 The Eastern court said the minimum was $10-$20 per week. The Metropolitan judge said his was $10 per week.
92 See circa note 84 supra.
wife signed an agreement which did not provide for alimony. There is no indication in the interviews that the wife traded her alimony for a larger child support arrangement, but of course this is possible. However, this data would be commensurate with the view of one judge that the wife considers child support to be the equivalent of alimony. But with a relatively clear line of demarcation between alimony and child support in Kansas, the judges and attorneys apparently do not use alimony as a substitute for child support.

**The Division of Property**

In the minds of most of the couples getting the divorce, their attorneys and the judges, the important decision for the economics of the divorce is how to divide the assets of the parties. As discussed above, under Kansas law a trial judge should, no matter who is at fault, set aside to the wife the property she owned prior to her marriage or acquired in her own right after marriage. He then must divide "such property as shall have been acquired by the parties jointly during their marriage." He has discretion to divide this property and it need not be an even split. Of course the parties may provide in an agreement for the disposition of this property, and if the court finds it fair, it may not disapprove. As previously discussed at length, the parties settled their economic rights in a formal manner in 17 of the 40 cases and in 9 others there was some form of agreement. However, 4 of these cases present an agreement of such a dubious nature that they are not counted as agreement cases. In the other 14 cases, plus the 4 of a dubious nature, the court had to divide the property. How did the court handle this assignment? How did the parties handle it?

There is no discernable percentage pattern in the cases. Whether talking of agreement or non-agreement, asset or no asset cases, in some the wife received almost all of the jointly acquired property, while in others the husband obtained almost all. Taken all together, for those cases where a percentage could be guessed, the property division averages fifty-one per cent to the wife and forty-nine per cent to the husband. However, a bit more meaningful view can be had...
by taking the 40 cases separately. In the 14 no asset, no agreement cases the statistics are almost completely meaningless. In half of the cases the attorneys claimed that there was absolutely nothing or at most 150 dollars worth of personal property to divide. Frequently in these cases the journal entry makes no mention of property or merely says that each is to keep what personal property he or she has in his or her respective possession. In 2 other cases there was no accumulated property and the wife took her property worth 500 dollars and 1,500 dollars. In 2 cases the award split 500 dollars and 600 dollars worth of joint property fifty-fifty. In 2 the wife got one hundred per cent of 500 dollars and 350 dollars worth of personal property. In the 7th case she got one hundred dollars worth of her own property plus sixty per cent of the 300 dollars worth of joint assets. Actually these "awards" represent what the wife wanted. In the 7 no asset cases where there were any assets at all, the husband did not file an answer. All of the judges indicated that in no asset, default cases they almost invariably go along with what the plaintiff wants, if at all reasonable.

In the 4 asset, no agreement cases, 2 involved a wife who ran off taking a few personal belongings. In each case she did not answer and the court awarded the husband all of the property except the personal things she took with her. The husband asked for and received about ninety-seven per cent of 16,000 dollars in assets in Case 14 and ninety-seven per cent of 8,000 dollars in assets in Case 19. In Case 31 the husband did not answer and the court split about 1,000 dollars in personal property fifty-fifty. It also set aside to her some oil lands that brought in 500 dollars per month which she had owned prior to the marriage. In these cases, as in the no asset cases, the court really had nothing to decide since it allowed what the plaintiff requested.

The 4th case, Case 2, was actually litigated. As pointed out in the appendix, the court found that the husband's parents were the true owners of the parties' home worth 4,000 dollars. Nevertheless the court went ahead and divided the property by giving the home to the husband and giving the wife 2,750 dollars in cash. Everyone considered this to be alimony. If it is so considered then the husband received eighty per cent, including the 4,000 dollar house, and the wife twenty per cent, plus the alimony. If the cash award is considered a division, she received about seventy-five per cent and he got about twenty-five per cent of the assets.\footnote{See circa note 64 supra for a discussion on the criteria the court used.}

The 9 no asset, agreement cases are quite similar to the no asset, no agreement cases. Any percentages are rather meaningless. In Cases 26, 33, and 36 there are less than 300 dollars in assets, with an oral agreement dividing the property fifty-fifty. The other 6 cases also present a sorry picture of dividing almost nothing. In Cases 9 and 27 the parties split, fifty-fifty, 800 dollars and
1,100 dollars worth of personal property. In Case 29 the wife received seventy-five per cent and the husband twenty-five per cent of 1,000 dollars in personal property. In Case 13, the wife took the parties' only asset, a 500 dollar car. In Case 22 the agreement gave the wife 500 dollars in furniture that she bought before marriage and they each took one car without mentioning it in the agreement. Finally, in Case 21, the husband, as his attorney said, gave away more than he should have. She received one hundred per cent of the assets, worth 800 dollars, and he agreed to pay off 1,700 dollars in debts.

It is in the 13 asset, agreement cases that the division becomes more meaningful, but even here there seems to be but little pattern, and many outside factors intrude. A detailed discussion of the cases occurs in the appendix and will not be reported here. The cases involved include Cases 1, 3, 4, and 10 from the Metropolitan County; Cases 12, 15, 16, and 18 from the Western County; Cases 23, 24, 25, and 30 from the Eastern County; and Case 32 from the Central County.

What are the characteristics of these 13 cases? Total assets\textsuperscript{100} run from a high of 65,000 dollars to a low of around 5,000 dollars. They averaged about 16,500 dollars. The Western County, however, was considerably higher. Its 4 cases averaged 31,600 dollars. In percentage terms the wife obtained an average of 56\% per cent of the assets. In 2 of the cases the husband did quite well. In Case 10 the wife ran off to a former husband and agreed to let the second husband have all of the 10,000 dollars in assets. In Case 12 the wife was "no good" and gave the husband about ninety-four per cent of 8,000 dollars because she wanted out. She kept some personal property and, at her attorney's insistence, obtained fifty dollars a month for her one child. At the other end of the scale are 2 cases where the wife got almost everything. In Case 32 the wife on her own talked the husband out of the home and car, which constituted about ninety-four per cent of the assets. He would not agree to child support and the court added twenty-five dollars per week. In Case 4 the court "pressured" a tavern owner husband into giving the wife ninety per cent of 6,000 dollars in assets plus 1,200 dollars in cash.\textsuperscript{101}

In most of the other cases each of the parties was able to claim at least a "fair share" of the assets. For instance, in Case 23, the parties split about 13,000 dollars fifty-fifty by the husband taking a car and 5,000 dollars in stocks and bonds while she took a house and another car. A second house was to be sold and split fifty-fifty. In Case 30 the husband got only twenty per cent. He took one home with a 1,000 dollar equity, a car, and 300 dollars in savings. She got

\textsuperscript{100} She claimed $400 was her separate property.

\textsuperscript{101} The figures are taken from the attorneys. In 1 case there was considerable property, but no value was obtained. In a couple of other cases I set a figure, but it was just an educated guess.

\textsuperscript{101} But he kept the tavern as a going business. They did not own the tavern property. For a discussion of the attorney's views on this case, see discussion circa note 113 infra.
another house with an 8,000 dollar equity, an old car, and a 150 dollar attorney fee. The husband's attorney said: "He gave up more than he needed."

Three cases deserve special mention. In Case 16 the "oil man" husband negotiated with the wife's attorney. He kept the airplane, one car, and oil leases worth around 20,000 dollars, while she got one car and personal property worth 4,500 dollars. The wife's attorney said she wanted to settle for 5,000 dollars in cash, but he did not think the husband should get off that easy. He told the husband that it would cost him 7,500 dollars to get out. The husband's attorney reported slightly different facts. He said she agreed to 5,000 dollars, but then stalled on getting the divorce. He agreed to 2,500 dollars payable when she got the divorce. He wanted a guarantee that he would be rid of her.

In the 2 Western County cases where the court "pressured" an agreement, the court tried to split it up about fifty-fifty. In Case 15, involving the insane husband, the court merely affirmed the division agreed to at a prior trial where it had denied the divorce. The wife received a little over one-half of the land with 13,700 dollars and the husband received a little less than one-half of the land worth 14,100 dollars. Case 18 involved a "no good" farmer husband who had inherited some farm land and a wife who had worked hard for him for thirty years. The judge talked them into each taking about one-half of the land. She got the wheat and he got the machinery and money. Out of 65,000 dollars, (all the property was appraised) she received forty-five per cent and he obtained fifty-five per cent.

This then is the way the parties and the courts divide the assets, according to the journal entry or the agreement. But I had heard that the parties would divide some of the property on occasion, even in asset cases, and it would never be mentioned in the judgment or property stipulation. Perhaps there existed substantial assets that never appeared in the court records. The attorneys were specifically asked if other property existed. Generally the answer was no. In most of the cases, clothing and other personal effects were not mentioned although in a few cases, both asset and non-asset, a long detailed list of personal effects appeared. In the no asset cases, on occasion, personal effects were not mentioned to the court, but even here they frequently were prior property of the wife. For instance, in Case 6 the decree does not mention property. Each kept some personal property and the husband's lawyer reported that she kept a 200 dollar diamond ring. In 1 case she kept a car, and in an agreement case, each took "their own car" without saying anything in the agreement.

109 In Case 25, the parties had lived together only six months and each had an "inexpensive" home that they kept along with the furniture. The attorneys got them to agree to this fifty-fifty split. In Case 24, she wanted "everything," including $150 a month support, but settled, when he threatened about going to court, for $3,000 equity in the home, the furniture, and $125 a month support while he got the 1959 car. It was about a seventy per cent split to the wife. In Case 1, the husband gave her what she wanted: two houses, furniture, and a car. He got seventeen shares of stock and the motorboat. There was no estimate of value.

100 See 10 KAN. L. REV. 480 (1962) for a discussion of this and a closely related problem.
In the asset, agreement cases there were several instances of non-mentioned property. In 1 she kept the furniture, in another a 500 dollar car. In 1 case the wife had "some money," and in another the husband had a 500 dollar bank account that he used to run his business. The "insane husband" had some money in the probate court that was ignored in the settlement. In the "65,000 dollar case," the parties sold 1,600 dollars worth of cattle which they split fifty-fifty before the trial court forced the settlement. In Case 16 both attorneys suggested that the "oil speculator" may have had other assets, but neither knew how much or where they were.

Apparently then, for all practical purposes, the assets of the parties are not kept out of the judgment, and cases like Zellner v. Zellner\(^\text{104}\) and Calkins v. Calkins\(^\text{105}\) present no practical problem.

What factors do the judges and attorneys have in mind when they decide a case or negotiate a settlement? How do they determine how much each side will take home? The answers given in the interviews present a wide range of attitudes and conditions. The key factor in most cases is, without doubt, the wishes of the parties. In a surprisingly large number of cases the parties have already divided the property before they see a lawyer.\(^\text{106}\) The parties certainly have a right to agree on their own, but, except for a very few, they undoubtedly do so without any knowledge of what their legal "rights" are. Apparently they decide on the basis of a popular "myth" as to what are their legal rights. Furthermore, there are several cases where it is obvious that one or both of the parties do not care what his or her property rights are. There are several examples of the wife or husband, even in asset cases, being willing to let the other spouse have-it-all, just to be free.\(^\text{107}\) Or perhaps a husband lets the wife have the bulk of the property since they did not have much and "he didn't care."\(^\text{108}\) Certainly in the no asset, no agreement, default cases the defendant did not wish to protest, and, as several attorneys said of these cases: "We asked for all there was." On occasion the parties agreed despite the advice of the attorneys—and the attorneys were unhappy.\(^\text{109}\)

Frequently when the parties agreed on their own they divided what they had about even, although there are examples of high percentages both ways. If they had separated for some time, they frequently each kept what they had taken with them. Without interviewing the clients, the real reasons for decisions on how to divide the assets must be unknown.

When the attorneys enter the picture and the parties leave to the attorneys

\(^{105}\) 155 Kan. 43, 122 P.2d 750 (1942).
\(^{106}\) See discussion circa note 56 supra.
\(^{107}\) See, e.g., Appendix, Cases 10, 12, and 19.
\(^{108}\) See Appendix, Cases 13 and 21.
\(^{109}\) See Appendix, Cases 13, 21, and 30.
how they will divide the assets, the key factor seems to be how the property was acquired. Although the Kansas cases provide that the trial court is to treat property in a different manner, the attorneys feel that each party should be allowed to keep what they had before they were married. This is particularly true when the parties were married late in life. Also the attorneys do not seem to take into account that, in theory, under Kansas law the separate property of the wife should be set aside to her and then the jointly acquired property divided. A few attorneys mentioned this fact, but most seem to consider that both should keep what they had before. On property acquired after marriage they feel that it should be split about even. But the fact that the wife earned wages and "purchased" property increases her percentages. In Case 18, the "65,000 dollar case," the husband had inherited the land, but she had worked with him as a farm wife for thirty years. The court and attorneys treated it as joint property. The court said it "pressured" the agreement on the basis that the husband had inherited the property, that he was a farmer, and that that was all he knew; but she had lived with him, and had worked on the place for thirty years, and he had treated her "like a slave."

A third factor is fault. Several attorneys mentioned that they felt they were in a stronger bargaining position if the other side was at fault. This was true apart from the question of alimony, although alimony itself was requested on occasion as a bargaining device. In Cases 2 and 18, in which property matters were litigated, all 4 attorneys mentioned that they tried to show "fault" in hopes that they would improve their position in the eyes of the court. I would hazard a guess that "fault" is thought of as a factor in property division more often than it is as a basis for alimony. As discussed in the alimony section, most of the cash payments were not treated as alimony, but were considered as a way of dividing the assets. In these cases "cash" was substituted for a larger division of the property. However, there were but few requests for alimony as a bargaining device. Attorneys do not seem to trade alimony for a larger share of the assets for the wife.

The most detailed and most interesting account on how one attorney decided what his case was worth occurred in Case 4. This case involved the tavern owner and his wife who had worked at the tavern for a long time. The attorney reported that he started off, as he does in all cases, on the assumption of a fifty-fifty split. He then added that there were three factors that put his client, the wife, in a good position to demand a favorable division of property and alimony: (1) the husband was delinquent in his temporary support, (2) the parties had a child that had died when it was two, and (3) the wife had worked

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110 See discussion circa note 24 supra.
111 See Appendix, Cases 21, 22, and 30.
112 For a discussion of the use of alimony as a bargaining device, see circa note 71 supra.
in the tavern and had helped to build the business, without pay. He said that he based his demand on the following factors: the conduct of the parties, the history of the parties, the events before the judge, and the financial circumstances. He added that the amount of alimony would have to include the fact that the husband might have to be forced to pay. He estimated the total worth to be about 6,200 dollars plus the going business from which the husband netted over 500 dollars a month. His initial thought, he said, was a one-half split on the property and 3,000 dollars in alimony. When the other side agreed to give the wife property worth 5,770 dollars, he agreed to settle for 1,200 dollars alimony. He felt that the added 900 dollars above his original figure was justified on the basis of the husband's poor record of paying and the "bad blood" between the parties. It was, in effect, collection costs.

There were a few other factors mentioned by the attorneys. In Case 24 the wife wanted everything. When the husband said he would "fight," they arrived at a settlement. In Case 12 the husband was going to "fight" until the wife said that he could have everything. She just wanted out. In a couple of others the property was divided on the basis of "what each could use."

One factor that was surprisingly not mentioned either in terms of the division of property or alimony was that of the husband's earning power or current wages. In many cases where child support was involved the attorney talked about the ability of the husband to pay. But in only 1 case did the attorneys even mention this in connection with alimony. Whether the husband was making 7,000 dollars or 3,600 dollars a year did not seem to influence the division of the assets or alimony. At least the attorneys did not seem to consider it a factor when asked about the basis for the division.

In several other cases involving property the attorneys gave a rather detailed account of how they or the court arrived at the total settlement. These statements are included in the discussion of the cases in the appendix and will not be repeated here. Attention is particularly directed to Cases 2, 4, 12, 15, 16, 18, 24, and 30.

The attitudes of the 4 judges in exercising their broad discretion on the division of property parallels that of the attorneys. As stated earlier, when the parties agree, the court will almost invariably approve it. But the judges were also asked how they handled a no agreement, default matter and how they would handle a litigated case.

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113 The parties were "pressured" into an agreement by the judge. Apparently the husband had not made too good an impression.
114 See Appendix, Cases 27 and 36.
115 See discussion circa note 89 supra. For actual comparisons, see discussion circa note 87 supra.
116 In case 30 the wife's attorney mentioned that the husband was a student so he did not think it was worthwhile to ask for alimony. In Case 4 the attorney said he considered the wife's earning capacity in determining how much alimony to press for.
117 See discussion circa note 51 supra.
In the default cases the judges were in agreement that they usually give the wife pretty much what she wants. They do not bother to take much, if any, evidence as to the property, but rely on what the attorney tells them. A couple mentioned that they check to make sure that what the wife wants is “fair,” but, as one said: “I only have the testimony of the wife.” One judge remarked that if the husband does not care enough to show up, he is not going to worry much about him. Another commented that frequently the wife wants the judge to decide for her. One of his problems is to determine who is going to be saddled with the property and so have to pay off the debt on it.

When it comes to the litigated cases the views of the judges vary somewhat. One judge said that he tries to get the parties to agree. When they will not he tries to “size up” each party to determine whose conduct is, in the main, responsible for the divorce. He also looks to the attitudes of the parties. If one wants all of the property and the other is willing to divide it, he is prone to agree with the latter.

A 2d judge, who also tries hard to get an agreement, is not so impressed with fault, although he admits that he has used it. He remarked that in one case he thought as follows: “I'll give one-third to the husband, he'll spend it on booze; I'll give two-thirds to the wife, she'll use it on the children.” He said his general attitude was that the parties should be put in the situation they were before the marriage plus one-half of the “proceeds” of the marriage. One should not make money off a marriage.

The 3d judge said he had not had a fully litigated case so he had not made such a decision. He said he would, however, consider the following factors: the requests of the parties, the obligations of the parties to each other, the parties’ station in life, how long they were married, how much property they had before marriage, what they jointly acquired, and what the husband could afford to pay.

The 4th judge also said that he had not had a case involving a substantial amount of property in which there was not an agreement. However, in the cases he had had, he said he first tried to equally divide the jointly acquired property and then tried to determine whether she should have some of his property. He added that of course he had first set aside her property, which she either had before marriage or which she had afterwards acquired in her own right.\footnote{The “fairness” was mentioned by 3 of the judges in terms of child support rather than property.}

\textbf{Other Economic Problems}

Two other facets of the economics of a divorce still need discussing. Under Kan. G.S. 1949, 60-1507, a trial court is empowered to grant temporary alimony\footnote{The views of the judges concerning alimony and child support will not be discussed here since they appear at the end of those two sections of this article.}
and/or child support, make a custody award, control the assets of the parties, and award "suit money." No statutory provision exists for enjoining either of the parties from seeing or molesting each other. How often do the parties ask for and receive a temporary order and what kind of relief do they get?

I have heard attorneys say that in their county, temporary orders exist in almost every case as a matter of form. If this is true, it does not show up in the 4 counties surveyed. In only one-half of the cases did one of the parties ask for some sort of temporary order. Support was requested in 17 cases and granted in 12. In the other 5 cases the plaintiff apparently did not press the motion. There is no judgment denying the request in the records. In 9 of the 17 cases, the wife asked for support of both herself and the children. It was granted in 7 cases. The amounts averaged almost 80 dollars per month. In 6 cases the wife asked for alimony alone, and it was granted in 5 cases for an average of 123 dollars a month. In only 1 case did the wife ask for child support alone, and it was not pushed.

"Suit money" or an attorney's fee was asked for in 11 cases and granted in 10. The court awarded an average of 130 dollars.

There were 9 requests for restraining orders and the court granted 8. In 5 cases the court gave control of the personal property to one of the spouses. In 3 of these 5, and 2 others, the court restrained one spouse from molesting the other and the children. Personal restraining orders are not provided for by statute, but such orders are requested and granted! The lack of statutory authority for this type of temporary order seems to bother neither the courts nor the parties.

Looking at the temporary orders by county, the Metropolitan County had 2 support orders, averaging 107 dollars a month, the Eastern County had 2, averaging 60 dollars, the Central County 3, averaging 96 dollars, while the Western County had 5, averaging 110 dollars. The prominence of the Western County may be due to the fact that all of the temporary orders were issued by the probate judge since the district court judge has more than one county in his district and does not live in the county where the study was made. It is interesting to note, however, that the Eastern County, with only 2 awards of

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120 Nor, for that matter, did the trial court refuse to grant what the plaintiff requested. In several cases the plaintiff did not request a certain amount, but in those in which she did, the court always gave what was asked.

121 In 6 cases only one amount was given. In the 7th the court separated the amounts, granting forty dollars a month alimony and sixty dollars a month child support.

122 In 1 case the husband was also ordered to pay the utilities. In another case the court granted $125 per month, which was later reduced to seventy-five dollars per month. The average is based on the seventy-five dollar figure.

123 But some of the combined decrees could be considered as being granted on the basis of the children.

124 In the 1 case the request was not pushed.

125 In 8 cases the wife also received some form of support. In 2 cases she asked for suit money only.

126 In 1 case the husband asked the court to keep her out of his tavern and she asked that he be kept out of the home. The court granted his request. See Appendix, Case 4.

127 KAN. G.S. 1949, 60-1507, covering temporary orders, does not mention personal restraints.
60 dollars each, is also the county in which the parties entered an agreement in 9 out of 10 cases.

In terms of suit money and attorney fees, a definite pattern emerges. In the Metropolitan County there were 4 awards, all of 150 dollars. In the Eastern County there were 2, both for 50 dollars. In the Central County there were 2, both for 215 dollars, and in the Western County there were 2, 1 for 100 dollars and 1 for 75 dollars. These differences are reflected in the minimum bar fees set in the respective counties and the judges' views as to whether to award the full minimum on the temporary hearing. Attorney fees will be discussed in some detail later in this paper.

The 8 restraining orders were also concentrated in the Western County—it had 5 of them. Again these orders were issued by the probate judge, but no reason is offered on why the relatively large number. Perhaps a bit of the "Old West" still exists in western Kansas!

The comparison between the temporary order of support and the final award, whether arrived at through agreement or by court order is remarkably consistent. In the 5 cases in which temporary alimony was awarded, some form of alimony was granted in the final award, be it a cash award or a division of the property which was labeled alimony. In other words, of the 6 cases that had an award resembling alimony, there was a temporary alimony order in 5 of them. There were 7 awards of support to both the wife and children. In all 7 cases the court awarded, or the parties agreed to, child support. In 2 it was the same amount, in 3 it went up and in 2 it went down.

The judges were questioned about their practices on temporary orders. Their responses reasonably follow what happens in practice. In the Metropolitan County the judge guessed that there was a temporary support order ninety-five per cent of the time, the Eastern County judge did not guess, and the Central County judge said 4 or 5 out of 10 cases. The Western County district court judge presents a different problem. He said that temporary child support was asked for in one-third to one-half of the cases but that temporary alimony is rarely requested. The probate judge was interviewed, but did not guess as to the percentage.

The practice of the 4 courts in awarding temporary support differs con-

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128 Apparently the attorney fee was for $200 and the court granted fifteen dollars in costs.
129 Two were in the Metropolitan County and 1 was in the Eastern County.
130 The awards increased from seventy-five dollars a month to one hundred dollars a month; from sixty dollars a month to $77.10 a month, and from sixty-four dollars a month to seventy-five dollars a month.
131 The awards decreased from $125 a month to sixty dollars a month and from one hundred dollars a month to seventy dollars a month.
132 Actually there were awards in only 2 out of the 10 cases.
133 He granted temporary support in 3 out of the 10 cases.
134 However, he awarded alimony in 3 cases and combined alimony and support in 2 for a total of 5 out of the 10 cases.
siderably. In the Metropolitan County the wife fills out a form listing her needs and the husband’s income. The court then orders, ex parte, a support award. The probate court in the Western County questions the attorney on the needs, but then routinely issues an ex parte order. The district court judge said he would pick up his pen and sign them. “If you grant it, it will force a hearing,” he said. In the Central County the judge criticized those judges who allowed ex parte support orders. He felt that it encouraged divorce. He insists on a hearing unless it will work a hardship on one of the parties. The Eastern County judge was even more emphatic in requiring a hearing. He said local custom decreed three days notice. He said ex parte orders got the court into trouble.\footnote{The statute, KAN. G.S. 1949, 60-1507, which allows temporary orders, is silent as to whether notice and a hearing is needed for a temporary support order.}

Although the judges were questioned on how much they allowed, none of the judges gave a figure. The Metropolitan judge suggested that the wife needed more support in the temporary order since she had not yet gone to work and adjusted her budget. The Eastern County judge said that he would allow up to one-half of the husband’s income and the home since she had to “keep going.” However, he felt that permanent alimony was an entirely different matter. But the Western County district court judge\footnote{The probate judge did not comment on this.} said that he would allow more permanent than temporary alimony. He said attorneys used temporary support as a way of getting fees. The Central County judge made no comparison but said that he was frequently able to get the parties to agree.

The judges were generally in agreement that they would routinely grant, in the temporary order, the wife’s attorney fees at the minimum bar rate if she so requested. The Western County judge said it was requested in 7 out of 10 cases and the Metropolitan judge said that when the wife was plaintiff it was requested in almost all of the cases. The Eastern County judge made no comment as to the number of requests, but said that he grants only seventy-five dollars on the temporary order. He normally grants the other seventy-five dollars at the final hearing. He also remarked that he does not grant it in every case since on occasion the wife will have more savings and more income than the husband. If the husband cannot afford the fee, he also will not order it. But the Western judge takes the attitude that he will go along with the attorney who says, “Well, give me 200 dollars, maybe I can collect one hundred of it.” Both the Metropolitan and Central County judges remarked that the wife’s attorney could ask for more at the final hearing and if there was a lot of work they would allow it. However, the Central judge said that he had yet to have a case where he granted more than the 200 dollars.
ATTORNEY FEES

Part of the economics of a divorce involve the cost of paying one and sometimes two lawyers. Although a few lawyers complain that for the time and worry divorce fees are too low and extremely difficult to collect, yet the cost of the attorney may be a factor to the parties in determining whether to seek a divorce. Since the litigants themselves were not interviewed, I have no direct evidence on this problem. However, in Case 9 the attorney said that the parties had separated four years earlier. The parties waited until the husband had saved 350 dollars and then they saw an attorney about a divorce. In Case 8 the parties lived together two months, and the husband ran off. Later his girl friend became pregnant and, according to the attorney, the mother of the second girl came up with the 150 dollar attorney fee.

What is the cost of a divorce? Who pays for it? What will the court award on a final decree? The attorneys were asked four questions concerning fees.

(1) Was there a local bar minimum? In the Metropolitan County all said yes and 2 mentioned 150 dollars. In the Eastern County all said that it was 150 dollars. In the Central County all mentioned 200 dollars. But the bar did not seem as well organized in the Western County. In that county 2 said that the minimum was 150 dollars, 1 said 200 dollars, 1 said he did not know, and 1 said that there was no bar minimum.

(2) How much do you charge for what kind of case? The responses varied. In the Metropolitan County 6 said they ask 150 dollars as a minimum while 1 said that he charged 250 dollars in default cases. All agreed that the fee would go up depending on the ability to pay, the amount of property, and the amount of work. No figures were given. In the Eastern County the responses varied even more. Of the 11 attorneys, 9 said that they would charge the 150 dollar minimum for a default case. One gave a 200 dollar figure and 1 said: “It depends.” 250 dollars, 300 dollars, and 350 dollars were frequently mentioned as charges if the case was contested or if there was considerable property. One mentioned a high of 3,500 dollars, another of 1,400 dollars. In the Central County, all of the attorneys gave the same answer. They normally charged the 200 dollar minimum and would go over that only when they had to spend considerable time in court. In the Western County, where the 5 attorneys could not agree on a bar minimum, there was a wide difference of approach. Two mentioned 150 dollars for a default case, but 1 said 75-100 dollars, 1 said 100 dollars and 1 said 20 dollars per hour plus 150 dollars for a court appearance. For con-

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137 One suggested that a minimum of $250 should be set for any contested case, while 2 others complained that other attorneys do not charge on a “time” basis although they do so for other types of legal work. One attorney suggested that the public should be willing to recognize that a divorce is a luxury and be willing to pay for it.

138 Although this study did not attempt to trace the history of these cases past the granting of the judgment, several attorneys voluntarily commented that they had not yet received from the husband the fee awarded to them by the court. Three lawyers specifically mentioned that they always attempted to get their fee prior to filing or “going to court.”
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tested cases or those involving property, 10 dollars and 20 dollars an hour was mentioned as well as an extra 50 dollars for "going to court."

(3) Does the husband agree to pay these charges even if the wife is your client? Twenty-four lawyers said "usually," "normally," or "often." Four said they looked to the wife first, but then to the husband. Two said "half of the time" and 1 said "not always." Only 2 remarked that they always looked to their own client. 138

(4) Does the court allow attorney fees when representing the wife and if so, how much? The lawyers from the Metropolitan County all agreed that the 150 dollar minimum was allowed as a matter of course. Many mentioned that the attorney could ask for more but his chances were not too good. Apparently on occasion the court would award 300 or 400 dollars. In the Eastern County the attorneys said 150 dollars, the bar minimum, was allowed. Only a couple said that if the divorce was contested the court might go higher. In the Central County the attorneys agreed that the court allows the bar minimum of 200 dollars. In the Western County the attorneys could not agree on this either. Two said the court would allow what the attorneys asked. One said 150 dollars. "If more you would have to explain." One gave 200 dollars which, he said, followed the bar minimum. One just said yes without giving an amount.

The above data shows what the attorneys asked for and what they said the court gives. In our 40 cases what did the court award or what did the parties agree to? In some 27 cases attorney fees are mentioned. In 11 out of 22 agreement cases the parties provided that the husband should pay the fee. In the 6 no asset cases the amount averaged 150 dollars.140 In the 5 asset cases the amount averaged 220 dollars.141 Of interest is the fact that of the 11 cases having an agreement on fees, 7 come from the Eastern County.142 Not only do they agree more in this county,143 but they agree on attorney fees as well.

In 6 of the agreement cases, where the parties could not agree on attorney fees, and in 6 of the 18 no agreement cases,144 the court awarded attorney fees.145 In the 6 asset cases, the court's order averaged 304 dollars.146 In the 7 no asset cases, the award averaged 171 dollars.147

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138 I could see no difference in the responses when broken down by counties.
139 One was for $200 and 1 for one hundred dollars. The rest were $150. In 1 case each agreed to pay his own attorney. In 3 of these cases the court granted a temporary order for attorney fees. In 2 cases the parties agreed on the same amount. In 1 the order was for fifty dollars and the parties agreed to $150.
140 They ranged from $350 down to $150. In none of these cases had there been a temporary award.
141 The 1 case where each agrees to pay his own fee also comes from the Eastern County.
142 See supra.
143 Attorney fees were prayed for in 10 of the 18 cases.
144 In 1 other case the journal entry says that the husband paid the fee, but no amount is given.
145 The 2 highest—1 for $425 and 1 for $400—both involved substantial property and considerable litigation. See Appendix, Cases 2 and 16. In Case 1 the court awarded $150 in its temporary order, but there was nothing in the journal entry or agreement concerning fees.
144 Four of the 7 cases came from the Central County where the court awarded $200 in each case. In the other 3 the award was $150. In 4 of the 7 cases there had been a temporary award. In 2 the award was the same. In 1 the court added seventy-five dollars to make it $150 and in the other the court added one hundred dollars to make it $150.
Apparently then, the attorneys guessed reasonably well on what the courts would give and on what the parties would agree to. In the asset cases, the court's average award of 304 dollars was substantially higher than the average of 220 dollars agreed to by the parties in asset cases. This may indicate, although the sample is quite small, that the attorneys do better than they think they do in obtaining more than the bar minimum from the court. In the no asset cases the courts awarded, or the parties agreed to, the bar minimum in every case.\textsuperscript{148}

\textbf{The Attorneys}

I tried to collect some data from the 32 attorneys interviewed concerning the proportion of their time spent on divorce matters, their feelings toward the way the courts now handle the property aspects of divorce, and their receptiveness to the establishment of a "Family Court"—either state wide or in our four largest counties.

There were only 3 lawyers in the sample who could be classified as divorce specialists. In the Metropolitan County 1 said he spent 70 per cent of his time on divorce cases while another said he spent 50 per cent. There was one 50 per cent attorney in the Eastern County. Five others—2 from the Metropolitan County and 3 from the Eastern County—spent 15 to 25 per cent of their time in this area. These 5 might be classified as part time specialists. The others spent from 1 to 10 per cent of their time in divorce matters, with 5 per cent being a popular figure.

The average time spent was 22 per cent in the Metropolitan County, 14 per cent in the Eastern County, and 5 per cent in the Central and Western Counties. These figures do not reflect, of course, an average of the bar in those counties since only attorneys who had one or more divorce cases in the sample were interviewed. Nor would this sample prove or disprove the supposed general feeling by the bar that they do not care for divorce cases and the supposition that many attorneys will not take them at all, while others specialize in divorce cases.\textsuperscript{149}

No specific questions were asked concerning general attitudes, but 2 Eastern attorneys and 1 Central County attorney volunteered that they did not like to take divorce cases and would do so only on rare occasions or "for regular clients." One Eastern County attorney said he hated to try custody matters because of the emotion involved. Several other attorneys complained about divorce cases in terms of the low and uncollected fees, but did not indi-

\textsuperscript{148} In the Western County the bar minimum is in doubt. In 1 case the court awarded $150 and in the other the parties agreed to one hundred dollars.

\textsuperscript{149} Marshall and May report that in Baltimore there was a high degree of specialization. Marshall & May I, at 29. In Ohio there was little specialization in Cleveland, but some in other cities. Marshall & May II, at 124-126.
cate a distaste for the subject matter. One young attorney commented that he didn’t mind divorce cases, but, as he said, he “didn’t have much else to do”!

Most of the attorneys felt that the courts were doing a reasonably good job in handling the economics of a divorce. In the Central County, the attorneys were all happy, with several mentioning that the court would go along with what the attorneys wanted. In the Eastern County there were few complaints. One did mention that the court favors the wife too much and that property matters were too much up in the air. Another agreed that the wife was favored, but blamed it on the law, not the court. One complained that child support was too low. In the Metropolitan County the attorneys were reasonably happy. One said that the court was too generous to wives, but another said that the wives should be favored. One felt child support laws should be strengthened while 2 saw problems of inconsistency in property matters. In the Western County the attorneys were not as happy. Of the 5 attorneys, 2 had no complaints, but 3 did. Two said the wife received too much and the other said that child support was too low. Two also complained that there was insufficient investigation of what constituted joint property, and 1 felt that the court should not “pressure” agreements so strongly. In summary, there was some feeling throughout the state that the wife was too favored, that child support was too low, and that there was some inconsistency, making it hard to advise clients. Overall though, the lawyers were satisfied.

But although satisfied with the economics of divorce under the existing system, the lawyers were generally agreed on the advisability of a “Family Court,” particularly for the larger counties in the state. Seventeen of the 32 lawyers, gave an unqualified favorable response with several offering the opinion that many marriages could be saved if the parties had help. However, several doubted that Kansas could have such a court because of the cost. Four others indicated that it was not economically feasible or it was not needed in their smaller county, but would favor it for the large counties. Three were rather indifferent, while 8 were opposed. Those in opposition suggested complete satisfaction with the existing system since there was a close relationship between the bench and the bar, that the cost of a “Family Court” was excessive for the service performed, and that one judge could become tyrannical.

CONCLUSION

This pilot study shows, I think, that the normal statistical data on the economics of a divorce is rather meaningless. Information that alimony is granted in fourteen per cent of the cases means little as do statistics like those appearing in the Kansas Judicial Council Bulletin. The data becomes mean-

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150 See discussion circa note 11 supra.
ingful only if each individual case is studied and the value of the assets is known. Some of this information can be obtained from the lawyers. How accurate it is is an open question, but it is doubtful that, in most cases at least, the parties themselves would have any better guess. Certainly the lawyers are a source of information and are willing to talk to law student investigators.

A problem that will always plague the investigator in this field is the excessively large number of variables that influence each case. Undoubtedly any future studies must involve—assuming funds exist—a much larger number of cases so that computers can be used. Also, the investigator should work in conjunction with a sociologist skilled at making large surveys involving many complex variables.

Other than showing that some data exists and can be obtained, the pilot study itself gives some information on the economics of divorce in a rather conservative Midwestern state. But it is certainly not in any way intended, and no one should take the collected data, as a true representation of the Kansas picture. It was not intended to be statistically accurate. It merely throws some "light" on the subject. I might, however, draw these tentative conclusions. Certainly the study shows that as a matter of practice and as a matter of preference the "property stipulation" is and will continue to be used. Yet such agreements are of quasi legal standing. The divorce code does not mention them. Although the supreme court has recognized them, there is always some danger that a court will hold that a particular agreement is collusive or that it is against public policy in that it promotes divorce. The attorneys and the judges themselves are not too clear as to the state of the law concerning what may go into an agreement, and certainly the income tax advantages go by almost unnoticed. It might be advisable for Kansas to promote these agreements and clarify their status by enacting a detailed statutory provision covering their use.

Second, the role of, and distinction between, "alimony" and "division of property" is almost meaningless at the trial court level; and the supreme court cases have left a vague feeling of uncertainty as to what should be done. There certainly seems to be little need for a rule requiring alimony. While fault still seems to play an important role in the bargaining process, its role as determining factor for alimony seems a product of an earlier age. Certainly a redrafting of the Kansas statute is in order.

Thirdly, I would like to make a most radical suggestion. While many have argued that "divorce" should be a non-adversary proceeding, with a Family Court to study the social and psychological causes of the divorce, the movement has not been overly successful. High cost may be one reason, but I

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182 Garver v. Garver, 184 Kan. 145, 334 P.2d 408 (1959) now requires alimony in Kansas where the divorce is granted for the fault of the husband.
would be suspicious that many attorneys resist the movement to a non-adversary hearing not only because of a selfish desire for fees, but also because, in the economics of a divorce, the process is, in fact, an advisory one. The lawyer has a real role to perform,\(^{13a}\) performs it, and should be paid for his services. If this is true, perhaps a realistic compromise could be worked out. The data in this study shows that in about one-half of the cases there is but little property and in many cases the only problem for the parties is to divide up the mortgaged car and furniture. Certainly the "grounds" for divorce present no problem. The attorneys complain that in the no asset cases, they do not receive sufficient fees to justify their time and effort. Perhaps it would be possible to dispense with the advisory nature of the divorce in the no asset case where it would not be possible or desirable to dispense with it in the asset case.

I hope that other investigators will be able to examine at least a few divorce cases in other states. Even a series of small projects would help give a more accurate picture of the "Economics of a Divorce."

APPENDIX

The 40 cases used in this study are herein described in some detail. Each case is assigned an arbitrary number so that the description of any particular case referred to in the text can be quickly found. The cases are segregated by county.

A. The Metropolitan County

Case 1: H guilty of extreme cruelty and gross neglect of duty. The parties were married 18 years and in their 40's at the time of filing the petition. They had no children. The court granted her $150 attorney fees. The H entered an appearance, but filed no answer and did not have a lawyer. The parties discussed the division of property before the W's attorney. The attorney drew up a written stipulation, but the parties did not bother to sign it. At the hearing she asked for, and the trial court gave her, basically what she had agreed to in the attorney's office. She received two houses, furniture, and the car. H received seventeen shares of stock and the motorboat. There may be $20,000 equity to her, but no guess on the stock. An asset, agreement case.

Case 2: W guilty of gross neglect and H guilty of extreme cruelty. They were married 11 years and in their early 30's. They had no children. W financed H's education. Then H thought he was too good for W. The court granted her $125 a month temporary support, later reduced to $75 per month. The Court ordered H not to come around the home. Both grounds and property matters were litigated since the parties could not agree to a settlement. They argued over whether the home and some additional land was held in "trust" for H's parents who had made the down payment. The court said that the closest they would come to a settlement was an offer by H to pay W $1,000 and an offer by W to take $100 per month for 10 years. H made $400 per month net, while W made $160.\(^{13b}\) Court awarded W $1,000 in furniture, $400 attorney fees, and $2,750, which was made

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\(^{13a}\) See Johnstone, Divorce: The Place of the Legal System in Dealing with Marital-Discord Cases, 31 Ore. L. Rev. 297, 327 (1952).

\(^{13b}\) These figures, as are later ones, are taken from the petition.
a lien on the home. H got the car, the home, and the hi-fi set. The court felt that perhaps the home was "trust" property, but that W was entitled to more than half the assets for putting him through school. Equity in home and land probably not worth more than $4,000. Both attorneys and court treated the $2,750 as alimony although not so labeled in decree and W's petition did not contain a prayer for alimony. An asset, no agreement case.

Case 3: H guilty of gross neglect. They were married 26 years and in their early 50's. They had one adult child. H entered an appearance, but had no lawyer and did not file an answer. An emergency was declared by the court. The parties had agreed on alimony and property prior to W coming to the attorney's office. The attorney just drafted the agreement, which the court routinely approved. W received $5,000 alimony payable at $50 per month, but to be stopped if W remarried. W received one car on which H was to pay the mortgage, all the furniture she wanted, the equity in 1,474 shares of stock in a motel corporation, a cemetery lot, plus remaining the beneficiary of $41,000 in life insurance on H. H got the 1959 Ford T-Bird, plus the rest of the furniture. The attorney could not guess on the value of the property. W told the court that her "promoter" H was down on his luck, but if he became rich he would give her more later. An asset, agreement case.

Case 4: H guilty of extreme cruelty. They were married 6 years and both were in their 40's. They had no children. Both sides represented and W filed a cross-petition. H was ordered to pay $35 per week plus utilities. Both sides asked for a restraining order. The court told W to stay away from H's tavern. There was no contest as the attorneys reached an oral agreement in the judges chambers after the court applied some pressure to H. The attorneys were ready to settle, but without the courts help were unable to do so since the parties were "very bitter." H had operated a tavern for years and made $500 per month profit. W had worked there without pay, helping to build the business. W received $1,200 alimony, $600 down and $50 per month. They split the furniture with W getting the bulk of it. H received an old car. They had assets of $6,200 in a home, plus the going business. W received $5,700 in assets by the husband agreeing to buy the home. The court excluded W from any interest in the tavern business. The attorneys figured W received $900 more than half of the assets if the alimony is included. $500 in a bank account that went to H was left out of the agreement. The court approved the agreement but added $350 attorney fees to W. An asset, agreement case.

Case 5: H guilty of gross neglect. They were married 13 years, but W had divorced and remarried H during this period. They had 3 adult children plus 1 girl, 19. There was personal service, but H did not answer. She took $500 in personal property, which she did not mention to the court, and then did not ask the court for anything since H was making less than $50 a week and would suffer contempt before he would help support W. Both W and her attorney felt that it would be no use. A no asset, no agreement case.

Case 6: W guilty of extreme cruelty and gross neglect. There was an emergency decree. The parties were married 3 months, but had stayed together only a week. They were both in their late 20's and had no children. W entered an appearance, but had no attorney and filed no answer. The court found that no property had been accumulated so made no division in its order. Each side kept their own personal effects and it was not mentioned to the court. The attorney said that the court felt both parties wanted out and W was fairly treated. H let W keep $200 diamond ring he was buying on time. A no asset, agreement case.

Case 7: H guilty of gross neglect. They were married only 8 months and had no
children. H had taken off and W did not know where he was. There was only publication service and no answer filed. The parties had accumulated nothing. She kept her own personal property and car. It was of little value and was not mentioned to the court. She asked for alimony but did not press the court for it, reported her attorney.\(^{185}\) A no asset, no agreement case.

Case 8: H guilty of extreme cruelty and gross neglect. They were married 7 months, but lived together only 2 months. They were late teenagers and had no children. There was personal service, but H did not answer. He had gone home to mother, found another girl, and got her pregnant. The mother of the second girl paid for the divorce. W did not feel she wanted or that she was entitled to alimony. She was working, had no children, and had lived with H for only 2 months. H had nothing. The court gave her her personal effects, an old car which she had had prior to the marriage, and $150 attorney fees. Total assets under $500. A no asset, no agreement case.

Case 9: H guilty of gross neglect and abandonment. They were married 8 years, but had separated 4 years before the divorce. They had a child, 5 years old. When H saved up $350, he saw an attorney with W. H was sent to another attorney and filed suit. W cross-petitioned. The parties had agreed on a division prior to seeing the attorney. H's attorney formalized it. Each kept the personal property in their own possession. H paid $10 per week child support and $150 to W's attorney. The court approved the agreement and made it part of the judgment. H made $60 a week. W worked as a maid. The attorney would not guess on personal property, but said that it was not worth over $800. A no asset, agreement case.

Case 10: W guilty of gross neglect and extreme cruelty. They were married 15 months, but had no children of this marriage. W had gone to California to live with a former husband. There was publication service, but no answer. W wrote H, after he had filed suit, that he could have all the property. The court granted him the house and furniture worth $11,000. A car, worth $500, which was owned by H prior to the marriage, was not mentioned to the court. An asset, agreement case.

B. The Small Western County

Case 11: H guilty of extreme cruelty and gross neglect. They were married 2 years, with H gone for the last 6 months. In their early 30's, they had no children. There was personal service, but no answer, although H had attorney of record. The court granted $100 per month temporary support. The parties owned nothing but a few household goods and furniture. W was on relief. H was in the trucking business. The county attorney, who represented W, debated on whether or not to bring criminal non-support charges, but decided to ask for $500 alimony—which she got. The money was to pay H's debts in the community. The court divided the "property," by allowing each to keep what was in their possession as requested by W. She asked for and the court granted her $150 attorney fees. The attorney said: "A typical divorce case." The attorney implied nothing was ever collected. A no asset, no agreement case.

Case 12: H guilty of extreme cruelty and gross neglect of duty. They were married 15 years, H in his late 40's and W in her early 30's. They had 1 daughter, 10 years old. There was personal service. H was represented by an attorney who appeared for him, but he

\(^{185}\) Since no in personam jurisdiction existed over H, the court could not have granted any. However, the attorney felt that the court did not grant alimony because the judge had no evidence of the financial condition of H.
filed no answer. The court awarded $50 a month temporary support. It granted W the
control of some personal property, including a car and the use of the home. W wanted out,
but H didn't. "Their ages show the problem," said W's attorney. "Hot pants," said H's
attorney. H at first wanted to fight, but agreed to let her have a divorce when she said
he could have everything. The agreement gave him a $7,000 home, $250 car, some personal
property, and $150 attorney fees. She got an old car and some furniture worth $500. At
her attorney's insistence she asked for and received $50 per month child support. The
court approved the agreement and incorporated it into its decree. W took some money
out of joint account and had some money of her own that was not mentioned in the
agreement. Total assets were about $8,000. An asset, agreement case.

**Case 13:** H guilty of extreme cruelty and gross neglect. They were married 4 years
and in their late 20's. They had 2 daughters, 2 years and 2 months. There was personal
service, but no answer. The court granted $100 per month for temporary alimony and
child support. The W was granted the use of the car and home. H was restrained from
bothering W or children. The parties agreed before they saw the attorney. They were
very amicable. W wanted the 1955 Pontiac worth $500, and H said O.K. He paid the $150
attorney fee. Child support was set at $75 per month. The court was not asked to approve
the agreement since the attorney wanted the court to make the child support order so
that it could later be changed. The court's order followed the agreement. The car was the
only property "worth anything." A no asset, agreement case.

**Case 14:** W guilty of gross neglect and extreme cruelty. They were married 9 years
and in their middle 20's. They had no children. There was personal service, but no
answer. W had run off some 6 months earlier. H and W and H's brother owned all of
the shares in a grain company. It was the brother's money that had bought the grain
company. H was paying it back. H asked for and the court gave him, his and her shares
worth about $10,000. The court also granted him all of the personal property in his posses-
sion, worth $5,500. She received $500 worth of personal property that she had taken with
her—mostly wedding presents from her friends. An asset, no agreement case.

**Case 15:** H guilty of incurable insanity. They were married 21 years and in their
early 40's. They had 1 adult daughter and 1 daughter, 11 years old. There was personal
service, and a formal answer by a guardian ad litem. In an earlier proceeding W sued for
divorce on grounds of insanity, but the doctors could not testify that H was incurably
insane. W wanted the property divided anyway. H's attorney stalled for some time since
he felt W was a poor wife and mother, and the land was purchased from H's father at a
reduced price. But with pressure from the court, he agreed to a 50-50 split since it was
technically jointly acquired property. The W's attorney felt 50-50 was fair since she lived
with H for 20 years and no one was at fault. In the division W got a little over one-half
the farm and ranch land appraised at $13,700, plus some personal effects. H's guardian
received a little less than one-half of the land, appraised at $14,100. H was to pay $25 per
month child support. Later W was worried about the title to the homestead, so she again
sued for divorce. This time the doctors said that H was incurably insane. The court, upon
agreement by attorneys, confirmed the prior division of the property, and ordered H to
pay $25 per month child support. H also had some money held by his guardian which
was not mentioned in the decree. H and W were both ordered to pay $75 each to the
guardian ad litem. An asset, agreement case.

**Case 16:** H guilty of extreme cruelty and gross neglect of duty. They were married 2
years, but had been divorced and remarried once before. They were in their early 30's
and had no children. There was personal service. H had an attorney, but he filed no answer. The court awarded $200 a month temporary support and gave her control of the household goods and the 1960 car. H made about $30,000 a year. The attorneys differed as to the parties’ problems and the reasons for the settlement. H’s attorney said W was a spoiled daughter of wealthy parents and wanted to live in the big city. H got fed up and wanted her to get a divorce. W’s attorney said that he was an oil and gas speculator. He ran around over the country with girl friends in every port. She was still in love, but got fed up with his running around. The parties reached agreement with help of W’s attorney. H negotiated directly with him. Total assets of about $25,000, but neither attorney could find out for sure how much equity in oil leases or how much money H had. He kept an airplane, one car, and oil leases worth around $20,000. She got a car, furniture, and clothes worth $4,500, plus $7,500 cash which H had to borrow. She was willing to agree to only $5,000 cash; but W’s attorney “forced” her to demand $2,500 more before agreeing. Her attorney complained that she could not make up her mind. H would “sweet talk” her into giving up everything. H’s attorney said the extra $2,500 was to insure W’s going ahead with divorce. The court approved the agreement and merged it into its decree, but added $425 attorney fees payable to W’s attorney. An asset, agreement case.

Case 17: H guilty of gross neglect and extreme cruelty. They were married 2 years and in their middle 30’s. They had no children. There was personal service, but no answer. H had just taken off, according to W’s attorney. There was no property, so she did not ask for anything. The court’s judgment makes no mention of property. A no asset, no agreement case.

Case 18: H guilty of gross neglect, extreme cruelty, and habitual drunkenness. They were married 31 years. H was in his late 50’s and W in her middle 40’s. They had 5 adult children. There was personal service, and H answered. The court granted $100 a month temporary alimony. H was restrained from molesting W and prohibited from withdrawing any money from the joint account. Later H was allowed to pay some bills and taxes. H made about $7,500 a year as a farmer off a half section of inherited land. There was no litigation on grounds, but the case was hard fought on property. The parties could not agree as to value or on how to divide it. The court had the property appraised. In his chambers the judge told W’s attorney he would make either one of two divisions based on the fact that H inherited the land and the court wanted to keep H in farming. On the other side W had worked hard for 30 years, and H had treated her “like a slave” while he loafed. W’s attorney and W did not like either of the court’s suggestions. W’s attorney replied that if the court would give her the wheat on the land in addition, they would be satisfied with one-half the property. The court and H’s attorney agreed. The court’s order provided that W should get most of the household goods, worth $1,500, one-half of the land worth $24,000, the wheat, worth $4,500, and $300 as attorney fees, for a total of $30,300. H received one-half of land worth $20,000, $1,500 in machinery, $2,500 in livestock, and $11,333 in stocks, oil, accounts receivable, and a car, for a total of $35,333. $1,600 from some cattle was split 50-50 prior to trial. The court’s judgment calls the division “permanent alimony and equitable division of property.” An asset, agreement case.

Case 19: W guilty of extreme cruelty and gross neglect. They were married 2 months, but lived together only 1 month. H was in early 60’s, and W in her late 40’s. They had no children of the marriage. There was personal service, but no answer. The “no good” W had run off with all the household goods and personal property. H obtained a temporary order for its return and got back about two-thirds of it. The court awarded H the house,
worth $7,500, and the personal property in his possession, worth $300. W was to keep the personal property in her possession, worth "very little." An asset, no agreement case.

Case 20: H guilty of "desertion." They were married 21 years. W was about 40 with 1 son, 20 years old, and a daughter, 17. H had been gone "quite a while." There was personal service, but no answer. No property was listed in the petition or judgment. W had purchased the household goods, had inherited "some property," and was working. She wanted nothing. A no asset, no agreement case.

C. The Medium-Sized Eastern County

Case 21: H guilty of gross neglect. They were married 2 years, but had no children. There was personal service and H answered. H had left town. He was making $65 per week. W asked for all personal effects, the household furniture which was hers, and an old car. H was to pay off $1,700 in debts on the furniture and car and $150 attorney fees. H did not care and signed the agreement. W had supported H. The furniture and car were worth $800. The court approved and merged the agreement. H's attorney said he paid off $768 and then went through bankruptcy. A no asset, agreement case.

Case 22: H found guilty of extreme cruelty on W's cross-petition. They were married 2 years, but had no children. He made $225 per month plus commissions as a salesman. W was a sales girl in a variety store. H agreed to let her have all the household furniture which she had had before marriage or had purchased with her own money. She kept her car and he kept his. H paid $150 in attorney fees and agreed to pay $600 alimony at $60 per month so that W could pay off some of their debts. Total assets under $1,000. The court approved and merged the agreement. A no asset, agreement case.

Case 23: H guilty of gross neglect. They were married 6 years. They were both about 30, and had 1 daughter, 10. There was personal service, but no answer. H made $5,500 per year. H and W agreed to a property settlement before seeing the attorney. He took one car and $5,000 in stocks and bonds. W took another car and a house she was buying. Another house was to be sold and split 50-50. She had taken the furniture she wanted. H was to pay $15 per week child support and $200 attorney fees. The attorney felt that it was a 50-50 split. Total assets were about $13,000. The court approved the agreement and merged it into its decree. An asset, agreement case.

Case 24: H guilty of gross neglect. They were married 10 years, and had 3 children, 9, 7, and 5. There was personal service, but no answer. H was a laborer and made $420 per month. ($350 said W's attorney.) W wanted everything and $150 a month support. After several meetings, with H threatening to litigate, she agreed to take the home with $3,000 equity, the furniture, and $350 attorney fees, and she remained the beneficiary of his life insurance. H took a 1959 car and debts on it. He agreed to pay $100 a month for a year and then $125 a month in child support. The agreement also provided for $1 a month alimony. A non-Kansas lawyer prepared this alimony provision on the assumption that it would give the court continuing jurisdiction. The court approved and merged the agreement except for the alimony. The judge said that it served no purpose. The court did not grant alimony since W testified that she did not want any. Total assets were about $5,000. An asset, agreement case.

Case 25: H guilty of gross neglect. They were married 6 months, and in their middle 50's. They had no children. There was personal service, but no answer. The parties agreed, with attorney's help, that each was to keep what they had before their marriage. Each
had an inexpensive house, plus some furniture and debts. H was to pay $150 attorney fees. The attorney had no guess on value, but it was not large. An asset, agreement case.

Case 26: H guilty of gross neglect. They were married 3 years. They were in their teens and had 1 daughter, 2. There was personal service, but no answer. The court granted $15 per week temporary support. According to the attorney they had almost nothing. The parties divided their assets before seeing him. The court approved their division. The court then awarded $15 a week child support, which the parties had not discussed. H made $75 per week, but the court found that he was making only $60 per week and that she was making $20. The court ordered H to pay $150 attorney fees. A no asset, agreement case.

Case 27: H guilty of gross neglect. They were married 3 years and in their early 20's. They had 2 daughters, 2 and 1. There was personal service and H filed a cross-petition. The court awarded $15 a week temporary child support and restrained H from coming to the home. H was a sergeant in the army. After working with attorneys, each agreed “to take what he could use.” W agreed to take the furniture and personal effects, worth $500, and $150 attorney fees. H obtained the car worth $600. He agreed to $77.10 per month child support (the army allotment). The court approved and merged the agreement. A no asset, agreement case.

Case 28: H guilty of extreme cruelty. They were married 2 years, but had no children. There was a general appearance, but no answer. W had been married before. H was injured in a fall and was now incompetent. He could not support either W or himself. The parties had used up the property they had. W did not ask for anything and court awarded nothing. A no asset, no agreement case.

Case 29: H guilty of gross neglect. They were married 16 years and had 3 children, 13, 12, and 5. There was personal service, and H filed an answer. He was a farm laborer making $250 per month. The parties had been separated for a long time, and she had supported the 3 children. With attorney's help they agreed that each would keep what they had. She got a car and furniture worth $750. H got an old car worth $250. She asked for alimony to bargain with. She wanted some child support and he agreed to $20 per week. Each agreed to pay his own attorney. The court approved and merged the agreement. A no asset, agreement case.

Case 30: H guilty of gross neglect. They were married 7 years, but had no children. There was personal service, but no answer, although H was represented by an attorney. H was a student and W had worked. He made $3.80 per hour “part-time.” With aid from attorneys, they agreed that H could have the home with $1,000 equity, the $150 car, and the $300 savings account. W got a house in another town, with $8,000 equity, an old car, and $150 in attorney fees. W's attorney said: “Not much chance for alimony. She was subject to a cross-complaint.” H's lawyer said: “He gave up more than he needed to.” The court approved and merged the agreement. The agreement said: “Shall be in lieu of alimony.” Total assets were about $10,000. An asset, agreement case.

D. The Middle-Sized Central County

Case 31: H guilty of extreme cruelty. They were married 22 years and in their early 40's. They had 2 children, 19 and 16. There was an entry of appearance, but no answer. H drank. W had wanted a divorce for years, but waited until her children were raised. She

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*156* It is included here because of the two pieces of real property.
realized H had "problems," and wanted nothing from him. She had a prior interest in oil property providing $500 per month. The court awarded her what she asked for—the real property (oil lands) and the personal property in her possession. H was awarded the personal property in his possession. The home, mortgaged and of no value, was given to W. One son wanted to go with W, 1 with H. The court ordered H to pay "reasonable" child support. The total assets were less than $1,000, not counting her oil land. An asset, no agreement case.

Case 32: H guilty of extreme cruelty. They were married 15 years. H was in his middle 40's, and W in her middle 30's. They had 2 children, 13 and 11. There was personal service, but no answer. H made between $300 and $400 a month. The parties agreed with no help from lawyer. In the agreement W got the home, the household furnishings, and the car, for a total of $4,700. H took a $300 savings account. H was "hard to get along with," however, and would not agree on child support. The court approved the agreement, but at the request of W, added $25 per week child support and $200 attorney fees. An asset, agreement case.

Case 33: H guilty of extreme cruelty and gross neglect. They were married 6 years and in their middle 20's. They had 2 children, 5 and 4. There was personal service, but no answer. The court gave a temporary order of $125 a month for the support of W and children. The parties agreed to a division of personal property without the attorney. Total assets were less than $300 with W getting most of them. The court approved the agreement by saying that the parties had divided the personal property. In addition W asked for and received $60 a month child support and $200 attorney fees. The attorney said: "A run-of-the-mill case in this community." A no asset, agreement case.

Case 34: H guilty of conviction of a felony. They were married 18 months and in their early 20's. They had 1 child, 2 months. There was personal service. H’s attorney filed a formal answer. “Rich girl” married “poor boy” who later was sent to prison. H’s lawyer (hired by H’s uncle) agreed to $75 a month child support—starting after H was released from prison—when W’s attorney asked for it in the courtroom. W’s attorney said that the girl’s father hired him and all he wanted was to get rid of H. H’s attorney agreed to the child support because “it was reasonable and standard.” Apparently H was not contacted. The court entered judgment for the $75 and added $200 attorney fees. The parties had accumulated nothing and W did not ask for anything. She kept her own personal belongings. A no asset, no agreement case.

Case 35: H guilty of extreme cruelty and gross neglect of duty. They were married 3 years and in their early 20's. They had 1 child, 2 months. There was personal service, but no answer. The court ordered $10 a week temporary alimony and $15 a week temporary child support. H was frequently in jail and did not support his family. They had been separated for a year and a half. H “capable of earning $300 a month.” The parties had accumulated nothing. The attorney said that everything but personal clothing had been repossessed. She wanted nothing but support. The court granted $70 a month child support and ordered H to pay $200 attorney fees. A no asset, no agreement case.

Case 36: H guilty of extreme cruelty. They were married 3 years and in their early 20's. They had 1 child, 3 months. There was personal service. H filed a cross-complaint, but dismissed it after the parties agreed. The court granted a temporary order of $16 a week for support of W and child. The attorney said that H was making $275 a month. H wanted the child because he felt that W was "no good." She was leaving the state to go to her mother. Since he could not prove any bad behavior on W's part, he gave up trying to
get custody. In a casual oral agreement between attorneys, W received her household goods and a TV set she owned prior to marriage. She also owned a washing machine, but gave it to H since he would not pay shipping charges on it. H received the car since he needed it. He also agreed to pay $60 in debts. Assets totaled about $400. H agreed to $75 a month child support and $200 attorney fees. The court approved the agreement and ordered it performed. A no asset, agreement case.

Case 37: W guilty of extreme cruelty and gross neglect of duty. They were married 2½ years, and in their early 20’s. They had no children. She entered an appearance, but filed no answer. H just wanted a divorce. W was running around. H worked as a grocery clerk. H’s attorney assumed that there was no property. “If there was any personal property, they each took what they wanted.” The court judgment said nothing about property. A no asset, no agreement case.

Case 38: H guilty of gross neglect. They were married 2½ years, and in their middle 20’s. They had 2 children, 2½ years and 4 months. There was personal service. H was represented by counsel but filed no answer. H made $300 per month. W said she wanted the household goods and furniture worth $300. She said H could have an old truck, worth $300, if he would pay off about $75 in debts. She wanted child support of $50, to be paid $25 every two weeks so she would get the money more often, and $200 attorney fees. H’s attorney told the court he thought that this was fair. The court’s order followed W’s request. A no asset, no agreement case.

Case 39: H guilty of extreme cruelty and gross neglect. They were married 19 years and in their middle 30’s. They had 3 children, 17, 14, and 8. There was personal service, but no answer. W just wanted to dispose of a “good-for-nothing” H. She expected nothing. The court gave her her “separate property” and household goods worth $250. H got his clothes and tools worth $50. The court ordered $50 a month child support. W’s attorney said that this was a “mere formality” and that she expected nothing. The judgment recites that H paid W’s attorney fees. A no asset, no agreement case.

Case 40: W guilty of extreme cruelty and gross neglect of duty. They were married 14 years and in their middle 30’s. They had no children. There was publication service only. The court appointed counsel for W and he answered. H’s attorney was afraid that she might be in military service. W had taken off and had not been heard of for years. H’s attorney said that H had no property. The court made no property award. A no asset, no agreement case.