

to their lawyers or to the trial judge, nor does it provide effective guidance for appellate review of trial court decisions. Critics of the "breakdown" standard are concerned that its vagueness might permit -- indeed, encourage -- judges with widely varying personal attitudes toward marriage and the family to impose their own personal standards on litigants. The impact of this risk would fall most heavily on three groups of married couples seeking divorce: (1) those many couples whose differences (their stated reason for terminating the marriage) seem "silly" or easily remedied, or whose marriages could be "saved" if both spouses would only behave with a little more "maturity" or "responsibility;" (2) those marriages in which the spouse primarily interested in a divorce has "caused" the marital problems-- because of behavior which, under former divorce standards, would clearly be labelled "faulty" (e.g., adultery); (3) couples who are poor -- because tax funds are being used or after the divorce will be used to support the wife and children.

Each of the divorce reform studies of recent vintage which have faced this difficulty with the "breakdown" standard -- with the single exception of the report of the Archbishop's Group -- have formulated more objective standards to accompany or in effect to replace "breakdown." The most common response

has been to recommend a period of "living separate and apart" -- an absolutely objective standard -- as either the sole or as one way of "proving" "breakdown." (See Monograph, pp. 49-54; Bodenheimer, Reflections on the Future of Grounds for Divorce, 8 J. Family Law 179 (1968).) Yet the Law Commission rejected "living apart" as the sole ground because a long period would not satisfy the need to grant a divorce expeditiously to a "wronged" spouse, and a period short enough to accomplish this purpose, the Commission felt, would create other difficulties:

But it is the fixing of a suitable period of separation as a pre-condition of the right to file a petition that presents the greatest difficulty in the way of this scheme. . . . [I]f a short period were prescribed, it would be possible for the parties to seek a divorce without having had time to recover from a passing affair or from the resentment left behind from a serious matrimonial quarrel or, indeed, time to consider whether the differences in the marriage were really insoluble. And a party who was himself largely to blame for the breakdown of the marriage would have altogether too little difficulty in freeing himself to marry someone else.

In our view, however, if prompt relief is to continue to be given in cases of outrageous conduct, no period of much more time than six months prior to the filing of the petition could be regarded as a feasible proposal were breakdown to become the sole ground for divorce. If as short a period as that is regarded as unacceptable, then this proposal ceases to be a practicable one. . . . With a longer period, however, it would be a practicable solution if coupled with other grounds. . . .^{2/}

^{2/}Law Commission, Reform of the Grounds of Divorce: The Field of Choice. Paras. 75-76 (Cmd. 3123, 1966).

The Law Commission's choice, confirmed in a later agreement with the Archbishop's Group (see Monograph pp. 67-72) and recently (June 14, 1969) accepted by the House of Commons, was to combine a longer period of separation (five years) with several of the traditional, albeit rephrased, "fault" grounds for divorce. No member of the Special Committee has indicated support for such a compromise.

The California Commission on the Family chose a different method of solving the dilemma created by the vagueness of the "breakdown" standard. It proposed a sole "breakdown" ground, in language similar to the Section 2.5 quoted above, but coupled it with the following provisions:

Section 029. If the court at the hearing fails to dissolve the marriage, the proceeding shall be continued for a period not to exceed ninety days during which time the parties may, if they so desire, pursue further the possibility of continuing the marriage. . . .

Section 030. If, at the end of the ninety-day period following the court's order continuing the marriage, the decision of one or both parties is that the marriage should be terminated, the court shall enter its order, effective when made, dissolving the marriage.

This proposal protects against the risks of the general "breakdown" standard, of course, by creating a form of statute of limitations -- and thus permitting either or both spouses to inform the trial judge that he incorrectly concluded that the