

Before  
THE SENATE AND HOUSE JUDICIARY COMMITTEES  
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In re: DIVORCE REFORM  
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Wednesday,  
April 25, 1979  
Harrisburg, Pennsylvania

Pages 1 To 210

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THE SENATE AND HOUSE JUDICIARY COMMITTEES

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In re: DIVORCE REFORM

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Stenographic report of hearing held in  
the Supreme Court Chambers, 4th Floor,  
Main Capitol, Harrisburg, Pennsylvania,

Wednesday,  
April 25, 1979  
at 10:15 o'clock a.m.

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SENATOR MICHAEL O'PAKE, Co-CHAIRMAN  
REPRESENTATIVE ANTHONY J. SCIRICA, Co-CHAIRMAN

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APPEARANCES:

- |                           |                                 |
|---------------------------|---------------------------------|
| SENATOR ROBERT JUBELIRER  | REPRESENTATIVE ARTHUR EARLEY    |
| SENATOR RICHARD SNYDER    | REPRESENTATIVE JOHN ALDEN       |
| SENATOR BUD DWYER         | REPRESENTATIVE NORMAN BERSON    |
| SENATOR MICHAEL SCHAEFER  | REPRESENTATIVE ROBERT O'DONNELL |
| SENATOR GEORGE GEKAS      | REPRESENTATIVE JEFFREY PICCOLA  |
| SENATOR QUINTEN ORLANDO   | REPRESENTATIVE MARILYN LEWIS    |
| SENATOR LOUIS COPPERSMITH | REPRESENTATIVE TERRENCE McVERRY |
| SENATOR EDWARD HOWARD     | REPRESENTATIVE E. RAYMOND LYNCH |
| SENATOR JAMES KELLEY      | REPRESENTATIVE MICHAEL FISHER   |

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P R O C E E D I N G S

1  
2 REPRESENTATIVE SCIRICA: I would like to  
3 introduce the members of the House and Senate Judiciary  
4 Committee sitting here today. Representative Arthur Earley  
5 of Delaware County. Next to him is Representative John  
6 Alden of Delaware County, Representative Norman Berson, the  
7 Minority Chairman of the Judiciary Committee in the House  
8 from Philadelphia County, Senator Robert Jubelirer of Blair  
9 County and Senator Richard Snyder of Lancaster County.

10 Senator O'Pake, who is the Chairman of the  
11 Senate Judiciary Committee, will be here momentarily.

12 We are here today because one area of the  
13 law has proved resistant to change. In the last ten years  
14 we have seen the redefinition and reform of our criminal  
15 law, our civil law and our probate law. The time has come  
16 to adopt a modern divorce code, to adopt a law that is fair,  
17 to adopt a law that diverts attention from fault which is  
18 in most cases illusory and concentrate instead on honesty  
19 and economic justice between the spouses and protection of  
20 the welfare of the children.

21 This effort for divorce reform in Pennsylvania  
22 began in 1961 with the report of the Joint State Government  
23 Commission. It has undergone periodic review by the  
24 Pennsylvania Bar Association, by local county bar associations  
25 and most recently by the Pennsylvania Commission on Women

1 and the staffs of the House and Senate Judiciary Committees.

2           The incidence of divorce in Pennsylvania  
3 continues to rise and matches the experience of neighboring  
4 states with no-fault divorce laws. Few bills will affect  
5 more directly the lives and well-being of more Pennsylvanians  
6 than this proposal. It is important that we do it right.  
7 The present law is unjust. It perpetuates and even intensifies  
8 bitterness between spouses. It does nothing constructive.  
9 In many cases it demands perjury or distortion of the truth.  
10 You can get a divorce by mutual consent in Pennsylvania. You  
11 just have to lie to do it. We all know that well over 90  
12 percent of divorce actions are ex parte in Pennsylvania.  
13 Where the marriage is irretrievably broken down, Pennsylvanians  
14 should be able in their own state to get a divorce without  
15 lying and without washing their dirty linen publicly.  
16 Pennsylvanians should have access to the courts to obtain  
17 economic justice in the award of alimony where appropriate  
18 and equitable distribution of property and have it disposed  
19 of in a single, consolidated action that will determine  
20 those rights and also the rights of custody and visitation.  
21 There is obviously more than one approach to achieve these  
22 ends.

23           Senate Bill 450 and House Bill 640 represents  
24 one approach. Among the questions that I hope will be  
25 answered today are the following:

1                   Should we adopt as an additional ground for  
2 divorce mutual consent and a three-month separation period?

3                   Should a divorce be permitted where only one  
4 party consents and they have lived apart for twelve months,  
5 especially where the court has ordered counseling and where  
6 economic justice is available through the courts for the non-  
7 consenting spouse?

8                   In this case does the state have a legitimate  
9 interest in perpetuating this marriage, especially where  
10 counseling has taken place and where economic justice is  
11 available?

12                   Does in fact this bill provide for economic  
13 justice?

14                   Should the award of alimony and the distribu-  
15 tion of property be conditioned on the relative fault of the  
16 parties or should it be without regard to fault?

17                   Finally, should the counseling provisions be  
18 mandatory or are they in fact needed at all?

19                   Many of us believe that the present law  
20 creates a legalized system of perjury, fuels the adversary  
21 nature of the proceedings and serves to destroy the last  
22 vestige of concern for each spouse's feelings. We hope  
23 that we will be able to pass a law that diverts the parties  
24 from recrimination and instead establishes a system that  
25 insofar as we can make it is fair and just and helps people

1 towards reshaping useful and productive lives.

2 I would like to note the presence of Senator  
3 Bud Dwyer. Are there any other members of the House or  
4 Senate Judiciary Committee who would like to make a state-  
5 ment before we begin?

6 I note that Senator Michael Schaefer of  
7 Allegheny County is also with us.

8 Is Dr. Eugene Crow here? Fine.

9 The first witness is Dr. Eugene Crow,  
10 President of the Pennsylvania Council of Churches.

11 MR. MYERS: Mr. Chairman, my name is Albert  
12 E. Myers. I am the Executive Director of the Pennsylvania  
13 Council of Churches, and I am presenting the testimony on  
14 Dr. Crow's behalf. Dr. R. Eugene Crow is the Chief Executive  
15 Officer of the American Baptist Churches of Pennsylvania and  
16 Delaware. In today's testimony he represents the Pennsylvania  
17 Council of Churches in which he serves as president. The  
18 Council is a common agency of thirty-eight Protestant church  
19 bodies with more than three million constituents in the  
20 Commonwealth.

21 The Pennsylvania Council of Churches supports  
22 the legislative proposals for divorce reform as found in  
23 Senate Bill 450, Printer's Number 462, and House Bill 640,  
24 Printer's Number 692. These bills are currently before the  
25 Judiciary Committees of the respective chambers.

1                   The Pennsylvania Council of Churches testifies  
2 out of deep concern for the 75,000 persons who go through  
3 the process of divorce each year in our state. We are not  
4 experts in the intricacies of the law. However, we do bring  
5 the expertise born of experience of our ministers, often the  
6 primary counselors in the agonizing personal and family  
7 trauma that precedes and follows divorce.

8                   We wish to affirm our concern for family life.  
9 We strongly support the six statements of legislative finding  
10 and intent found in Section 102 of the bills. I repeat:  
11 our testimony does not reflect any diminution of our traditional  
12 commitment to family life. Our serious concern for persons  
13 and the family impels us to speak at this time and in this  
14 context.

15                   The General Board of the Pennsylvania Council  
16 of Churches, in its Statement of Legislative Principles for  
17 1979-1980, states:

18                   "We affirm the solidarity of family life.  
19 However, human imperfection may result in the destruction of  
20 a marriage to the point where divorce is the better and more  
21 honest option, despite the pain and acknowledgment of failure  
22 involved. With the needs of children and spouses protected  
23 in any divorce action, we support divorce reform which  
24 includes mutual consent as a legal ground. Further, we  
25 support divorce law reform which includes a provision for



1 unilateral divorce action after a twelve-month separation."

2           The Pennsylvania Council of Churches believes  
3 that Senate Bill 450 and House Bill 640, now before you, will  
4 accomplish the needed and appropriate divorce reform in the  
5 Commonwealth for the following reasons:

6           1. Whether we like it or not, divorce is a  
7 reality in today's society. Persons seeking divorce have  
8 been married an average of seven and one-half years (HEW  
9 Public Health Service statistic, 1967). However, divorce  
10 comes to persons married for a brief time, for those who  
11 have been married for decades, and even for those married  
12 for forty or fifty years. Divorce may come for what may be  
13 considered a "good reason" or it may come for apparently no  
14 good reason, but it does often come. Pastoral or other  
15 counseling, if sought and accepted by the couple, may avert  
16 divorce, and result in a strengthened marriage relationship.  
17 However, sometimes it is apparent that the dissolution of  
18 the marriage is a better response -- in spite of once  
19 seriously taken marriage vows.

20           2. The practical reality is that, in our  
21 state, it is not always easy to proceed toward a legal divorce  
22 while maintaining mutual respect and concern. Civil law  
23 continues to require that marriage partners establish an  
24 adversary relationship in order to effect dissolution of the  
25 relationship. This may result in an unnecessarily embittered

1 atmosphere which may persist long after divorce is decreed.  
2 This unfortunate circumstance is especially painful when  
3 others, such as children are involved.

4 This needs to be changed. We believe that  
5 divorce without demonstration of "guilt" or cause after a  
6 three-month separation when both spouses agree to the  
7 divorce, as in Section 201(c)(1), or after a full year  
8 separation when one spouse wants a "guiltless" divorce, as  
9 in Section 201(c)(2) is appropriate. These provisions  
10 respond to present realities.

11 When a spouse moves to another state to obtain  
12 a divorce and is successful, we are concerned about the  
13 potential unenforceability of property and alimony awards.

14 There are those who believe that unilateral  
15 divorce action after one year of separation, or even two or  
16 three more years, is crassly blind to the other partner who  
17 wants the marriage to continue. This may well be the most  
18 debatable aspect of this legislation. The concern of the  
19 Pennsylvania Council of Churches is not for persons who use  
20 marriage as a legal cover for progressive polygamy, but for  
21 persons who mean what they say when marriage vows are given  
22 and accepted.

23 It is our finding that a marriage is truly  
24 over when it is conclusively over in the experience and  
25 mind and heart of the spouse in the circumstance. It is

1 over regardless of whether or not it truly began in mutual  
2 love and with serious intention to permanence. We support  
3 unilateral divorce action not for the freedom of one spouse  
4 but for justice for both. We see justice in terms of the  
5 appropriate settlement of rights and responsibilities and  
6 the cessation of a relationship which has become empty or  
7 intolerable. Our goal is that both partners can make the  
8 best of a future apart from each other.

9 Most no-fault divorces are better called  
10 "both fault". We believe, and studies indicate that provisions  
11 for such divorces will not appreciably increase the rate of  
12 divorce in the Commonwealth.

13 We are strongly pro marriage. Divorce is an  
14 agonizing and final step in the dissolution of life's most  
15 intimate unit and society's most basic relationship. Where  
16 such dissolution is the better remaining option, it should be  
17 an option for every citizen, not just those who can economically  
18 afford to establish residence in a state where unilateral  
19 divorce action can be brought. Not only is out-of-state  
20 divorce unequally available, it can result in a settlement  
21 that cannot be enforced in Pennsylvania.

22 3. Pennsylvania needs provision for alimony.  
23 Too often this has been regarded as the big payoff by affluent  
24 persons in order to change marriage partners. That is not  
25 the case with most marriage dissolutions. However, to be

1 fair, there must be consideration of the earning capacities  
2 of each spouse, as well as their mental, physical and  
3 emotional conditions. Contributions of the homemaker spouse  
4 and retirement benefits for this spouse should also be  
5 included in working out a settlement, along with other  
6 concerns in Section 501(d).

7 4. The Pennsylvania Council of Churches  
8 supports the concept of distribution of the "mutual property".  
9 Criteria for such distribution should include age, health,  
10 length of marriage, employment ability, and parental custody  
11 especially as it relates to remaining in the family dwelling,  
12 as found along with other criteria in Section 401(d).

13 While we have some concern about the proposal  
14 for court ordered counseling, we can agree to it as outlined  
15 in this legislation - where one party requests it and there  
16 is at least one child under fifteen years of age. We have  
17 some concern about who will be considered by the courts to  
18 be "other persons who, by virtue of their training and  
19 experience, are able to provide counseling" in Section 202(c).

20 The General Assembly is responsible for  
21 establishing public policy which is judicious and equitable.  
22 This responsibility is seen in bold perspective as it relates  
23 to reforming our divorce laws. The Pennsylvania Council of  
24 Churches believes that the legislation before this hearing  
25 represents great progress, not making divorce easier or more

1 alluring, but adding realistic provisions for more just and  
2 amicable decisions when marriage has failed to fulfill its  
3 hope and promise for two human beings, and has become for  
4 them a negative and debilitating influence in their lives.

5 Thank you for this opportunity to share the  
6 thoughts of the Pennsylvania Council of Churches on divorce  
7 reform in our Commonwealth.

8 REPRESENTATIVE SCIRICA: Thank you, Reverend  
9 Myers. I would like to note the presence of Senator George  
10 Gekas, the Minority Chairman of the Senate Judiciary  
11 Committee from Dauphin County and Senator Quinten Orlando  
12 from Erie County.

13 Are there any questions for Reverend Myers?  
14 Senator Gekas?

15 SENATOR GEKAS: Reverend, did you take into  
16 consideration in your presentation Senate Bill 49 at all?  
17 Did you confine your analysis in your testimony today to the  
18 House Bill and Senate Bills 450 and 640?

19 REVEREND MYERS: That is correct, the latter.  
20 We did confine our consideration to Senate Bill 450 and House  
21 Bill 640.

22 SENATOR GEKAS: Did you then not even consider  
23 at all Senate Bill 49?

24 REVEREND MYERS: Not for the purpose of this  
25 testimony.

1                   SENATOR GEKAS: I am wondering whether or  
2 not Senate Bill 49 was circularized to all the prospective  
3 witnesses. It was?

4                   REPRESENTATIVE SCIRICA: It was, George.

5                   SENATOR GEKAS: Do you recall whether you  
6 received a copy of Senate Bill 49?

7                   REVEREND MYERS: We did.

8                   SENATOR GEKAS: But you did not touch upon  
9 it?

10                  REVEREND MYERS: Not for this testimony,  
11 Senator Gekas.

12                  SENATOR GEKAS: Senate Bill 49 calls for  
13 mutual consent type of no-fault divorce to supplant the  
14 problem that the courts now have with the action based  
15 on indignities, where someone is forced to go into court  
16 even though there is mutual consent. Setting aside 450  
17 and 640, the items on which you testified, if neither one  
18 was able to pass the General Assembly, could you support  
19 Senate Bill 49 if that were the only viable passable  
20 alternative?

21                  REVEREND MYERS: I am not authorized to speak  
22 to any position of the Council on that bill.

23                  SENATOR GEKAS: Well, do you oppose mutual  
24 consent type of divorce if that would be the only thing  
25 that the General Assembly could find itself willing to pass?

1 REVEREND MYERS: In principle we would not  
2 oppose mutual consent as you have outlined it.

3 SENATOR GEKAS: I have no further questions  
4 at this time.

5 REPRESENTATIVE SCIRICA: Thank you, Senator  
6 Gekas. George, we did send copies of your bill to the other  
7 participants today.

8 Senator Snyder?

9 SENATOR SNYDER: Thank you, Mr. Chairman.  
10 Reverend Myers, on page four of your testimony you expressed  
11 some misgiving with respect to the unilateral divorce action  
12 after one year of separation. You said this may be the most  
13 debatable part of the legislation. Was there a split within  
14 your Council on this issue when it was discussed by yours  
15 members?

16 REVEREND MYERS: No, but there appears to be  
17 a division within the wider religious community and we  
18 acknowledge that in this sentence of the testimony.

19 SENATOR SNYDER: Have you any way of measuring  
20 that? I ask this because I think I have a -- frequently a  
21 concern whether a body which represents so many people,  
22 millions, I suppose, accurately senses the feeling of the  
23 peoples in the pews, shall we say, or whether it is determined  
24 by a select council that may take a different position.

25 REVEREND MYERS: Mr. Chairman, in response let

1 me say that the Pennsylvania Council of Churches is governed  
2 by a legislative assembly composed of officially constituted  
3 representatives of the church bodies which own the Council.  
4 These do include a substantial number of grassroots people.  
5 A majority are lay persons in the churches. They come from  
6 all areas of the Commonwealth. At the general board meeting  
7 of the Council this month at which this Council was reviewed  
8 there was substantial agreement. I would say those in  
9 opposition to this position would be less than five percent  
10 of those participating in the vote.

11 SENATOR SNYDER: Thank you, Mr. Chairman.

12 REPRESENTATIVE SCIRICA: Senator Jubelirer.

13 SENATOR JUBELIRER: Thank you, Mr. Chairman.

14 Reverend Myer, I would like to pursue what Senator Snyder  
15 has stated on and go to your testimony on page five, because  
16 I think it does need to be clarified somewhat. You have  
17 said that this may well be the most debatable aspect of the  
18 legislation, unilateral divorce action. Furthermore, you  
19 have set forth in your testimony on page five I think the  
20 key provision or key fact of life shall we say in Pennsylvania  
21 that I don't think has been really brought to the general  
22 public's attention and to those who oppose no-fault divorce  
23 well enough. You say divorce is an agonizing and final step  
24 and when such dissolution is a better remaining option it  
25 should be an option for every citizen, not just those who



1 can economically afford to establish residence in a state  
2 where unilateral divorce action can be brought. Not only  
3 is out-of-state divorce unequally available, it can result  
4 in a settlement that cannot be enforced in Pennsylvania.

5 I think we need to talk about that section,  
6 because to me that is the key part of your testimony in the  
7 entire matter. Pennsylvania is one of three states that  
8 does not have no-fault divorce. The others being South  
9 Dakota and Illinois. We are one of, as I gather, two states  
10 in the entire fifty states without alimony, Texas being the  
11 other state. Now, let me present a set of facts to you and  
12 to this distinguished Judiciary Committee of the House and  
13 Senate.

14 Let's take the businessman in the city of  
15 Pittsburgh as a hypothetical example. He goes to his  
16 lawyer and says I would like to get a divorce but my wife  
17 won't give me a divorce, and let's face it, contested divorce  
18 action in Pennsylvania is most difficult if not impossible to  
19 get. His lawyer, being well versed in the laws of not only  
20 Pennsylvania but the surrounding states, says: Well, Ohio  
21 has a six-month's jurisdiction and West Virginia has a year's  
22 jurisdiction and the courts have said that you can move your  
23 residence to either of those states, establish a valid  
24 residence -- that is get an Ohio or West Virginia license  
25 plates, vote there, join a club, join a church, but become

1 for all practical purposes a resident of either those states.  
2 He can afford to do that, so he does and he commutes to the  
3 city of Pittsburgh and works there and the Supreme Court has  
4 set forth that is very valid. You can be a resident of one  
5 state while being employed in the other. When he establishes  
6 that residence for the statutory period of time, either six  
7 months or a year, he then brings a divorce action under the  
8 no-fault provisions of the state of Ohio or West Virginia,  
9 whatever the state may be. He satisfactorily secures a  
10 divorce, then the attorney for his wife has the decision to  
11 make shall we enter an appearance and recognize that  
12 jurisdiction or shall we attack the jurisdiction. Whatever,  
13 chances are almost overwhelmingly that that divorce is going  
14 to be granted. Now, those states have alimony. The question  
15 then becomes if they grant alimony, what happens next? The  
16 divorce is final. That man obviously is going to move back  
17 into Pennsylvania, give up his residence in Ohio, give up  
18 his residence in West Virginia, come back to Pittsburgh and  
19 establish residence there. Then the question becomes the  
20 public policy of Pennsylvania on alimony, and I believe, you  
21 know, it is a mixed bag. There have been some decisions that  
22 said Pennsylvania will give full faith and credit to the  
23 alimony, but it is not a clear decision. The fact is the  
24 woman who may be economically unfortunate, there is no equal  
25 distribution of property in Pennsylvania. There is no

1 community property. She may have nothing in her own name.  
2 It may be in his name. It may be in joint names. But,  
3 whatever purpose this woman may be married twenty, twenty five,  
4 thirty years, the woman that those who oppose this bill seek  
5 to protect is in fact the one who is hurt the most because  
6 she may not get alimony. She may not get equal distribution  
7 of property. He has his divorce and the benefits of the no-  
8 fault divorce, the alimony and the equal distribution, are  
9 not available to her.

10 I bring that out. Is that a fair clarification  
11 of what you are testifying to as unequally or uneconomically  
12 unfair?

13 REVEREND MYERS: It is very much so, Senator  
14 Jubelirer and you have accurately described the situation of  
15 a man for whom I was pastor in Allegheny County.

16 SENATOR JUBELIRER: And the other situation  
17 of course is the state of Florida. You go down there and the  
18 only alimony is rehabilitative alimony in the state of  
19 Florida, to rehabilitate the woman, ala Michele Marvin.

20 REVEREND MYERS: Have you been in my counseling  
21 files, Senator?

22 SENATOR JUBELIRER: No. Anyhow, I think  
23 that these are things that I have not seen or heard, things  
24 that I have reviewed since this bill was introduced and  
25 since it was introduced the first time. I thought it might

1 be well to bring this out, and if you have anything further  
2 to elucidate, I think that is perhaps a key matter when we  
3 are dealing with divorce reform when every other state around  
4 us has this situation.

5 REVEREND MYERS: We agree, Senator, that is a  
6 key matter of justice that must be addressed as the divorce  
7 law is reformed in this state. Very much so.

8 REPRESENTATIVE SCIRICA: Representative  
9 John Alden.

10 REPRESENTATIVE ALDEN: Reverend Myers, you  
11 are in agreement with the three-month duration for unilateral  
12 agreement or mutual agreement? Do you agree with that  
13 provision?

14 REVEREND MYERS: We do.

15 REPRESENTATIVE ALDEN: Aren't we making it  
16 easier for people to get this divorce rather than try maybe  
17 to get together again?

18 REVEREND MYERS: Hopefully, this is an  
19 acknowledgement of a situation in which a marriage has  
20 already internally dissolved.

21 REPRESENTATIVE ALDEN: Well, there are people  
22 who separate to try the separation. Aren't we saying in  
23 effect we have this three-month provision that now instead  
24 of trying to get this marriage together, the other option is  
25 to go and seek the divorce and stop trying? Aren't we really

1 contributing to the breakup of the family?

2 REVEREND MYERS: We acknowledge the responsibility  
3 of the church and other units of society to try to strengthen  
4 marriage and try to reconcile persons. We don't believe that  
5 secular law is necessarily the instrument for that.

6 REPRESENTATIVE ALDEN: Do you think that a  
7 provision that would extend that to more than three months  
8 might be better in this situation?

9 REVEREND MYERS: We are satisfied with the  
10 three-month period. That would be the minimum that we would  
11 accept.

12 REPRESENTATIVE ALDEN: What would be your  
13 maximum that you would accept?

14 REVEREND MYERS: We have no position.

15 REPRESENTATIVE ALDEN: Would it be a year as  
16 in a unilateral one?

17 REVEREND MYERS: We have not come to a position  
18 on that. We only addressed the proposal for three months.

19 REPRESENTATIVE ALDEN: You have not discussed  
20 that?

21 REVEREND MYERS: No. My feeling is perhaps  
22 six months would also be acceptable to us. Beyond that I  
23 wouldn't care to comment.

24 REPRESENTATIVE ALDEN: Well, has that been  
25 discussed by your group?

1 REVEREND MYERS: Not in detail.

2 REPRESENTATIVE ALDEN: Thank you.

3 REPRESENTATIVE SCIRICA: Are there any  
4 further questions for Reverend Myers?

5 Yes, George?

6 SENATOR GEKAS: You mentioned that one of  
7 your considerations you had was your feeling about justice  
8 in the situation proposed to you by Senator Jubelirer. Does  
9 the question of justice between the parties enter into your  
10 considerations or one who seriously does not want the  
11 marriage dissolved, the wife who sees the husband walk out,  
12 walk into the home of another woman and begin living with her  
13 and then being able to get a divorce? What about the sense  
14 of justice there with respect to the woman who is left? Does  
15 that enter into your consideration?

16 REVEREND MYERS: Regarding civil justice,  
17 which is, I suppose, the concern of this hearing, we feel  
18 that the matter of justice for the aggrieved spouse, whether  
19 it be male or female, is that there will not be proper  
20 responsible response to the needs of that person for support  
21 and other rights unless there is a final divorce decreed.  
22 That it may often be, and we encounter this as pastors very  
23 frequently, wishful thinking on the part of the aggrieved  
24 spouse to believe that there is any meaning in maintaining  
25 a marriage which has for all intents and purposes already

1 disappeared. And in fact that to try to compel that marriage  
2 to remain as a legal entity may create an increasingly  
3 adversary relationship which will impact negatively upon  
4 the aggrieved spouse and upon children, if there are any.  
5 So that from a practical standpoint, sitting aside our  
6 religious commitment to the sanctity of marriage and its  
7 permanence, from a practical standpoint in secular law, we  
8 think it is probably unwise and counterproductive to compel  
9 people to maintain the facade of marriage where there is no  
10 marriage.

11 SENATOR GEKAS: Are you saying that it would  
12 be unjust to permit that person to contest that divorce,  
13 unjust to the person who wants to contest?

14 REVEREND MYERS: Yes, if that procedure were  
15 a lengthy one, it might well be.

16 SENATOR GEKAS: I have no further questions.

17 REPRESENTATIVE SCIRICA: Reverend Myers,  
18 thank you very much for appearing before us today and giving  
19 us the excellent testimony.

20 REVEREND MYERS: Thank you.

21 (Witness excused.)

22 REPRESENTATIVE SCIRICA: I am pleased to  
23 note the presence of Senator Michael O'Pake, the Chairman  
24 of the Senate Judiciary Committee, and Representative  
25 Robert O'Donnell of Philadelphia, member of the House

1 Judiciary Committee.

2 Our next witnesses are Mr. Albert Momjian,  
3 who is President-Elect of the American Academy of Matrimonial  
4 Lawyers. Mr. Momjian is from Philadelphia. And, Mr. Jack  
5 Rounick, distinguished lawyer from Montgomery County, Chairman  
6 of the Family Law Section of the Pennsylvania Bar Association.

7 I should also like to note the presence of  
8 Representative Jeff Piccola of Dauphin County.

9 Do you gentlemen have prepared statements?

10 MR. ROUNICK: Yes, but if you are willing,  
11 since you have prepared statements, we would like to go into  
12 something other than the prepared statements.

13 MR. MOMJIAN: That would be my preference as  
14 well. We were under the impression it might be more profit-  
15 able just to distribute what we had and be available to give  
16 you --

17 REPRESENTATIVE SCIRICA: (Interrupting) Good.  
18 I think that is a good idea. I can barely lift these state-  
19 ments, so it may take a while, but we will have these for the  
20 record and they will be inserted into the record. We will  
21 be able to go through them afterwards. I see you have made  
22 some recommendations. Why don't you proceed, and then we will  
23 ask you questions afterwards.

24 MR. ROUNICK: I would like to address myself  
25 to Senate Bill 49 for a minute, and Senator Gekas, not to



1 insult you --

2 REPRESENTATIVE SCIRICA: (Interrupting) Jack,  
3 put the microphone closer to you. We can't hear.

4 MR. ROUNICK: Senate Bill 49 unfortunately  
5 does nothing to help the people who are in the difficult  
6 straits in this state. Senate Bill 49 provides that people  
7 mutually consent to a divorce after living apart for twelve  
8 months. Today in Pennsylvania people mutually consent after  
9 living apart for two weeks if they want to get a divorce.  
10 Mutual consent may prevent perjury in certain cases, but in  
11 most cases if two people consent to a divorce and what in  
12 reality happens is only one person testifies, no perjury is  
13 necessary. You just listen to any family some week and  
14 there has got to be an argument or two and if only one side  
15 of any case is presented, there is a divorce. So, no one  
16 has to commit perjury to get a divorce. Just one person  
17 has to not show up.

18 The mutual consent accomplishes nothing unless  
19 it is built into a bill that gives some economic relief to  
20 the people who suffer. A mutual consent divorce without  
21 having alimony or equitable distribution of property is nothing  
22 different than we have today. Mutual consent, even with that,  
23 is something less than what is necessary.

24 We just had an example in our office a couple  
25 weeks ago of a man who called, he has been separated from

1 his wife for twenty years. He cannot afford to move to  
2 another state. He cannot afford to pay for a contested  
3 divorce. He is not married. Maybe he is married under the  
4 law because there is a piece of paper that says he is married,  
5 but that is not a marriage, but they are kept together because  
6 one party won't agree.

7 It seems to me that we must proceed in the  
8 manner of Senate Bill 450 and House Bill 640, and we must  
9 have real divorce reform in this state. Anything short of  
10 that is not reform. Reform is what all the citizens and  
11 the people that I run into day after day cry for.

12 That is just a short statement I want to make  
13 other than answer questions.

14 MR. MOMJIAN: May I make a brief additional  
15 statement over and above what I distributed that part from  
16 the basic deficiencies of the current divorce system; namely,  
17 lack of equitable distribution which fails to recognize the  
18 contribution of the homemaking spouse, the lack of any post  
19 divorce alimony in the existing system which essentially puts  
20 onto the job market under the existing Pennsylvania law a  
21 person without skills, and the imposition of establishment  
22 of fault are three of the basic deficiencies of the existing  
23 system. But, over and above that, the present system is  
24 creating havoc in a number of other areas.

25 Number one, the expense of divorce is staggering.

1 Contested divorce proceedings in Pennsylvania is sometimes  
2 beyond the reach of even wealthy people. That is one factor  
3 we have to consider.

4 The second is that the very public policy of  
5 the Commonwealth which is supposedly to promote matrimonial  
6 harmony is devastated by the fault system of divorce.

7 Thirdly, the kids are the innocent victims  
8 of the matrimonial warfare and are being devastated by the  
9 hostility created by our system.

10 Fourthly, people are leaving the Commonwealth.  
11 One of the senators suggested they are leaving because they  
12 can't deal with the system we have now. It is not uncommon  
13 for hundreds and hundreds of people by the month to move to  
14 Delaware, to move to New Jersey and move to Ohio not with the  
15 thought of even coming back, but stay there because they have  
16 set up homes there and they feel it's a more civilized system  
17 of dealing with the dissolution and breakdown of marriage.

18 And again, the subject again with what Jack  
19 says, I think that is the substance of my thought, and both  
20 of us would be available to answer any questions that anyone  
21 would have.

22 REPRESENTATIVE SCIRICA: Thank you, Mr.  
23 Momjian.

24 I would like to note the presence of Senator  
25 Coppersmith of Cambria County, Senator Howard of Bucks County,

1 and the Chairman of the House Judiciary Committee, Warren  
2 Spencer, has just come in.

3 I am sure we have got a number of questions  
4 for you gentlemen, and Representative Berson would like first  
5 crack at you.

6 REPRESENTATIVE BERSON: I just have a short  
7 question, and that is would either of you care to comment on  
8 the impact of the recent decision in the Vento case with  
9 respect to the necessity that any bill we pass deal with the  
10 division of marital property.

11 MR. MOMJIAN: Well, it will. Not only the  
12 Vento case, but the subsequent case interpreting Vento, which  
13 is Demergin both show the idiocy of our law. It is absolutely  
14 foolhardly to have a system which would perpetrate Vento,  
15 and that simply is that you can have a male spouse or any  
16 spouse that leaves the matrimonial domicile and he can grab  
17 any of the joint assets and possibly the only relief avail-  
18 able to the remaining spouse is maybe, and I am not even sure  
19 of that, is to seek a restitution of the joint status of the  
20 accounts of the assets, and Vento and other cases like the  
21 George rule are the awkward situations that have been created  
22 by the system as opposed to being law. The concept that you  
23 have in divorce reform would overcome Vento and take away  
24 the necessity of having cases such as Vento.

25 REPRESENTATIVE SCIRICA: Senator O'Pake.

1                   SENATOR O'PAKE: Do you think it is fair, as  
2 the bill suggests, that the distribution of property should  
3 be without regard to marital misconduct?

4                   MR. ROUNICK: I would like to answer that.  
5 I believe that the distribution of property and the award  
6 of alimony should all be without regard to marital misconduct.  
7 The reason for that is that the purpose of no-fault divorce  
8 is to remove the element of fault from the courts and from  
9 the battles and from the family. If you put it into alimony  
10 or equitable distribution, then you bring back the fights,  
11 you bring back the emotional trauma that comes around with  
12 the arguing of fault. It is just like a partnership, a  
13 business partnership. If you go into a business partnership  
14 and one of the parties is at fault for breaking up that  
15 partnership, those assets and that property is still divided  
16 equally because they are each 50 percent owners because they  
17 are partners, and that is what a marriage should be. It  
18 should be a partnership. There should be some form of  
19 distribution and who created the breakup is not the important  
20 one. There is other factors to be considered.

21                   SENATOR O'PAKE: That may be true with regard  
22 to the grounds for divorce, on the theory that we don't want  
23 to force people to live together and stay "married" who are  
24 in fact not. But, doesn't that permit a situation whereby  
25 you have the guiltiest of spouses, the one who is totally

1 irresponsible, who is living with other people, who has left  
2 the home and after one year that person is, number one,  
3 entitled to divorce and, secondly, he is also entitled to  
4 a 50/50 division of whatever -- or an equitable distribution  
5 based upon, well, these other things, but marital misconduct  
6 is not one of those criteria. Now, playing the devil's advocate,  
7 I would like your strongest response to that argument.

8 MR. ROUNICK: The strongest response I can  
9 make is that, number one, you must keep the emotional trauma  
10 and remove emotions from this as much as possible.

11 Number two, when these people were married,  
12 if they know the law and the law says that this property is  
13 to be marital property no matter whose name it is in and how  
14 it is acquired, there is a way to handle that. They just  
15 enter into an agreement at the time they get married if they  
16 want to handle the property otherwise. Otherwise, everybody  
17 is aware and everybody is on notice.

18 Number three, more important, when you take  
19 those marriage vows, it is my feeling that you enter into  
20 such a partnership and, therefore, if one party commits fault --  
21 I think if you look in 99 percent of the cases there is no  
22 such case as one party being all at fault. There is more  
23 than one party, and we take the court again sitting there  
24 with the great scales of justice and they now determine on  
25 the innocent injured spouse which side weighs down more so

1 who gets the divorce. I think that is the problem.

2 SENATOR O'PAKE: I would appreciate hearing  
3 from Mr. Momjian.

4 MR. MOMJIAN: I have two comments. First  
5 of all, the existing bill, Senate Bill 450 Item 6 on page 15,  
6 to a degree suggests that the court might consider the  
7 contribution or dissipation of each party in the acquisition,  
8 preservation, depreciation -- appreciation of the marital  
9 property including the contribution of a party as a homemaker,  
10 so that if the fault of the party has some bearing on the  
11 valuation of the assets or its dissipation, I think the court  
12 might consider that fault. But I can see many, many situations  
13 where parties can have marital misconduct on the part of one  
14 or both, but both can be working side by side in some respective  
15 capacities building up the marital property, and that is I  
16 think what the law proposes to do. You can have in effect  
17 both parties working in a business relationship as a husband  
18 and wife in a business owned by the husband, but just because  
19 after twenty years of a marriage relationship which he was  
20 faithful he turns out to be unfaithful, it would seem wrong  
21 to me to have her forfeit by virtue of that fault any portion  
22 of the contribution that she has to the building up of that  
23 marital property whether as a business partner or a home-  
24 making partner.

25 SENATOR O'PAKE: I am not suggesting she

1 forfeit all of it, but I am wondering whether one of the  
2 criteria might not have to be some consideration of marital  
3 misconduct.

4 MR. MOMJIAN: The minute you do that, sir, you  
5 also have the additional problem of expense, because without  
6 regard to what the existing law is, the minute you establish  
7 fault as a criteria, it is going to be enough to go with  
8 these criteria among others.

9 SENATOR O'PAKE: Not on the grounds for  
10 divorce, but with regard to disposing of the final --

11 MR. MOMJIAN: (Interrupting) But you are  
12 going to have a divorce trial of the old-fashioned kind in  
13 the trial that takes place in the bifurcated divorce situation  
14 involving distribution of property, because anybody who has  
15 anything to say about martial property distribution is going  
16 to say the other party is at fault, and you are going to have  
17 trials that will last day after day after day after day,  
18 and the only people that will come out the better of that  
19 will be the attorneys.

20 SENATOR O'PAKE: Let me ask you two experts  
21 my final question. It is two part. A, what is your inter-  
22 pretation of what this bill does with regard to a separation  
23 which has already begun, and secondly, what do you view should  
24 be the law with regard to a couple who have already separated,  
25 they have begun to live apart. Should their prior living



1 apart be able to be considered even though it predates the  
2 effective date of this law, with regard to either the three-  
3 month or the twelve-month time period as grounds for divorce?

4 MR. ROUNICK: It is my opinion it should, and  
5 the bill provides for twelve months from the filing of the  
6 complaint.

7 SENATOR O'PAKE: But isn't it vague enough  
8 so that it is not clear that a complaint that has already  
9 been filed might somehow be considered to be that complaint  
10 and, therefore, the living apart time period could have  
11 already begun?

12 MR. ROUNICK: It is possible, and I do not  
13 see -- if the parties have lived apart for a year, whether  
14 they live apart for a year after passage of the bill or  
15 before passage of the bill, I don't think is really a relevant  
16 significant issue. It is one that I think should be from the  
17 date they have been living apart, but whichever way it is  
18 handled I would have no opposition one way or the other.

19 SENATOR O'PAKE: What is your opinion as to  
20 how the bill handles that problem in its present form?

21 MR. ROUNICK: I think in its present form  
22 it requires filing a complaint alleging grounds for -- based  
23 on unilateral grounds to start the time running.

24 SENATOR O'PAKE: The grounds would have to  
25 begin at some date in the future after the effective date

1 of the law. Do you agree with that, Mr. Momjian?

2 MR. MOMJIAN: I agree that that is how the  
3 present bill is. I would like to comment that I am aware I  
4 believe of some New Jersey cases which when New Jersey passed  
5 its divorce reform in effect created equitable distribution  
6 after passage of divorce. In other words, the courts applied  
7 the benefit of the new statute to divorce situations recently  
8 created. I think Mr. Rounick's suggestion in his prepared  
9 statement tries to make that clear that it would not happen  
10 in Pennsylvania.

11 SENATOR O'PAKE: One other thing. What if  
12 they can't agree with regard to the distribution of property  
13 and the amount of the alimony even within that thirty days  
14 that we allow after the handing down of the divorce decree?  
15 What then? Are we really resolving everything in one pro-  
16 ceeding hopefully at the time prior to the divorce decree?

17 MR. ROUNICK: No. Honestly, you are not going  
18 to do it in one proceeding at that time. If people have  
19 significant property there will be litigation that will take  
20 place if they cannot resolve it between themselves and the  
21 court will have to resolve that issue.

22 SENATOR O'PAKE: Shouldn't we hold up the  
23 granting of the decree until the whole economic package is  
24 resolved?

25 MR. MOMJIAN: As long as there is temporary

1 relief as they do in Florida. They will bifurcate a divorce  
2 case, grant the divorce after the six month passage of time,  
3 give temporary relief by way of support, even temporary  
4 counsel fees and costs and then sit down at a later time  
5 for hearing the disposition of the property and the permanent  
6 alimony, rehabilitative alimony, whichever it may be. As  
7 long as the courts are empowered under the legislation, I  
8 believe it has that power to grant temporary relief. There  
9 shouldn't be any problem with the bifurcation of the case.  
10 I don't think the calendars of the courts are going to be  
11 able in congested areas to deal with both issues at one time.

12 SENATOR O'PAKE: But doesn't that undercut  
13 your argument that you have got to provide the alimony,  
14 equitable distribution of property at the same time you clear  
15 up the legal status of the marriage?

16 MR. ROUNICK: That is the situation with  
17 temporary relief, and if you are talking about you have to  
18 supply it, today we have situations in various counties where  
19 if you bring a support action for the wife and/or children  
20 it is six months until you get into a courtroom and there  
21 is no temporary relief and they are on welfare. This bill  
22 is 100 percent better and the chances of people getting some  
23 immediate relief, even in a temporary form, is much better  
24 under this bill than it is in today's system as it exists.

25 REPRESENTATIVE SCIRICA: Excuse me. I would

1 like to follow up myself on one of the questions of Senator  
2 O'Pake. That has to do with the award of alimony or dis-  
3 tribution of property without regard to fault. I am almost  
4 convinced by your arguments but not quite. If our purpose  
5 here is to make the law as fair and as just as possible, it  
6 seems to me that we can accept the arguments that to exclude  
7 fault will certainly do a great deal to mitigate the emotional  
8 trauma. It certainly will mitigate the expense and time  
9 involved in the proceedings, but will it produce a just  
10 result in all cases or in most cases, and the incidents that  
11 were raised by Senator O'Pake where one party really is  
12 virtually not at fault in this circumstance, and usually  
13 it is the middle-aged or older woman whose husband decides  
14 to leave, but it could be the other way around just as well,  
15 I can see where a disposition that may not take into account  
16 that person's exemplary conduct might shock the conscience  
17 of individuals and legislators when the time comes to vote  
18 on this bill. I don't know how we answer that argument with  
19 the arguments that has been presented today; namely, that we  
20 would save on emotional trauma, will save on time and expense.  
21 How do we meet the argument what is just in that circumstance  
22 and in fact, do the categories, do the criteria that we list  
23 for the equitable distribution of property and the award of  
24 alimony, do they really protect that person in trying to  
25 start their lives anew?

1 MR. ROUNICK: As to the fault and the  
2 protection and the equitable system, if you look at it,  
3 what are you going to do? Are you going to go into adultery  
4 and if somebody commits adultery once they get penalized  
5 \$10,000, twice \$20,000? Are we going to set up scales like  
6 some of the courts have now done for support that if a wife  
7 makes so much money and the husband so much money and the  
8 kids so much we are going to set up a scale where if the  
9 wife commits adultery twice the husband three times, we are  
10 then going to give ten thousand more or ten thousand less?  
11 This is what comes about by getting into fault. You go to  
12 one county and one judge who the person that commits adultery  
13 they are going to put the red letter, the scarlet letter on  
14 that person and that person gets a scarlet letter and is  
15 going to get \$5,000 instead of \$50,000. You go to the next  
16 county, that judge says that doesn't make any difference.  
17 That person is human. In that county that person is going  
18 to get the \$50,000. The problem with putting fault on, it  
19 is something that is so subjective and it just brings out  
20 all of the venom from all the people involved that the courts  
21 are going to spend their time and the people are going to  
22 spend their time on a vengeance kick and then we are going  
23 to reward for more fault or we are going to take that a  
24 husband is going to lose 70 percent of his property versus  
25 only 30 percent, and I think it is an unworkable system.

1 That is my opinion on it.

2 MR. MOMJIAN: With reference to your second  
3 point, I think the protection is more than adequately  
4 furnished by the existing bill to a spouse whose conduct  
5 has been exemplary as opposed to a spouse whose conduct has  
6 been wrong. So that I don't think there is any problem in  
7 the bill and the capacity of a court to protect economically  
8 and financially such a person.

9 With respect to the first issue as to how do  
10 we address ourselves to people who might inquire shouldn't  
11 there be an extra, some extra plus for a person whose marital  
12 performance has been outstanding. I think the problem is  
13 in my experience you really can't judge. It is subjective.  
14 To many males who may leave in middle age they have subjective  
15 problems of subtle fault on the part of the female and say  
16 that the female drove him out and it may very well be that  
17 his final fault is moral virt, living together with a paramour.  
18 But when you measure the two against one another, it is  
19 sometimes difficult to evaluate which is worse. You have  
20 a lot of emotional people, have emotional problems. You  
21 are going to have cases tried by psychiatrists as to whether  
22 or not the Bobb's defense is available so that a person's  
23 fault is truly motivated by what the person wants to do or  
24 that person is incapable of having done what he did. I  
25 really feel because of those reasons and the expense factor

1 and the time factor and the getting over with it concept  
2 you are better off eliminating fault from any consideration  
3 when you are dealing with the economies of the situation in  
4 the breakdown.

5 REPRESENTATIVE SCIRICA: Okay. Now, it is  
6 your position that a woman who is fifty with children whose  
7 husband decides to leave her will fare as well economically  
8 under this proposal with the equitable distribution of  
9 property and the right to alimony as she would under our  
10 present system where she could block that divorce and hammer  
11 out a pretty good settlement if the man really wanted to get  
12 out of the marriage?

13 MR. MOMJIAN: Better, better.

14 MR. ROUNICK: We both agree better.

15 REPRESENTATIVE SCIRICA: Why?

16 MR. MOMJIAN: Because right now she will be  
17 devasated by the legal expense of hanging in there. As one  
18 of the members of the Judiciary Committee indicated, the  
19 fellow can take off even if he wanted to and get his divorce  
20 under any circumstance. But now all that a female is entitled  
21 to receive under Pennsylvania law are two things: ongoing  
22 support which cannot exceed one third of the spendable  
23 income available to the male, and I think that is un-  
24 constitutional today, but that is what the decisional cases  
25 say, and the only other thing that she can hope for is his

1 death before her in which case she can claim some portion of  
2 the assets that he may leave behind if he hasn't gotten rid  
3 of them before that time. So that all that she has is ongoing  
4 support and that is very, very unattractive. But in this  
5 kind of situation, she can get the lion's share of the assets  
6 if his income is great and she needs it. She can get con-  
7 tinuing alimony which can go up or down as circumstances  
8 change, and she doesn't have to live a deceitful life, which  
9 is one of marriage while the guy may be outside living with  
10 a paramour.

11 MR. ROUNICK: The answer to it, if I may  
12 answer for a minute and give you the perfect case in example,  
13 the woman comes in to you and says my husband is living with  
14 his girl friend. He wants a divorce. I want to fight the  
15 divorce. The first thing you tell her is well, here is what  
16 you are entitled to. You go into court and you get a support  
17 order. She says fine. Am I allowed to date? No. Your  
18 life is closed. You now show yourself and live as a recluse  
19 the rest of your life because if you start, and under the  
20 case law they are going to follow you and under opportunity  
21 and inclination in Pennsylvania somewhere along the way he  
22 is going to have a detective because he can afford it and  
23 you are going to charged with adultery and you will get no  
24 support. Therefore, at that point all you are doing is  
25 staying married, receiving no support, having no property.



1 That system is just so shallow that it is unbelievable. And  
2 that is what we have today.

3 MR. MOMJIAN: To add insult to injury, make  
4 her go out to work. Even if she has given twenty of the best  
5 years of her life to raising a brood of children, she ought  
6 to go out and regain those skills at age fifty, fifty-five.  
7 You are compelling her to go out in the street and work.  
8 Where his income may be tremendous and he may have a build-  
9 up of assets worth a million dollars as a result of her  
10 faithful performance as a wife during twenty years of home-  
11 making contribution. She can't put one finger on those  
12 assets. Why do males move to Pennsylvania? Because it's  
13 advantageous. Why do other people move out? Because many  
14 people who have substantial buildup of assets go to Florida  
15 where there is common law distribution or come to Pennsylvania  
16 where they are sheltered and they can live a happy life with-  
17 out being divorced.

18 REPRESENTATIVE SCIRICA: Thank you very much.  
19 I would like to note the presence of Representative Marilyn  
20 Lewis of Montgomery County and Representative O'Donnell.

21 REPRESENTATIVE O'DONNELL: I am interested in  
22 two notions that you have raised. One is the analogy of  
23 marriage to a partnership. Could you tell me what do you  
24 think the terms of that partnership are?

25 MR. ROUNICK: The terms of the partnership

1 are that the people will live together, raise a family  
2 together and that their terms of the partnership are in  
3 some people's mind that they will be faithful to each other  
4 during the terms of that marriage.

5 REPRESENTATIVE O'DONNELL: Let's put aside  
6 the Neanderthal concepts. Let's get to your very progressive  
7 view of that concept. I want to know what in your mind are  
8 the terms of that partnership.

9 MR. ROUNICK: In my mind the terms of that  
10 partnership, the partnership are the people who build a  
11 family together and they will own everything they acquire  
12 during the marriage together and they will each be equal  
13 partners. Simple terms.

14 REPRESENTATIVE O'DONNELL: That is fairly  
15 simple. I suggest that it departs significantly from the  
16 popular and present legal understanding of what the terms  
17 of that partnership are.

18 MR. ROUNICK: In Pennsylvania, but not else-  
19 where in the country.

20 REPRESENTATIVE O'DONNELL: Well, certainly  
21 not in California. I haven't reviewed the other states,  
22 but yes, in Pennsylvania. So, those are the terms of the  
23 partnership and, of course, the notion of fault that Mr.  
24 Scirica raised with you in the distribution of property,  
25 who has been violative -- the concept of fault of course

1 involves a violation of a duty. If you have no-fault divorce,  
2 the only -- it is kind of a contradiction, because you can't  
3 violate the terms of the duty because there is no duty. The  
4 only duty is to be together and raise a family and if you are  
5 saying that the partnership is a contendency of will, either  
6 party can walk away from that, then there is no possibility  
7 of fault because in fact there are no duties. There is no  
8 fault because there is no duties. I understand the logic  
9 of that. It is very compelling. But, I suggest to you that  
10 your analogy of marriage as a partnership is not a compelling  
11 analogy.

12           The second thing I am interested in is your  
13 view of the present process. I had a different view of it,  
14 and I would like you to share with us your experience. I  
15 think you indicated, and I don't want to misquote you, that  
16 the present uncontested divorce that significant or sufficient  
17 grounds could be made out merely by the one-sided presentation  
18 of a family argument and that no real perjury was necessary.  
19 If you take -- I guess the easiest grounds for a divorce is  
20 indignities, which I think involves subtle hatred and estrange-  
21 ment. It is not difficult for me to conjure up a situation  
22 in which two people simply don't want to be living together  
23 anymore. They simply don't want to be married anymore, and  
24 it is best for both of them to split, but neither one really  
25 hates nor has either one made out a factual basis to establish

1 in the mind of a reasonable observer that they hated each  
2 other. I can think of lots of people that just for their  
3 good, for the children's good or whatever ought to be and  
4 want to be divorced, but they don't hate each other nor have  
5 they made out the sufficient factual basis.

6 Now, can you tell me under the present state  
7 of affairs how does that couple cope with the present process?

8 MR. ROUNICK: Suttle hate and estrangement  
9 doesn't mean hate in the form which you are referring to.  
10 The courts have ways of defining the meanings of words and  
11 if you have the form that is now used in Philadelphia, a  
12 short affidavit, he cursed at me last week. He slammed the  
13 door in my face two weeks ago. He walked from the dinner  
14 table and threw a plate of spaghetti at me, and if you file  
15 an affidavit to that you would probably end up getting a  
16 divorce.

17 REPRESENTATIVE O'DONNELL: Yes, and I would --  
18 it is interesting he chose Philadelphia. Perhaps in Montgomery  
19 County they don't throw plates of spaghetti at each other.

20 MR. ROUNICK: No, no. In Montgomery County  
21 we do a longer form. I used the short form.

22 REPRESENTATIVE O'DONNELL: Eggs benedict they  
23 throw at each other. Are you telling me that what you have  
24 just laid out here is a sufficient basis, if you are the  
25 master at a divorce case in Montgomery County and Attorney

1 Scirica comes up there and says my client was cursed at, had  
2 a door slammed in his or her face and received one plate of  
3 spaghetti or eggs benedict that that is a sufficient factual  
4 basis for a divorce in Pennsylvania? Is that what you are  
5 telling us?

6 MR. ROUNICK: For Attorney Scirica, but not  
7 for some other. I really don't believe that that would be  
8 a sufficient basis.

9 REPRESENTATIVE O'DONNELL: I don't think it  
10 would be either.

11 MR. ROUNICK: But what I am trying to tell  
12 you is that I am not so sure that some of the courts are  
13 reading what comes in and they are rubber stamping.

14 REPRESENTATIVE O'DONNELL: Of course they  
15 are rubber stamping, and that is not what we are talking  
16 about. What we are talking about is the burden on a person  
17 who has to make out under the present law a completely  
18 fictional affidavit establishing one of the necessary grounds  
19 for support when in fact those grounds aren't there, although  
20 there might be a sufficient reason from other points of view,  
21 justice for getting a divorce.

22 MR. ROUNICK: I can tell you in eleven years  
23 I have never had to make out fictional grounds for divorce.  
24 That every person --

25 REPRESENTATIVE O'DONNELL: (Interrupting) I

1 would hardly expect you to sit there and say otherwise.

2 MR. ROUNICK: But I can ignore it and not  
3 mention it.

4 REPRESENTATIVE O'DONNELL: Well, saying that  
5 a family argument if presented in a one-sided way is enough  
6 for a divorce in Pennsylvania when it is uncontested is  
7 tantamount to ignoring it.

8 MR. MOMJIAN: I was going to comment on my  
9 view of the partnership relationship. I think it has two  
10 levels: spiritual and economic. I think the problem is  
11 that we are trying to mix the both levels. In terms of the  
12 economic partnership, I concur with what Jack said. Basically,  
13 when that partnership dissolves there ought to be some  
14 equitable solution of what happens to the property just as  
15 with a regular partnership.

16 With reference to the spiritual, that is what  
17 creates the problem. It is a marriage of faith and goodwill  
18 and honesty towards one another and when that breaks up, when  
19 you try to inject those factors into the economic relationship  
20 it creates havoc and you can't do it.

21 On the issue of the ethical ability to file  
22 an action based on indignities, the way I look at it, and  
23 I am sure most of do it that way, we are troubled with the  
24 problem and all that we can tell a client is look at your  
25 marriage relationship for the last fifteen or twenty years.

1 Pick out of that barrel everything that was unpleasant, and  
2 the best of us have unpleasant relationships. We shout, we  
3 argue, we holler, and if you dig down and pull out of that  
4 barrel of your relationship only those negative things and  
5 put them on a piece of paper and that is what the master or  
6 the judge reads, then you probably have made out a cause for  
7 action in divorce.

8 Now, you don't quibble with it. You don't  
9 try to make a subjective judgment as to whether that is valid  
10 or not, but that is the approach that you have to take under  
11 Pennsylvania law, which is difficult. Many times you  
12 probably have misgivings as to what the client is saying,  
13 but you go with the system that is imperfect and the judges  
14 understand it more than even the lawyers sometimes.

15 REPRESENTATIVE O'DONNELL: Mr. Rounick, one  
16 final question. I am interested in your view of marriage as  
17 a partnership. Suppose in your law partnership, suppose  
18 Mr. Rounick and you, as a result of hearing each other today,  
19 decide to go into a law partnership and sometime between now  
20 and the end of the proceeding Mr. Rounick, however, meets  
21 Mr. Scirica outside and Scirica says, listen I think we can  
22 present a lot of business to you, Mr. Rounick, in this area,  
23 and Rounick says I'll tell you what. Don't tell Momjian.  
24 How about if you and I go and form another little informal  
25 partnership in which we will enjoy the fruits of the formal

1 partnership and divvy that up between us.

2 Mr. Momjian, would you bring an action by you  
3 to dissolve that partnership -- let's say that you are some-  
4 what offended at Mr. Rounick's behavior. It a) cost you  
5 money and b) you felt that there was some ethical question  
6 involved in his behavior. I hate to sound Neanderthal, but  
7 let's just say there was an ethical issue involved. Would  
8 you bring that ethical question about his going off and getting  
9 involved with Scirica before the court in an action to dis-  
10 solve the essence of your legal partnership? Would you bring  
11 that before the court?

12 MR. MOMJIAN: Sure.

13 MR. ROUNICK: Sure.

14 REPRESENTATIVE O'DONNELL: Thank you.

15 MR. MOMJIAN: As does an employer with respect  
16 to an employee who has been caught cheating or stealing from  
17 the till and he seeks to get his back wages for five or six  
18 weeks and the employer says you violated your fiduciary  
19 relationship. You are not going to get a penny.

20 REPRESENTATIVE O'DONNELL: Sure, a fiduciary  
21 which is higher than the sterile kind of partnership. It  
22 is higher than contract, fiduciary is.

23 MR. MOMJIAN: I read what you are saying.  
24 With all due respect I just feel that if you take the scales  
25 and put them down, while there is a lot to be said in support



1 of what you are saying, I can't believe that if we inject  
2 fault as a criteria for equitable distribution of post  
3 divorce alimony it is going to double the system. It is  
4 going to be bad enough now. It is going to be worse then.  
5 That is the judgment that you have to make.

6 REPRESENTATIVE O'DONNELL: Deciding fault is  
7 always a terrible thing, and it is a tremendous burden, but  
8 in terms of Mr. Rounick's presentation, have you found the  
9 courts befuddled by the necessity to decide those kinds of  
10 issues in the employer/employee relationship, to decide those  
11 kinds of issues in the partnership dissolution that you  
12 described before? Have the courts completely foundered?

13 MR. MOMJIAN: There is not so many of those.  
14 That is the problem. In the marriage situation, you are going  
15 to have more masters than lawyers. Because every system is  
16 going to go a master. You are going to have litigation upon  
17 litigation. We have trials now that take eight, nine, ten  
18 days. Nobody can afford it.

19 I would like to say that I wouldn't believe  
20 Jack would do that to me in any event. Would you, Jack?

21 MR. ROUNICK: By the way, you realize that  
22 more than 50 percent of the litigation in this state is in  
23 the family area? That is why the problems are here and that  
24 is why this is so blown up and exemplified.

25 REPRESENTATIVE O'DONNELL: Thank you.

1                   REPRESENTATIVE SCIRICA: Thank you,  
2 Representative O'Donnell. Senator Gekas.

3                   SENATOR GEKAS: Is it Mr. Rounick?

4                   MR. ROUNICK: Rounick.

5                   SENATOR GEKAS: Let's assume for the moment  
6 that the pure no-fault cannot pass the General Assembly of  
7 the Commonwealth of Pennsylvania. Assume that for the  
8 moment. You are not willing to say to me that you would  
9 not support the contents of Senate Bill 49, the one I  
10 sponsored, as an updating of the present system which involves  
11 this very same subject you have been discussing, the  
12 indignities and the course of conduct that we have to as  
13 lawyers undertake and as clients in posing of grounds for  
14 divorce, are you?

15                   MR. ROUNICK: If there is -- let's put it  
16 this way: I would support it if you had with it equitable  
17 distribution of property and alimony. Without it there is  
18 no purpose behind it and it is only in my opinion an effort  
19 to say we did something when you are not really doing any-  
20 thing.

21                   SENATOR GEKAS: Well, that is not so. First  
22 of all, I want to say to you that I am very much intent on  
23 reforming the present system where we have people who have  
24 already decided that the divorce, a divorce is imminent.  
25 That the marriage is over, and yet we force somebody to go

1 in to testify. The way you make it sound, Mr. Rounick, is  
2 that it's all right. Let them go in and say all these things  
3 about spaghetti and so forth, and I think that is an insult  
4 to people, and it does lead that person to magnify faults  
5 and to perjure, if not totally perjury in the legal sense,  
6 at least to exaggerate to the point of falsehood in that  
7 person's own mind as to what the other person did. The  
8 purpose of this mutual consent divorce is to supplant where  
9 necessary the necessity for going in on this one-sided  
10 unilateral way of giving this litany of offenses under  
11 indignities.

12 MR. ROUNICK: Senator Gekas, for that purpose  
13 I would support it, but not for the purpose of divorce reform.  
14 For reform you must have something more than that. For  
15 reform you must have alimony. You must have equitable  
16 distribution, and for reform you must have unilateral divorce.  
17 But, for the purpose of solving the problem you are talking  
18 about, yes, that will solve that problem.

19 SENATOR GEKAS: If pure no-fault faded out  
20 of the legislative picture, can I count on you for support  
21 of that concept?

22 MR. ROUNICK: I would hate to find that my  
23 legislators and my elected representatives would let pure  
24 no-fault fade out of the picture. I would hope it would  
25 never have to come to that.

1                   SENATOR GEKAS: Well, it did the last time.

2                   MR. ROUNICK: Well, I am hoping that finally  
3 there has been an awakening in this state and that we realize  
4 that we have got to catch up to the rest of the world and  
5 bring ourselves to the twentieth century.

6                   SENATOR GEKAS: The other question that I had  
7 proposed is that under the present bills on pure no-fault,  
8 can you answer me, is this hypothetical true? A wife who  
9 is being supported and is a housewife, does no outside work,  
10 who under -- if pure no-fault went into effect, is it not so  
11 that she could move out of the house, move in with a paramour  
12 with no intentions of ever marrying the paramour no can the  
13 paramour marry her if there should ever be a divorce, would  
14 she, under the concepts of this law, be able to immediately  
15 get alimony while living with the paramour? Remember, there  
16 is no-fault involved here. She would be able to get alimony  
17 immediately, live with the paramour indefinitely, get a  
18 divorce under no-fault, continue to get alimony while she  
19 continues not to marry the paramour.

20                   MR. ROUNICK: There is many factors to be taken  
21 into account. One is need. What is her need while she is  
22 living with the paramour? Who is paying the bills? What  
23 are her expenses? Does she have the ability to work? How  
24 many years does she need money to be able to educate herself  
25 so she can earn a good living? These are all factors that

1 are built into the bill, to be taken into account.

2 SENATOR GEKAS: Assume all the factors in  
3 favor of the desperate need of the woman I have just described  
4 to you. Are you saying that if all the needs and all the  
5 evidence points to her needing this money and the paramour  
6 can't support her and all that sort of thing, that that  
7 would be a just result under this no-fault divorce law?

8 MR. ROUNICK: Yes, Senator. I will give you  
9 a perfect example of the law that exists today. If a woman who  
10 is incompetent moves out of the house and moves in with a  
11 paramour and lives with that paramour, the law as it is  
12 written today provides she receives alimony, because she has  
13 a mental deficiency, and that mental deficiency stands her  
14 above everybody else in this state. That law exists today.  
15 It is in your legislation and that person is entitled to  
16 receive alimony.

17 SENATOR GEKAS: Isn't the mental deficiency  
18 mitigative of fault?

19 MR. ROUNICK: It may be mitigative of fault,  
20 and then you have to get into that issue and we get into the  
21 psychiatric issue. It may be mitigative of indignities.  
22 Is it mitigative of adultery? We don't know the answer to  
23 that. What I am saying is we are building that back into  
24 the system.

25 SENATOR GEKAS: I have no further questions

1 at this time.

2 REPRESENTATIVE SCIRICA: Thank you, George.  
3 We have Representative Terry McVerry from Allegheny County.  
4 Terry has a brief question for our witnesses.

5 REPRESENTATIVE McVERRY: Gentlemen, in your  
6 estimation, do the provisions for equitable distribution of  
7 property in this bill or rather than do they, do you anticipate  
8 that they may have the effect of encouraging more meretricious  
9 relationships or live-in arrangements so that spouses do not  
10 become entangled in the possibility of equitable distribution  
11 of property?

12 MR. ROUNICK: I think in view of Marvin  
13 those people have that problem today and I know my friend  
14 sitting here has many clients that he is writing agreements  
15 for to cover that situation in meretricious relationships.  
16 In view of the trend that has been started and adopted in  
17 many states following Marvin, there has been a need for  
18 agreements for people who are living together. Therefore,  
19 I am not too sure that there is going to be that great a  
20 distinction sometime in the near future on that issue.

21 MR. MOMJIAN: That precise question, sir,  
22 raises the issue of only having consensual divorces, because  
23 if you provide only for consensual divorces, then indeed  
24 you have the encouragement on the part of the male who might  
25 leave, enter into a meretricious relationship, and not consent

1 so that he would not be subjected to equitable distribution.  
2 But, if, as you have under the Bill 450, you provide for non-  
3 consensual divorces after a period of time, then he doesn't  
4 have that strong feeling that he could beat the system, and  
5 he will be subjected to equitable distribution in time. But,  
6 I don't think it is going to have any effect on whether he is  
7 going to be living outside or with a paramour otherwise.

8 REPRESENTATIVE McVERRY: I don't believe the  
9 status of our law today is very clear with respect to property  
10 division of people who are living in a meretricious relation-  
11 ship. As a matter of fact, it is clear, but it is not being  
12 tested, I don't think here just yet, and you think then, in  
13 view of these provisions in this code, that we should address  
14 that issue legislatively? Those persons who engage in  
15 meretricious relationships or live together will or may  
16 subject their property interest to the rights of the other  
17 person. Do you think we should address legislatively the  
18 Marvin issue is what I am asking you.

19 MR. ROUNICK: It would be helpful so people  
20 would know which side of the street they are on. But I  
21 would like to see us address and take care of the married  
22 people before we start taking care of the unmarrieds. You  
23 need some help there first. But I would say that yes,  
24 something should be done legislatively.

25 REPRESENTATIVE McVERRY: And what?

1 MR. ROUNICK: What?

2 REPRESENTATIVE McVERRY: Give me your opinion  
3 as to what then should be done legislatively.

4 MR. ROUNICK: I believe they should not share  
5 in each other's property. That is my opinion.

6 MR. MOMJIAN: If you address the issue to  
7 exclude the Marvin result, I think it would be appropriate  
8 to put it in the bill. That goes as to the spiritual context  
9 of trying to hold the marriage together. You would only  
10 encourage people not marrying and living in meretricious  
11 relationships, so that if you wanted to take an anti-Marvin  
12 step, you ought to include it. The only problem you have  
13 basically is untitled property. There is no problem with  
14 securities or bank accounts. That doesn't mean that if  
15 parties cohabitating together have a joint bank account that  
16 they don't follow whatever the bank requirements are with  
17 respect to who gets it upon the dissolution of that relation-  
18 ship. Probably co-tenants without right of survivorship.  
19 The only real troublesome property right is the furnishing  
20 within the apartment or household in which the cohabitating  
21 people live, since it is not titled, and there you could  
22 have really dramatic problems in terms of who contributed  
23 to it, but I think the law could deal with those problems  
24 and you don't have to worry about protecting them.

25 REPRESENTATIVE McVERRY: Do you suggest such



1 an amendment to this bill?

2 MR. MOMJIAN: From a personal viewpoint, I  
3 would like to see it, but I am not concerned about it.

4 REPRESENTATIVE McVERRY: One other question  
5 for your opinion as an attorney, do you think that the  
6 provisions for uncontested divorce here, being three months  
7 or one year, effectively do away with the need for any of  
8 these other grounds for divorce because if any degree of a  
9 contest is mounted the parties seeking the divorce need only  
10 bide his or her time to secure that divorce. Do you think  
11 it effectively does away with the need for these other grounds?

12 MR. MOMJIAN: No. You are going to have a  
13 situation where if the parties agree to their property  
14 division and rights, they don't have to wait the twelve-month  
15 period following. Well, they can do it at three months. I  
16 guess it does do it. Sure, they can get rid of it in three  
17 months by separation of three months. Effectively it does  
18 do it.

19 REPRESENTATIVE McVERRY: Of course, there is  
20 no problem when they agree. But, I am talking about when  
21 they don't agree, you are really -- this bill, it seems to  
22 me, effectively does away with the need for those other  
23 grounds.

24 MR. MOMJIAN: It does.

25 MR. ROUNICK: No question about it.

1 REPRESENTATIVE McVERRY: Thank you.

2 REPRESENTATIVE SCIRICA: Thank you. Senator  
3 O'Pake.

4 SENATOR O'PAKE: I have one question. Do you  
5 think that if this bill becomes law it will increase the  
6 divorce rate in Pennsylvania?

7 MR. ROUNICK: No. It may have one quick  
8 upswing initially and stop and drop down to its normal level.  
9 I don't think it has shown anywhere in the country there has  
10 been any significant increase as a result of no-fault divorce.  
11 There may be an immediate one shot deal and then it levels  
12 off. In fact, in my testimony I showed the divorce rate is  
13 increasing percentage wise more in the country other than  
14 California has a lower increase than the other states. If  
15 there ever is any state anybody would believe has the highest  
16 increase it would be California.

17 SENATOR O'PAKE: Mr. Momjian, what is your  
18 answer? Then I would like to know why in your opinion this  
19 has been the case.

20 MR. MOMJIAN: Statistically, it will bring  
21 back into the Pennsylvania courts those cases which are now  
22 going into Delaware, Florida, New Jersey and Ohio. So, you  
23 may have, and you oughtn't to interpret it as something  
24 negative if you have an additional thousand or fifteen  
25 hundred matrimonial cases going through the system. I would

1 suspect that those cases might very well be the cases that  
2 would otherwise go out of the system, but at least you have  
3 residents. You are not losing your people, the Claymonts,  
4 the Cherry Hills, wherever it may be.

5 SENATOR O'PAKE: There would be an initial  
6 increase, but then it will level off because, and this is the  
7 whole answer, they are now going out of state anyway and  
8 therefore - .

9 MR. MOMJIAN: (Interrupting) That plus the  
10 fact there are so many marriages in the state of turmoil now  
11 that haven't been resolved so that the system would have to  
12 flush that out. There are many, many situations of couples  
13 living together in some kind of hostile state or separation  
14 for ten years or fifteen years and fighting in the courts.  
15 Those cases will finally close themselves out. There may be  
16 thousands and thousands upon thousands of those that have  
17 been living in that situation. So that you are going to get  
18 that initial upswing as a result of those cases which have  
19 been in some festering state for years already. You are  
20 going to have an upswing of cases coming back into the Common-  
21 wealth that were going out before, but I think in time it will  
22 level out in some way.

23 SENATOR O'PAKE: I can understand why there  
24 would be the immediate upswing, but what is the basis for  
25 your conclusion that it will not in the long run increase the

1 divorce rate? You are making it a little easier for the  
2 twelve-month unilateral.

3 MR. MOMJIAN: It is a personal view on my  
4 part. That is all. I have no statistics.

5 MR. ROUNICK: Senator, I believe there would  
6 be some increase. I think naturally there is going to follow  
7 some increase. Some of these cases that have been accumulating  
8 now will come in a big bundle at one time and will be spread  
9 out over a period of years. There will be some increase, but  
10 it would not be significant and nothing that is going to  
11 startle anybody's conscience when it happens.

12 SENATOR O'PAKE: Thank you.

13 REPRESENTATIVE SCIRICA: I have got a technical  
14 question on the scope of jurisdiction for the master. We  
15 have provided in the bill that the master shall consider all  
16 issues with the exception of custody, support and paternity,  
17 which necessarily includes alimony and the distribution of  
18 property. Do you think that the master ought to consider  
19 alimony and the distribution of property?

20 MR. ROUNICK: No. I put in page ten of my  
21 prepared testimony I recommended that that be added. That  
22 provision was taken from the existing law which does not  
23 provide for alimony disposition. I think it would be very  
24 inopportune to give that to a master.

25 REPRESENTATIVE SCIRICA: Mr. Momjian?

1 MR. MOMJIAN: I agree with that.

2 REPRESENTATIVE SCIRICA: Fine. Thank you  
3 very much. Are there any other questions? We have got to  
4 get moving along here.

5 MR. ROUNICK: I am due in court at 1:30  
6 anyway.

7 REPRESENTATIVE SCIRICA: Jack, thank you  
8 very much. Mr. Momjian, thank you very much.

9 MR. MOMJIAN: Thank you very much for having  
10 us, sir.

11 REPRESENTATIVE SCIRICA: Is Lynne Gold-Bikin  
12 here? Miss Bikin was involved in the Women's Commission Task  
13 Force. I understand that she has some petitions that she  
14 would like to present to the committee.

15 MS. GOLD-BIKIN: I am Lynne Gold-Bikin. I  
16 am a divorce lawyer from Montgomery County and after the  
17 institution of this bill my compatriot here, Leslie Compter  
18 and I formed a committee called succinctly the Committee  
19 for the Passage of the Divorce Reform Bill, and in the last  
20 two weeks we have gotten over 600 signatures on a petition  
21 which I would like to read to you.

22 It says: "We, the undersigned, believe in  
23 bringing divorce reform into the twentieth century. We  
24 believe in the concepts of alimony for a dependent spouse  
25 and equitable distribution of property, thereby recognizing

1 the contribution of both parties to a marriage. We also  
2 believe in no-fault divorce where the marriage is no longer  
3 functional. Therefore, we do petition our legislators to  
4 vote for and pass House Bill 640 (Senate Bill 450), the so-  
5 called 'Divorce Reform Bill'."

6 I present to you over 600 signatures on these  
7 petitions in addition to 120 post cards addressed to you  
8 gentlemen and ladies for the passage of this bill.

9 REPRESENTATIVE SCIRICA: Thank you, Mrs.  
10 Gold-Bikin. We will make these a part of the record.

11 Our next witness is Mr. Howard Fetterhoff,  
12 the Executive Director of the Pennsylvania Catholic  
13 Conference. Howard, we are happy to see you with us here  
14 today. I apologize to you for keeping you waiting this  
15 morning. We always have the star witness right before lunch.

16 MR. FETTERHOFF: Thank you, Mr. Scirica and  
17 Senator O'Pake, for the opportunity to testify. I don't  
18 mind the delay, because it is informative, but how much  
19 time do we have now?

20 REPRESENTATIVE SCIRICA: You can have as  
21 much time as you like.

22 MR. FETTERHOFF: I took note that our  
23 testimony is kind of long. It is about twenty-two pages.  
24 If I read it in detail, I think it would take too long.  
25 So, what I will try to do is summarize the high points of it

1 so that there is more time for questions on your part.

2 To begin with, we acknowledge, as a lot of  
3 people do, that Pennsylvania's present law does need reform.  
4 If you look at it from the standpoint of just interest in  
5 preserving marriage, our divorce rate is mounting just as  
6 fast as other states. In fact, a little faster than some  
7 neighboring states who have no-fault divorce. So, we are  
8 not looking at the policy here strictly from the standpoint  
9 of its impact on the divorce rate.

10 We also feel that if more attention was paid  
11 to conciliation in Pennsylvania as was intended from the  
12 beginning of the divorce reform movement and more than has  
13 been done in some other states that perhaps we could do  
14 something to save some marriages before divorces go forward.

15 I would like to cite a couple points of  
16 agreement that we have with the new bills. I also wanted to  
17 mention that we did not prepare in this testimony some  
18 specific comments on Senator Gekas' bill, Senate Bill 49.  
19 I would like to say on that that if that bill had a  
20 conciliation provision added to it and economic protection  
21 to dependent spouses, we could support it, because we agree  
22 that a no-fault divorce by mutual consent is acceptable and  
23 perhaps better than the present situation.

24 In Senate Bill 450 and House Bill 640 we think  
25 that legislative intent is excellent because you do allude

1 there to the value of permanence of marriage in our society.  
2 We think that there are some points in the bill that work  
3 against that, however.

4 We agree very strongly that there are economic  
5 protections needed in Pennsylvania law for dependent spouses  
6 that do not exist now and that are part of the reason for no-  
7 fault divorces in other states.

8 We also think that because of the availability  
9 of no-fault divorces in other states something should be  
10 done in Pennsylvania to protect dependent spouses left back  
11 here even if they get settlements in other states.

12 Now, on the question of the no-fault ground,  
13 we do not oppose the addition of a no-fault ground if it is  
14 by mutual consent and if it is accompanied by a strong  
15 conciliation provision. One of the reasons for that is that  
16 under the present situation we do have a lot of consensual  
17 divorce, perhaps as high as 90 percent of the divorces, and  
18 now there is no effort at all to save those marriages.

19 Let me focus in now on what we consider one  
20 of the most important parts of this legislation and that is  
21 the element of conciliation. It is often said that if a couple  
22 is not living amicably, it does nothing for the children to  
23 make them live together. That is true in extreme cases, but  
24 I don't think you can just write the children off. Back in  
25 1969 there was a study from HEW that said in Pennsylvania



1 when we had 21,000 divorces a year there were 27,000 children  
2 involved in those. Today with the number we have there is  
3 almost 50,000 children every year in this state whose home  
4 lives are disrupted by divorce. So, if anything can be done  
5 to prevent that for even some of those children, we think it  
6 is worthwhile. Children have rights in this whole setup that  
7 are very seldom mentioned. When you get into a hearing on  
8 divorce reform, everybody is talking about the rights of the  
9 spouses, but the rights of the children are very important.  
10 And if they can be protected, they should be.

11 In the bill, the conciliation provision we  
12 think could be strengthened. Here we have recommendations  
13 for strengthening that. When either of the parties requests  
14 counseling, we think the court should require the other party  
15 to comply. In this way a spouse who wishes to try to save  
16 the marriage has a right to bring that conciliation provision  
17 into play. Right now in the bill it is left up to the court  
18 entirely. We do agree, though, that if an experienced judge  
19 sees an opportunity for conciliation he should be able to  
20 bring it into play.

21 We also think that since we can't tell how  
22 many divorces under a reform bill would be under a no-fault  
23 ground and how many would be under indignities, we think the  
24 conciliation provision should apply not only to the no-fault  
25 ground but to the ground of indignities as well. We don't

1 think it has to apply to the other grounds, but if you had it  
2 applying to indignities and no-fault it would take care of  
3 that opportunity for most divorces in Pennsylvania.

4 In cases involving either a no-fault ground  
5 or indignities we think it would help if there was an ninety-  
6 day cooling off period at the beginning of which the court  
7 would inform the spouses of their right of conciliation and  
8 then ask them to reflect on their situation for another three  
9 months before the divorce goes forward and in that way  
10 conciliation would become a practical matter and there would  
11 be an opportunity to take care of it.

12 The recommendations on conciliation are not  
13 just pie in the sky. They are working in other jurisdictions  
14 in the country. We followed for years the conciliation court  
15 in Phoenix, Arizona. Recently, just to make sure it was in  
16 business, so we could testify about it, we checked with them  
17 and they are still in business. Their 1977 annual report  
18 cited that in thirteen years that court out there in one  
19 county reconciled 7,486 couples. Those couples involve  
20 15,490 children. So, regarding that first recommendation  
21 of ours that the conciliation should be available if one  
22 spouse requests it, that is what is done in Phoenix, Arizona.  
23 Even though they recognize that at times the party who doesn't  
24 want to enter conciliation is resistive and uncooperative,  
25 it usually works. Out of 2,000 cases that they handle a year

1 out there, conciliation cases, couples who come for concilia-  
2 tion, the reconciliation rate is up to 50 percent. So there  
3 is a thousand reconciliations. Within a year when they  
4 check that out, they find that 90 percent of those couples  
5 that have been reconciled as a result of conciliation are  
6 still living together.

7 Now, in Pennsylvania we do not predict that  
8 much success even if the recommendation we have were followed,  
9 because in Phoenix, Arizona the court pays for all the costs  
10 of the conciliation. The cost of conciliation, the cost of  
11 counseling here could be a problem. The reason they pay for  
12 it out there and think it is an economic benefit to do so is  
13 that their success in saving families and marriages has been  
14 enough that they think they are saving more in welfare costs  
15 by paying for the conciliation than they are losing by paying  
16 for it. Out there they employ about nine professional  
17 counselors in the court itself. We are not asking for that  
18 here. We are asking the court to avail itself of the  
19 professional counselors and clergy and others in the community  
20 so that they can be called to the attention of the spouses.

21 It is true what Dr. Meyer said in his  
22 testimony that probably the most controversial part of this  
23 is the part on unilateral no-fault divorce. I think perhaps  
24 I will take the time to read most of my testimony on that,  
25 because I think that that is important enough to give you the

1 ideas we have and then be open for questions.

2 We are convinced that the state has an  
3 interest and an obligation to uphold the permanence of  
4 marriage.

5 SENATOR JUBELIRER: Where are you reading  
6 from?

7 MR. FETTERHOFF: Page 9.

8 The sponsors of Senate Bill 450 and House Bill  
9 640 express this conviction in their legislative finding and  
10 intent which says:

11 "The family is the basic unit in society and  
12 the protection and preservation of the family is of paramount  
13 public concern."

14 But the section which allows one party to  
15 obtain a no-fault divorce without the consent of the other,  
16 in our opinion, undermines that policy and really ends up  
17 promoting divorce by desertion rather than promoting marriage  
18 as a permanent union.

19 We know that no law can force one party to  
20 love the other or to live with the other. We know too that  
21 preventing a divorce is not synonymous with preserving marriage.  
22 But even so, permanence of marriage, just like justice and  
23 other values essential to a healthy society, is a value  
24 which must be upheld as a matter of policy whether or not  
25 it is honored in every case. Public policy should state

1 clearly for the good of all that fidelity to one spouse and  
2 children is a sacred responsibility which may not be abandoned  
3 at will. Partners to a marriage have both a right to fidelity  
4 and a responsibility to render it to the other spouse and the  
5 children. Unilateral no-fault divorce ignores this dimension  
6 entirely and it legalizes desertion and then busies itself  
7 just with the economic dimension of the settlement. We feel  
8 that there is more to marriage and also more to justice than  
9 just the economic dimension.

10 Our opposition to unilateral no-fault divorce  
11 is not based on doomsday prediction about what it might do to  
12 the divorce rate. We have already noted that one of the short-  
13 comings of Pennsylvania's current law is that it does nothing  
14 to stem the tide of divorce. In fact, the divorce rate in  
15 both New York and New Jersey where they have unilateral no-  
16 fault divorce is a little lower than ours. Again, that is  
17 the reason why we are not opposed to reforming this law.  
18 Because this law is not doing anything at the present time  
19 to preserve marriage.

20 But, our fundamental objection to unilateral  
21 no-fault divorce is not what it does to the divorce rate, but  
22 its intrinsic negation of the permanence of marriage, and its  
23 tendency to establish an absolute right to divorce after a  
24 specified period of desertion. In other words, under that  
25 policy the only absolute right that a married couple has or

1 that a spouse has is the right to get a divorce. All the  
2 other rights, including the economic rights, cannot be upheld  
3 by the state because even in the states that have economic  
4 protections the enforcement of those is a little bit weak and  
5 less than half of the people that get these settlements realize  
6 them in practice.

7 Now, it is often said, and sometimes glibly,  
8 that the spouse of one who deserts the family must have secret  
9 faults some place which justifies or caused the desertion.  
10 We reject this presumption of guilt leveled at many spouses  
11 who would be given no opportunity to defend their commitment  
12 to the marriage under unilateral no-fault divorce legislation.

13 We know that nobody's perfect, but we do think  
14 that there are some cases in which the fault is very heavily  
15 on one side and we don't see how you can have due process of  
16 justice if you totally eliminate any attention to that factor,  
17 whether in the economic settlement or even in the divorce  
18 itself. So, we feel that the state has a responsibility to  
19 uphold marriage as a permanent union and not to establish  
20 divorce as an absolute right. We think that unilateral no-  
21 fault divorce really ends up rewarding fault rather than  
22 rewarding the virtues of marriage.

23 And the period of separation, the reason we  
24 don't accept the period of separation -- people say what  
25 about two years, what about three years. Essentially, the

1 longer you desert your spouse, the surer you are of getting  
2 free from your responsibilities. In most states that have  
3 unilateral no-fault divorce -- there was a TV documentation  
4 on this last week on public television -- the beneficiaries  
5 are the independent spouses, the financially independent  
6 spouses. The victims are the dependent spouses, wives and  
7 children. Their standard of living always drops. Most people  
8 who enter divorce actions are not wealthy enough to take care  
9 of reasonable economic settlements. So, when you have most  
10 families who are poor, all that happens under unilateral no-  
11 fault divorce is that the dependent spouses are left with a  
12 great disadvantage and a drop in the standard of living. We  
13 don't think that unilateral no-fault divorce takes care of  
14 justice.

15 Another thing is this too, when a spouse is  
16 committed to the marriage and doesn't want a divorce, it's  
17 not always just spite or bitterness. We think that is kind  
18 of a sweeping allegation against such spouses. We, in the  
19 past few weeks, had many women, many, many, twelve, fifteen  
20 women write to us about their concerns about the unilateral  
21 no-fault divorce, because when women begin to get older, or  
22 dependent spouses begin to get older, usually women, they are  
23 not too confident about the virtues of unilateral no-fault  
24 divorce to them.

25 Here is a case that came to our attention.

1 A woman married thirty years is deserted by her husband and  
2 under Senate Bill 450 or House Bill 640 the husband can apply  
3 for unilateral no-fault divorce after a year of separation.  
4 This woman happens to be living in the home that she and her  
5 husband struggled to pay off for twenty years. She is not  
6 apparently guilty of serious marital fault, so he could not  
7 get a fault divorce against her. He could get a unilateral  
8 no-fault divorce. Even under this property distribution,  
9 though, since that is about the only asset this family has,  
10 and there is a lot of families like this, this woman is going  
11 to be told that she is going to have to move out of that house  
12 that she struggled for years to help pay off and move some  
13 place else because that is the only assets they have and  
14 has to be sold and distributed to both the husband and the  
15 wife. Her question is why should she be forced out of her  
16 home because her husband decided voluntarily to leave it.  
17 There are a lot of cases like that.

18 The question of unilateral versus mutual  
19 consent is a dilemma. We know that. We don't think that  
20 the law in any event is going to be able to take care of  
21 everybody to everybody's satisfaction but we think there is  
22 more justice in preventing divorces being forced upon innocent  
23 spouses than in unilateral no-fault divorce, even though no  
24 matter which way you go in this you have a dilemma.

25 So, we are opposed to that. We want to make



1 it clear that we are not enthusiastic about mutual consent  
2 no-fault divorce, but we do think it would be an improvement  
3 over the present situation, especially if it is accompanied  
4 by conciliation.

5 We also want to comment for a moment on the  
6 problems in contested divorces. One of the things that  
7 makes many people feel you just have to have unilateral no-  
8 fault divorce is the problem of contested divorces, whether  
9 it is a man trying to get a divorce or a woman. We think  
10 that the legislature, and I don't have any specific ideas on  
11 this, but we think the legislature should look at the problem  
12 of contested divorces. Are the traditional defenses the  
13 problem or what is the problem? It shouldn't be necessary  
14 for people to have to be totally innocent in order to take  
15 care of an unbearable situation, and if you could reduce the  
16 expenses and the length of contested divorces by some  
17 legislative measure so that due process would be there but  
18 it wouldn't be impossible to obtain a divorce over a contest,  
19 we think that would be a much better way of solving that  
20 problem than be resorting to unilateral no-fault divorce.  
21 In other words, it seems to us it seems unbelievable the  
22 only way you can solve the problem of contested divorce in  
23 Pennsylvania is to undermine marriage for everyone and to  
24 say to every couple the day they get married that whichever  
25 one of you decides to get a divorce for any reason we are on

1 your side. We think the state should be on the side of  
2 marriage, not on the side of divorce, unless there is serious  
3 marital misconduct.

4 Let me just read the summary for you, then we  
5 can get to the discussion.

6 The Catholic Church can support no law which  
7 purports to put asunder what God has joined together, yet  
8 our conference which represents the Catholic dioceses of  
9 Pennsylvania can support provisions in a reform law which will  
10 help preserve marriage and the rights of children in a state  
11 whose divorces and divorce rate mount each year. And we can  
12 support provisions which give economic protection to dependent  
13 spouses now virtually unprotected in Pennsylvania. In fact,  
14 we consider such improvements in the law to be urgently needed.

15 Sandy Staraban just asked me would we like to  
16 see nothing done. No, we think the present law is bad, and  
17 we think that reform is urgently needed. We think something  
18 to preserve families and economic justice is urgently needed  
19 and should be done, even if you did nothing else.

20 Further, we can tolerate -- though not  
21 enthusiastically -- a new ground which eliminates adversary  
22 proceedings in cases wherein both parties and the court  
23 agree that reconciliation is impossible, provided that such  
24 a new ground is accompanied by an effective counseling  
25 provision.

1                   We are convinced that the right of a spouse  
2 to contest a divorce is part of due process, but we can  
3 acknowledge that some modifications in the law should be  
4 considered by lawmakers to eliminate interminable contests  
5 for spouses who are victims of demonstrably unbearable  
6 conduct.

7                   But in those rare cases where a blameless  
8 wife or husband refuses consent to a divorce, we are con-  
9 vinced that justice is violated rather than advanced by  
10 forcing divorce on such a person. Therefore, our conference  
11 continues to oppose a policy which completely undermines  
12 marriage by legislating divorce on demand after a specified  
13 period of desertion. There is no way such a policy can  
14 accomplish the laudable legislative intent of Senate Bill 450  
15 and House Bill 640: "The family is the basic unit in society  
16 and preservation of the family is of paramount public concern."

17                   REPRESENTATIVE SCIRICA: Mr. Fetterhoff, thank  
18 you very much for the excellent testimony. I would like to  
19 note the presence of Senator Jim Kelley of Westmoreland  
20 County, and I guess that is everybody right now.

21                   I have got a quick question and then I am  
22 sure the other members will have several questions for you.

23                   I note that you cite the experience in Maricopa  
24 County, Arizona as a model county and a model state in terms  
25 of providing counseling for people that are going through

1 divorce. We took a look at the situation in Maricopa  
2 County, and I think our statistics comport with what you  
3 presented here today in your written testimony. In 1977  
4 approximately 13,000 divorces were granted in that county,  
5 and out of that number 2,000 participated in some form of  
6 counseling. Now, under the Arizona statute there is only  
7 one grounds for divorce, and it is a pure no-fault ground,  
8 and the ground is irremediable breakdown of marriage. It  
9 doesn't even have a living apart provision. But, the Arizona  
10 law also has a Conciliation Court. And what happens is when  
11 one of those parties desires any kind of counseling, they  
12 simply file a petition with the Conciliation Court. The  
13 court must assume jurisdiction and must have some form of  
14 counseling. So, in 2,000 out of those 13,000 cases there  
15 were petitions filed or counseling and approximately 50  
16 percent of those 2,000 cases there was some form of  
17 reconciliation effected.

18 I think what we are proposing here today in  
19 these two bills is very similar to what we have in Arizona,  
20 and as a matter of fact, in terms of the grounds for divorce,  
21 it probably is not nearly as liberal, because we have the  
22 twelve month waiting period. And it seems to me that if  
23 we were to maintain that unilateral ground for divorce and  
24 change the counseling provision under our present bill to  
25 mandate counseling, if one party requested it, not leave it

1 to the discretion of the judge as we presently have it right  
2 now we are going to have the Arizona law again in not as  
3 liberal a form. And, it seems to me that if the Pennsylvania  
4 Catholic Conference supports what they are doing in Arizona,  
5 there shouldn't be any problem with doing this to our bill  
6 here in Pennsylvania.

7 MR. FETTERHOFF: We support what the  
8 Conciliation Courts do. We don't necessarily support their  
9 entire divorce law. I know, because I have talked to people  
10 out there in Maricopa County that they have a very high  
11 divorce rate in that county higher than we have here. But,  
12 that the experience of the Conciliation Court is worthwhile  
13 looking at. It doesn't cut down the overall divorce rate,  
14 but it does save some families which possibly could be saved  
15 here, too, if you had something like that.

16 Now, the legislature has to decide what mix  
17 of policies to put in the new bill. We can tell you what  
18 our policy -- what we think the policy should be. We think,  
19 for example, that a lot of these problems raised by earlier  
20 witnesses would be solved in Pennsylvania, including the  
21 out-of-state divorce and everything else, without going all  
22 the way unilateral no fault divorce. We think, for example,  
23 one of the things that keeps people from consenting to  
24 divorce today is the poor economic protection in Pennsylvania.  
25 So, a lot of those would be eliminated. We think the thing

1 that makes people go to other states is because here there  
2 is no economic protection and no opportunity to have a mutual  
3 consent divorce with it and with conciliation. So, it seems  
4 to us that you could clear up the problem in over 90 percent  
5 of the divorce cases without going to unilateral no-fault  
6 divorce, and then when you get to isolate that policy all by  
7 itself and start weighing the number of cases in which it is  
8 a benefit, and the number of cases in which it is an injustice,  
9 it is our conviction that it is an injustice in more cases  
10 than it is a benefit.

11           Somebody said earlier well, in our state now  
12 a woman is helpless if her husband leaves the state and get  
13 a no fault divorce in another state. She would not be  
14 helpless in this state if we had economic protection and if  
15 we had in her hands the right to consent to a no-fault divorce  
16 in this state.

17           Now, if a woman in this state has economic  
18 protection and refuses to consent to a no-fault divorce and  
19 then her husband leaves, that is her decision. We don't  
20 think that such a person, dependent spouse, man or woman --  
21 by the way, we have had some men call us who are too enthused  
22 by unilateral no-fault divorce either, but we think that if  
23 you had decent economic provisions the problems of the un-  
24 consented divorce would be reduced to a minimum, and as I  
25 say, of the cases left I think the unilateral would work as

1 much in justice as justice, if not more.

2 REPRESENTATIVE SCIRICA: Senator O'Pake.

3 SENATOR O'PAKE: First, let me commend you  
4 in the conference for the way this issue is being handled  
5 this time. I think it is being presented in a much more  
6 reasonable and positive and productive way, and it is a  
7 matter of legitimate concern for all of us, and your delegates  
8 were very helpful, as I understand it, to the Commission and  
9 the Task Force who worked on this issue, and I think the  
10 process has focused on some narrow areas of disagreement,  
11 and I would like to ask you about two of those.

12 With regard to counseling, whether it should  
13 be mandatory, whether it could be effective if it were  
14 mandatory, it is my understanding that in 1969 New York State  
15 established a conciliation service for counseling for those  
16 on the brink of divorce, but in 1973 that mandatory counsel-  
17 ing service was abolished. It is also my understanding that  
18 the New York Catholic Conference supported abolishing the  
19 mandatory counseling program for two principal reasons.

20 First, it only had an impact in two or three  
21 percent of the cases, and secondly, the giagantic cost of the  
22 program.

23 In light of the New York experience, especially  
24 your colleagues in New York, what evidence do you have that  
25 mandatory counseling in Pennsylvania will fare any better

1 than the New York experience which your counterpart advocated  
2 abolishing after four years' experience?

3 MR. FETTERHOFF: Part of the experience in  
4 New York, as I understand it from conversations up there,  
5 I haven't had many, but the counseling provision wasn't  
6 adequately implemented in most of the court jurisdictions.  
7 That was one of the reasons they --

8 SENATOR O'PAKE: (Interrupting) Was that  
9 because of the cost?

10 MR. FETTERHOFF: Well, I don't know whether  
11 it was because of the cost or whether it was because the  
12 presiding judges just didn't feel it was worthwhile. The  
13 problem with backing off altogether despite New York's  
14 experience is that if you have counseling only <sup>in</sup> those cases  
15 where the couple mutually desires it, it does reduce the  
16 opportunity for one couple who wants some effort made to  
17 try to preserve the marriage. It is really not asking much  
18 to say to someone to appear at no more than three sessions,  
19 and as far as cost is concerned, not all the qualified  
20 counselors in the community would be somebody you have to  
21 pay money to, because the bill as you have written it con-  
22 siders qualified counselors to be clergymen who are experienced  
23 in this, and they don't charge for their services. So that,  
24 yes, we realize that the success will be lower if it is not  
25 mutually desired. But, at the same time, the opportunity



1 for the one spouse that wants to save the marriage is so  
2 reduced that we think it is worthwhile. We don't think it  
3 is asking too much.

4 SENATOR O'PAKE: You say it is worth a try  
5 even though New York seems to tell us that it can't be  
6 effective if it is forced on the parties and they are not  
7 going to cooperate in the elaborate or not elaborate  
8 reconciliation session?

9 MR. FETTERHOFF: The reason that I don't like  
10 to take New York as a model is because we know from experience  
11 that that same mandatory approach is used in Arizona and works  
12 in 50 percent of the cases when people go for it, but at any  
13 rate, we feel that the counseling provision should be avail-  
14 able if either spouse requests it.

15 SENATOR O'PAKE: My understanding, though,  
16 of Arizona is that one party must request it. The court  
17 cannot force it on both parties if neither one requests it.  
18 Is that correct?

19 MR. FETTERHOFF: Yes, but that is what we are  
20 saying, too, Senator. We are not saying that the court should  
21 force it on everybody.

22 SENATOR O'PAKE: I see.

23 MR. FETTERHOFF: We are only saying that just  
24 like in Maricopa County that it should only come into play  
25 only --

1                   SENATOR O'PAKE: (Interrupting) If one  
2 requests it --

3                   MR. FETTERHOFF: (Interrupting) Yes.

4                   SENATOR O'PAKE: -- then the court should  
5 mandate it.

6                   MR. FETTERHOFF: Yes, but only if one requests  
7 it.

8                   SENATOR O'PAKE: My second area of inquiry,  
9 I take it that in light of your testimony you would feel  
10 that at least in the considerations for the equitable dis-  
11 tribution of property and alimony some notion of fault or  
12 misconduct, marital misconduct, should be a factor. If that  
13 were added and thereby we would be protecting the more  
14 innocent of the two spouses, could you then agree that a  
15 unilateral marital estrangement, living apart, irretrievable  
16 breakdown, whatever, would be grounds for divorce if we  
17 protected the dependent spouse by adding marital misconduct  
18 as one of the factors in the economic distribution clauses?

19                   MR. FETTERHOFF: I don't think so, but I  
20 followed your discussion with some of the other witnesses,  
21 and I think it is a very difficult point to make a decision  
22 on. I think there is some sense in saying that if the court  
23 really took a conscientious look at the economic need and  
24 followed those criteria that are in the bill you would not  
25 have to take fault into consideration. You would not have

1 'to if they took a conscientious look at economic need. But,  
2 the reason why we don't feel that we could exchange some  
3 kind of an amendment like that or agreement to the unilateral  
4 provision is that our opposition to the unilateral is not  
5 based entirely on economic consideration but on other aspects  
6 of the relationship which we feel -- for example, both parties  
7 decide to get married. If one party alone decides to get a  
8 divorce, there should be some demonstrated serious cause for  
9 that, not just a whim. That is our problem. On the level of  
10 policy and principle and relationships, not just on the level  
11 of economics.

12 SENATOR O'PAKE: Thank you.

13 REPRESENTATIVE SCIRICA: Senator Snyder.

14 SENATOR SNYDER: I am impressed by your  
15 Arizona statistics, Mr. Fetterhoff, but do you know is that  
16 section of Arizona a fair cross section of the type of people  
17 that we have say in Pennsylvania or is there perhaps some  
18 racial or religious predominance that would warp the statistics?

19 MR. FETTERHOFF: Well, I really think that in  
20 a certain sense, Senator, that Phoenix, Arizona is a more  
21 liberal area, not a more conservative. In other words, I  
22 don't think their results out there are due to some sort of  
23 conservative religious bent, and I can't answer why. I think  
24 they have just -- what they have done is they have developed  
25 a very exciting system and the whole community promotes it.

1 You know, they give prizes every year for the TV station  
2 that promotes the conciliation service the best and stuff  
3 like that, which has to be done to make something come to  
4 the attention of the people.

5 SENATOR SNYDER: That is an element that  
6 perhaps we would have to cultivate, too, if we were to try.

7 MR. FETTERHOFF: Right. I think that the  
8 reason -- that is one of the reasons that it works out there.  
9 I am not here to say that Arizona is a model or that Phoenix  
10 is a model place, compared to us. It is probably more liberal  
11 or more inclined to divorce.

12 SENATOR SNYDER: Thank you.

13 REPRESENTATIVE SCIRICA: Are there further  
14 questions? Senator Jubelirer.

15 SENATOR JUBELIRER: Thanks. A couple of things,  
16 Howard, I would just like to bring out. I notice in your  
17 testimony that you consistently talk about children, wife  
18 and children, wife and children. I respectfully would dis-  
19 agree that they should be attached. I don't think they are  
20 the same thing. I think the rights with regard to the main-  
21 taining the marriage are completely different to children  
22 as they are to a spouse, shall we say, instead of a wife.  
23 I think that the facts and figures have proven time and time  
24 again that the maintenance of a marriage, a marriage that is,  
25 shall we say, somewhat explosive, where there is a tremendous

1 amount of fighting, arguing, perhaps physical violence at  
2 times, is the worst thing that can be done for children, and  
3 yet I note in many of the -- much of the testimony that you  
4 present here you consistently have and children, and children.  
5 I just think that they need to be somewhat separated.

6 MR. FETTERHOFF: Well, in the section on  
7 conciliation where we refer mostly to the children, the point  
8 there, the thrust of that is not to say that you should  
9 imprison children in a violent or contentious household, but  
10 it is to say since 50,000 children in this state each year  
11 have their lives disrupted by divorce that before those  
12 divorces are granted at least for the sake of the children  
13 we should see if the marriage is salvageable. That is all.

14 SENATOR JUBELIRER: I don't think there is an  
15 argument on that.

16 MR. FETTERHOFF: That is the point.

17 SENATOR JUBELIRER: But I notice just your  
18 public policy must state clearly that for the good of all  
19 the fidelity to one's spouse and children is a sacred  
20 responsibility which may not be abandoned at will. I  
21 think that is a little strong. You phrase it in such a way  
22 that nobody is certainly going to argue with that statement,  
23 but I think there is certainly a difference. I think that  
24 those marriages that may be terminated, in fact, that the  
25 fidelity due to the children is not destroyed at all. I

1 would take issue with you on that point.

2 MR. FETTERHOFF: When we announce what  
3 that policy should be we know that is the ideal. We are  
4 saying that is where you start and you have to adjust from  
5 there when you get into realistic and tragic situations.

6 SENATOR JUBELIRER: Okay. I would like to  
7 get back to my example which I think is the real world.  
8 I think the real world is, Howard, and you have said if we  
9 have divorce by mutual consent and bring in the economic  
10 sanctions and so forth 90 percent of the situation is going  
11 to be solved. I don't know where you are getting your  
12 figures from. I would like to know where you come up with  
13 that kind of solution.

14 MR. FETTERHOFF: Do you want to just stop  
15 there for a minute?

16 SENATOR JUBELIRER: Sure.

17 MR. FETTERHOFF: If we have 37,000 divorces  
18 in Pennsylvania as we had in 1977 and up to 33,000 of those  
19 were based on indignities and over 90 percent of them weren't  
20 contested, that is where we are getting that.

21 SENATOR JUBELIRER: Ninety percent of what?

22 MR. FETTERHOFF: Ninety percent we understand  
23 of the divorces granted under indignities were not contested,  
24 so there is an indication there that there is a lot of mutual  
25 consent divorce going on now that most divorce in Pennsylvania

1 is by mutual consent. That is what I meant.

2 SENATOR JUBELIRER: All right. But what  
3 about the divorces that are being brought about in the states  
4 of Delaware, New Jersey, Ohio, West Virginia, and so forth  
5 and so on, where our Pennsylvania citizens availing them-  
6 selves of no-fault laws all around them, and 47 out of the  
7 50 states have no-fault divorce, some sort of no-fault  
8 divorce, but our citizens in effect are using the courts of  
9 other states, avoiding equitable distribution of property,  
10 avoiding any alimony. To give you an example of the woman  
11 who has worked so hard to provide for the marriage, and I  
12 am very sensitive to that situation, yet I disagree with your  
13 final conclusion, because I think that the real realities are  
14 that -- and it is becoming greater and greater all the time,  
15 because we don't have the figures for that, that the person  
16 where the spouse says I am sorry, and we might as well face  
17 it, it is usually the woman in most cases, she doesn't want  
18 a divorce, therefore, contested divorce is very difficult to  
19 get in Pennsylvania so that particular gentleman goes to  
20 Florida, goes to, depending on his economic situation, but  
21 goes out of state but continues to work in Pennsylvania, and  
22 the fact is when he gets his no-fault divorce very, very well  
23 that person who you and your organization tries to protect  
24 is probably doing the most harm to by virtue of the fact  
25 that that person is without any economic relief whatsoever

1 and could become destitute and can become a product of our  
2 welfare system.

3 MR. FETTERHOFF: What we are saying, though,  
4 is this: to just follow that very example, if the policy  
5 was the way we have outlined it in our testimony, the dependent  
6 spouse, usually the woman, would have the option with economic  
7 protection now that she doesn't have under the present law to  
8 consent to the no-fault divorce so her husband wouldn't have  
9 to go to the other state, and if she did not, then it is not  
10 the law that is working the hardship on her. It is her own  
11 decision.

12 SENATOR JUBELIRER: Why should we put her in  
13 that decision-making process?

14 MR. FETTERHOFF: Why not? She is the one who  
15 made the decision to get married. Why should the state  
16 decide for her that she is going to have to take a divorce  
17 whether she wants it or not?

18 SENATOR JUBELIRER: Well, I think the situation  
19 becomes as a matter of as most social issues do the matter of  
20 enforceability of them, and we are really not much in a  
21 position, I don't think, of enforcing our laws, because they  
22 are being avoided by going to the next state. When laws  
23 become repressive, and I think in many marriages they have  
24 become repressive, then people are going to find some other  
25 available means, and those who can't afford to go to other



1 states are not maintaining the marriage. The facts are they  
2 are leaving the marriage. They are going into the situations  
3 of a meretricious relationship or they are leaving the home  
4 and they are abandoning their responsibilities. You talk  
5 about the deserter in lines with no-fault divorce, unilateral  
6 divorce. I would suggest it is more the desertion comes  
7 when there is not no-fault divorce because that is when the  
8 one spouse does indeed leave the home with no alternative.  
9 I can't get a divorce. She won't give me a divorce, so I  
10 am leaving. And he in turn goes some place to parts unknown  
11 and maybe abandons his wife and family.

12 MR. FETTERHOFF: Well, the thing is, Senator,  
13 you can create -- I am not saying create. I know this  
14 scenario exists, but they are not the only scenarios that  
15 we have to deal with.

16 SENATOR JUBELIRER: I realize that.

17 MR. FETTERHOFF: The law that applies to  
18 everybody in this state that gets married and so not in  
19 every case would the policy we are advocating bring about  
20 that kind of hardship. In fact, it wouldn't have to bring  
21 it about in any case, because then it would be up to the  
22 dependent spouse to decide. Now the dependent spouse has  
23 no say in the matter at all. The independent spouse goes  
24 to the other state, and we have no economic provisions back  
25 here or we have no ways of enforcing a settlement that is

1 made in another state. We could under this bill whether we  
2 had unilateral no-fault divorce or not. If you recognize  
3 alimony in this state that is granted in another state, why  
4 couldn't you enforce it just as easily as you could enforce  
5 alimony settlements in this state?

6           SENATOR JUBELIRER: Well, that is not clear.  
7 Unfortunately, that is not clear, and I am not sure that the  
8 General Assembly is prepared to take the steps to provide  
9 the economic benefits without providing the rest of the reform  
10 which is no-fault divorce. I think that is the -- again,  
11 the practicalities are without the reform of some form of no-  
12 fault divorce -- I don't consider divorce by mutual consent  
13 no-fault. I think that is another means.

14           MR. FETTERHOFF: I know that there is a segment  
15 of the divorce reform movement that says unless you go all  
16 the way it is not reform. We don't think you have to go all  
17 the way to have reform. We also think that the disadvantages  
18 of unilateral no-fault divorce are just as big if not bigger  
19 than the advantages, and you could come up with some scenarios  
20 on that, too. But, in the final analysis, you know, Senator,  
21 the policy decision after you have all the testimony and all  
22 the input is up to the General Assembly. It is not up to  
23 any specific group like ours. We tell you what we think is  
24 the best policy. After that, you weigh that. We just can't  
25 see unilateral no-fault divorce as promoting justice.

1                   SENATOR JUBELIRER: Let me just make a state-  
2 ment, Mr. Fetterhoff. I recognize you and the Pennsylvania  
3 Catholic Conference as one of the most effective lobbying  
4 groups in all of Pennsylvania. When you say it is up to  
5 the General Assembly, I am suggesting that the Pennsylvania  
6 Catholic Conference has indeed been most effective in precluding  
7 any no-fault divorce statute from becoming a reality in the  
8 Commonwealth, and the Commonwealth is one of the last vestiges  
9 of the fault system in these United States, one of three.  
10 We were one of two without alimony.

11                   What I would like to ask you is if there are  
12 no economic benefits, if the General Assembly would vote  
13 without the no-fault system, is your position still the same  
14 that the Conference would oppose no-fault?

15                   MR. FETTERHOFF: I think it is. Understand  
16 this, we think the General Assembly should enact economic  
17 protection, should enact and should not necessarily link  
18 those two concepts together. In fact, can you tell me why  
19 the General Assembly cannot enact economic protection for  
20 a dependent spouse?

21                   SENATOR JUBELIRER: From an academic point of  
22 view or an intellectual point of view, certainly we could.  
23 But, I think as a practical point of view I don't think any-  
24 thing is going to be done unless there is a reform package.  
25 I must say that I agree. I think the idea of conciliation

1 is something that needs to be done. I think we need to not  
2 just talk about the no-fault without having -- if one party  
3 wants conciliation, I think there should be some sort of  
4 conciliation. I think that should be part of the reform.  
5 But, it is a total package. It does contain divorce by mutual  
6 consent. I really think that the fault system potentially  
7 could remain as well. If somebody wanted to still get a  
8 divorce on the grounds of indignities, I guess they still  
9 could. But I do think that at least they are going to be  
10 linked together by the practicalities. I don't foresee --  
11 I may be wrong. I am only one voice -- I don't foresee the  
12 economic benefits to the spouse coming in without the reforms  
13 coming in with them also. I just don't see it.

14 MR. FETTERHOFF: I think the economic protections  
15 are important, and I hope they will be passed. I really hope  
16 they would be passed because I think it is very important  
17 that it happens.

18 REPRESENTATIVE SCIRICA: Is there no further  
19 questions? I am sorry. Senator O'Pake has a question.

20 Representative Ray Lynch from Chester County.

21 REPRESENTATIVE LYNCH: I have a question  
22 pertaining to your required, court-ordered requirement of  
23 counseling. At the present time if someone started a divorce  
24 action on indignities then found it was contested, the  
25 individual starting the action could back off and that would

1 be terminated. In your application of the court-required  
2 counseling, it seems that a weapon goes into the hands of  
3 the defendant, because if the plaintiff did not comply with  
4 that court order, then that plaintiff would be in contempt  
5 of court and subject to sanctions of the court, and this  
6 would put more pressure on the parties to split the marriage  
7 and break the marriage up, in my opinion, without any  
8 reconciliation.

9           How do you deal with the courts to prevent  
10 them from bringing sanctions and penalizing plaintiffs who  
11 start an action if he didn't comply with the order for  
12 counseling?

13           MR. FETTERHOFF: I don't have an answer to  
14 that, Representative Lynch. However, the bill as it now  
15 exists has that problem in it, even apart from our recommenda-  
16 tions to strengthen it. I am not an expert enough in the  
17 law to know all the ramifications of how the court would  
18 deal with that. What we are trying to deal with is the  
19 policy of the defendant's right to try to save the marriage.  
20 We don't think it's an unreasonable provision just to have  
21 three counseling sessions at most, you know.

22           SENATOR O'FAKE: In an attempt to bring us  
23 together in one very important area, when there is opposition  
24 to the divorce complaint by one party, if we were to add  
25 mandatory counseling in those kinds of cases, and if we were

1 to tighten the provision to require that the court, after a  
2 twelve-month period of separation, carefully and judiciously  
3 finds an irretrievable breakdown of the marriage, would you  
4 then still oppose the unilateral provision?

5 MR. FETTERHOFF: According to our present  
6 policy, we probably would, but I will tell you, though, that  
7 would be a heck of a lot better than what is happening in  
8 most no-fault states now. One of the problems with no-fault  
9 states, even mutual consent no-fault states, and especially  
10 unilateral, is that there really is no serious investigation  
11 by the court of whether the marriage has irrevocably broken  
12 down. You can read studies that show many couples coming  
13 back to the court a year later to get remarried because they  
14 realized themselves that they made a hasty decision and the  
15 court did nothing to prevent it, you know. So that if the  
16 court -- one of the problems, though, is the heavy load of  
17 cases, but if the court were really looking into these cases  
18 and really made an informed decision that the marriage was  
19 irrevocably broken and there was a serious reason to dissolve  
20 it, then that wouldn't be exactly what we have, just a whim  
21 like we have in some no-fault states now. I think that would  
22 be a lot better, Senator, but I don't know if we could at  
23 this sitting here say well, okay, we could look at that.  
24 But, I do think -- another thing is this: if we did reform  
25 the law with everything short of unilateral no-fault divorce

1 and keep studying that last remaining problem, I think possibly  
2 there are some things that could be done.

3 SENATOR O'PAKE: At least there is hope of  
4 agreement in that.

5 MR. FETTERHOFF: I think so, because here is  
6 the thing: our policies on civil law matters are not based  
7 on irrevocable doctrine. It is a prudential judgment on our  
8 part. We are trying to do the best thing we can for the  
9 most people in the state. So far we haven't seen a way to  
10 approve of unilateral no-fault divorce because of the many  
11 people we think it would hurt. That is the basic reason.  
12 If we could see a way that people could be protected in that  
13 kind of a process, fine. But, that would take some more  
14 study.

15 SENATOR O'PAKE: We are trying to help as  
16 many people as we can as best we can.

17 MR. FETTERHOFF: I know you are. I know you  
18 are. I really know that. That is why an issue like this  
19 with so many dilemmas it is hard to find a perfect answer.

20 REPRESENTATIVE SCIRICA: Howard, on the  
21 irretrievable breakdown issue, it seems to me that one  
22 reason for having the twelve-month separation period is  
23 that it is a form of objective proof that the marriage is  
24 irretrievably broken.

25 MR. FETTERHOFF: Right. When you read the

1 journals on Family Law that is true. That is the reason  
2 it is there. It is one way of ascertaining that you have  
3 a breakdown. But the other side of that coin is when it's  
4 the policy and everybody knows it's the policy from the  
5 first day they are married, what it says is that desertion,  
6 which used to be considered a pretty serious problem in a  
7 marriage, now becomes the key to freedom. That is the  
8 problem there. It is at once a confirmation that a marriage  
9 has broken down, but at the same time a ratification of  
10 desertion as a way out of marriage for anybody that wants  
11 it. We have a hard time with that, a hard time with that as  
12 a philosophy of marriage in society.

13 REPRESENTATIVE SCIRICA: I want to thank you  
14 for your testimony, and I want to thank you for the past  
15 help that you have given us in helping to draft the bill,  
16 and you can be assured that we will be talking with you in  
17 the weeks ahead as we try to move this legislation forward.

18 MR. FETTERHOFF: Well, I would like to say  
19 one last thing. We know you have a tough job. We don't  
20 underestimate the difficulties of it. We know you are trying  
21 to do the best for the most people. We have some amendatory  
22 language we could share with you if you would like to consider  
23 it, but I think being the church we should also say that  
24 from here on in we should pray for the legislature to come  
25 up with the best decision, too.



1                   **REPRESENTATIVE SCIRICA:** We would be happy to  
2 see whatever suggestions you have for amendments. We are  
3 going to take one more witness before lunch, because our  
4 guest is from New York and has to catch a plane to go back.

5                   I will apologize to him for having to wait  
6 so long. Our next witness is Henry H. Foster, Professor  
7 Emeritus, New York University School of Law and editor of  
8 the Family Law Quarterly.

9                   Do you have a prepared statement, Mr. Foster?

10                  **MR. FOSTER:** Yes, Senator. I have filed it  
11 with your staff.

12                  **REPRESENTATIVE SCIRICA:** Thank you very much.

13                  **MR. FOSTER:** Due to the hour, I am sure we  
14 have had enough food for thought and you would like some food  
15 for some other place about now, so I thought what I would do  
16 is just lead with my chin and lay myself open to questions  
17 and try to serve as a recourse person. I assume you are  
18 aware I have been here many times before, and it is some  
19 twenty years ago that I was the official reporter for the  
20 Joint State Government Commission original study on reform  
21 of the marriage and divorce laws in Pennsylvania. Since  
22 then I have served in a similar capacity in New York, New  
23 Jersey and elsewhere, and divorce reform, including family  
24 courts conciliation, are all matters that I have been  
25 intimately acquainted with now for a period of twenty to

1 thirty years.

2 REPRESENTATIVE SCIRICA: I read your report,  
3 the Joint State Government Commission, several weeks ago,  
4 and I found that practically all of it is extremely relevant  
5 to the situation that we have before us today. I was not  
6 aware that so much work had been done at that time. As a  
7 matter of fact, we have the son of the chairman of your task  
8 force is now our chief counsel to the Judiciary Committee.

9 There were a couple areas this morning we  
10 would like to address. We would like your opinion as to the  
11 advisability or the necessity for unilateral ground. You  
12 have heard the testimony from the spokesman of the Pennsylvania  
13 Catholic Conference saying that this should not be part of  
14 our divorce law. We are also interested in your opinion on  
15 the concepts of alimony and equitable distribution of property;  
16 specifically, whether or not they should be granted with  
17 regard to fault or in the absence of any considerations of  
18 fault and, of course, anything else that you may want to  
19 touch on.

20 MR. FOSTER: I am going to file a copy of  
21 an article entitled "Divorce in the Fifty States - An Over-  
22 view as of August, 1978" by Dr. Doris Fried and myself which  
23 appeared in four Family Law Reporters commencing at page 40-33,  
24 which is a summary of the law in the fifty states as of that  
25 time with reference to such matters as grounds for divorce,

1 defenses, durational residency requirements, the effect of  
2 marital fault on alimony and/or distribution of property,  
3 and many other things, and I think you may find it helpful  
4 if your staff doesn't have it already to give you a bird's-  
5 eye view of what exists throughout the country.

6           You asked me about what did I think of the  
7 prior speaker's testimony. Frankly, it carried me back to  
8 around 1550 when Archbishop Kramer as head of a committee  
9 made a report to parliament recommending that subtle hatred  
10 between spouses be a grounds for termination of marriage.  
11 Now, Archbishop Kramer didn't have too much influence then  
12 or now, but I would note that some 400 years later the  
13 Archbishop of Canterbury's commission in England came up  
14 with a report that recommended almost precisely the same  
15 thing that Kramer had recommended many years ago.

16           Now, the other side of the coin of this  
17 holy deadlock proposition is that the person who cares to  
18 can keep the other on a yo-yo or put him in limbo indefinitely,  
19 whether it is by religious motivation, spite, malice or  
20 dissatisfaction with the laws of Pennsylvania regarding  
21 divorce. This is a power and an authority that no individual  
22 should have over another human being if you regard our time  
23 and place as committed to the proposition of the dignity of  
24 man. It is intolerable to be put at the mercy, so to speak.

25           I talked over a TV station some years ago in

1 Philadelphia. I got a phone call when I got back to New  
2 York from a woman. She was living with a Catholic man who  
3 was undivorced from his wife and who had a family by the  
4 wife, but they had been separated for some time. The woman  
5 in question met the man after the separation. They had one  
6 child and she had a second child on the way. She told me  
7 that she had an appointment in Philadelphia to have an  
8 abortion because of all of the problems with regard to having  
9 a family that was extra-legal and having the child and subject-  
10 ing him or her to all of the problems that might result.

11 I talked to her at great length. I assured  
12 her that she had better go ahead and that she could live  
13 with the stigma, the social disgrace or whatnot, but to go  
14 ahead and have a more meaningful relationship. When I got  
15 through, she asked me what my fee was, and I said well, I  
16 want your promise that you don't go to that abortionist in  
17 a couple days. Many months later into my office unannounced  
18 comes this couple from Pennsylvania, one boy around twelve  
19 looked like the all-American boy, neatly dressed, clean, and  
20 in the arms of the woman was a baby and she said that she  
21 had named the child after me. I assure you I had nothing to  
22 do except very indirectly. There was no cause and effect  
23 or causation factor present.

24 Now, for my moral code, my sense of ethics,  
25 I think that it is appalling that one person should be able

1 to put the other party in limbo when there is no longer any  
2 meaningful marriage or relationship between them. If it is  
3 over, the decent thing from a moral point of view, I mean  
4 from my sense of morality, is to give the dead marriage a  
5 decent burial and to zero in on the economic aspects, the  
6 custody problems, and to perhaps help parties adjust to the  
7 post-divorce period when there are going to be all kinds of  
8 stresses and strains.

9           On the matter of counseling, I think it would  
10 be very ill advised to have anything written into the statute  
11 in the nature of compulsory counseling. What you may do  
12 constitutionally is to require attendance at screening  
13 interviews or meetings for the possibility of counseling  
14 can be explored. It will not work if there is anything  
15 compulsory in the sense that over his or her objections a  
16 spouse is forced into counseling.

17           Another former student of mine --

18           REPRESENTATIVE SCIRICA: (Interrupting)

19 Excuse me. Do you know why New York abandoned the mandatory  
20 counseling?

21           MR. FOSTER: Yes. I had a lot to do with  
22 that. I was adviser to the committee that drafted that  
23 legislation and followed it very closely. There were a  
24 lot of problems in New York. The ultimate thing that killed  
25 it was the cost.

1                    Secondly, it had become a political football.  
2 Supreme Court justices who were defeated were then made  
3 Conciliation Bureau commissioners. There was a lack of  
4 professional competence. The success ratio was two or three  
5 percent in effecting reconciliation, which I thought was very  
6 good considering the selective number of cases that were  
7 actually put into that kind of counseling. What happened  
8 with the bureau was it became a mediation service to try to  
9 get agreement on custody, amount of support or alimony, those  
10 issues. On that basis it saved the courts of New York a  
11 great deal of time, and I am not sure it wasn't a luxury  
12 to get rid of the bureau. I think it was very effective in  
13 taking things out of court time and having the matters  
14 resolved hopefully to the mutual satisfaction of the parties  
15 who agreed upon them, the eventual terms.

16                    So, you can't force people into counseling.  
17 That would be comparable to saying that we should force  
18 somebody to stretch out on the psychiatric couch. David  
19 Siedelson, University of Pittsburgh Law School graduate,  
20 has an article where he has stressed the unconstitutionality  
21 of compulsory counseling.

22                    I am aware of both Arizona -- Judge Brown  
23 out there is a friend of mine -- and the Los Angeles  
24 Conciliation Service, which was the model which the Arizona  
25 court followed when it created its present setup. Note that

1 these courts out there have a selective number of cases, and  
2 usually they are ones where there is motivation for recon-  
3 ciliation on the part of both parties. The marriage isn't  
4 quite dead. There is a spark of life left in it. With  
5 professional help a lot could be done. They do not purport  
6 to heal the breach forever. What they do purport to do is to  
7 give short term, two or three conferences perhaps, that type  
8 of counseling, not counseling in depth where there is an  
9 underlying pathology or serious personality differences.

10 SENATOR O'PAKE: Professor Foster, in addition  
11 to the question of counseling, another area of contention is  
12 the question of the grounds based on twelve months of living  
13 apart, and I detected some ray of hope with the last speaker.  
14 If we were to -- well, let me ask it this way: in addition  
15 to the fact of twelve months living apart, what other standards  
16 could we write into a law to have a court consider in making  
17 the finding of irretrievable breakdown?

18 MR. FOSTER: I also served with the National  
19 Conference of Commissioners on uniform state laws as an  
20 adviser for the Uniform Marriage and Divorce Act, and this  
21 was one of the points of disagreement between the Family  
22 Law Section ABA and the commissioner's staff. ABA took the  
23 position in its alternative proposal that there had to be  
24 more than mere breakdown and to try to give some objective  
25 proof of breakdown. The things that we came up with were,

1 first, that reconciliation efforts had been attempted and  
2 failed and there was no prospect that they would work, or  
3 the parties had been separated for a period of time. As I  
4 recall it, we came up with one year.

5 Now, each of those is good, objective evidence  
6 that in fact the marriage is dead. I see no justification  
7 other than a religious one for the modern state not to  
8 terminate marriages if in fact you have that assurance, even  
9 though one party objects.

10 SENATOR O'PAKE: And even though the separation  
11 is entirely the wish of one party?

12 MR. FOSTER: That is true, also.

13 SENATOR O'PAKE: Well, if we were to look  
14 for some other objective criteria in addition to the physical  
15 separation for one year, what can you offer us based on your  
16 expertise as to what those additional criteria might be?

17 MR. FOSTER: I gave you one, that there had  
18 been reconciliation efforts. They were unsuccessful and  
19 you have a finding of a court staff member that there is no  
20 reasonable prospects of reconciliation being effected between  
21 the parties. If you are going to set up a conciliation  
22 bureau, you can give it that function. You can have a  
23 clearance there.

24 Now, I want you to understand that I am a  
25 moderate in this whole area of marriage divorce law, and the



1 Uniform Marriage and Divorce Act went far beyond my advice  
2 in some of the provisions it came up with. I want to be  
3 sure where we have any divorce reform that in particular  
4 the wife and the children are protected economically and  
5 with reference to custody and visitation. If you go for no-  
6 fault divorce, as the rest of the country has done, then the  
7 court should have more time for these very meaningful, and I  
8 submit, often long-term problems of custodial visitation  
9 problems, the financial incidence of divorce, the financial  
10 future of the parties living apart.

11 SENATOR O'PAKE: More time than it takes to  
12 issue a divorce decree?

13 MR. FOSTER: It will have time to explore  
14 those issues. In California, for example, it is not uncommon  
15 to have protracted hearings on custody, even though, as the  
16 former speaker said, the granting of the divorce is pro forma,  
17 automatic.

18 SENATOR O'PAKE: Shouldn't, especially the  
19 economic interest, be decided before the divorce decree is  
20 handed down?

21 MR. FOSTER: Ideally, simultaneously, but not  
22 necessarily. You can have a bifurcated type of procedure.  
23 I would urge that the same judge retain the case. I think  
24 you get into problems if you start a schizophrenic division  
25 of labor between several judges.

1                   REPRESENTATIVE SCIRICA: Are there any  
2 further questions for the witness?

3                   Mr. Foster, thank you very much for appearing  
4 before us this morning. We will recess now and we will be  
5 back in business at 1:30.

6                   MR. FOSTER: Mr. Chairman, I would like to  
7 note that I chose to come down here today rather than go to  
8 Albany. In Albany the announcement of the impending passage  
9 of an equitable distribution law which I fathered up there  
10 is to be announced in Albany this afternoon.

11                   REPRESENTATIVE SCIRICA: I am grateful to  
12 you for that.

13                   MR. FOSTER: New York is going to have, for  
14 what it is worth to you, is going to have equitable distribu-  
15 tion. I have a copy of the New York statute. If you lack a  
16 copy of it, I will be glad to leave it with you.

17                   REPRESENTATIVE SCIRICA: We would be happy to  
18 have it. I assume you imagined we needed more help in  
19 Pennsylvania than they did in New York.

20                   MR. FOSTER: I like yours better in many ways.

21                   REPRESENTATIVE SCIRICA: Okay.

22

23                   (Whereupon the hearing was recessed  
24 at 12:40 o'clock a.m.)

25

1 --oOo--

2 AFTERNOON SESSION

3 - oOo--

4  
5 (Whereupon the hearing was resumed  
6 at 1:40 o'clock p.m.)  
7

8 REPRESENTATIVE SCIRICA: Both the House and  
9 Senate are in session today and it is going to be extremely  
10 difficult to get people here, but they will be coming in and  
11 out.

12 For our first witness this afternoon, I would  
13 like to call Mr. Francis J. Morrissey, who is a noted  
14 domestic relations expert, who has written and commented in  
15 this area of the law for several years. Mr. Morrissey.

16 MR. MORRISSEY: Mr. Scirica, thank you. I  
17 am appearing on behalf of the Family Law Committee of the  
18 Philadelphia Bar Association. Let me announce that right  
19 off the bat that we approve and are willing to support this  
20 bill. It does not--or these bills I should say, which are  
21 now before the Joint Committee. The bills do not follow  
22 in every particular legislation which the Philadelphia Bar  
23 Association has approved, but they are substantially in  
24 accord with our own ideas and, therefore, we are willing to  
25 go along with them.

1                   As everybody recognizes, the four areas of  
2 Pennsylvania law which have to be reformed are: first, the  
3 no-fault divorce ground; second, the conciliation; third,  
4 alimony, and fourth, equitable distribution of property.

5                   I would like in my remarks today to concentrate  
6 on the question of conciliation, but in heading toward that  
7 direction, may I say first of all that as far as the alimony  
8 provisions of this bill are concerned, we find them quite  
9 acceptable. As far as the equitable property distribution  
10 provisions are concerned, they are also acceptable.

11                  In regard to the no-fault divorce ground itself,  
12 our own provision, that is the Philadelphia Bar Association's  
13 provision, on the last occasion did not provide for living  
14 apart by mutual consent. However, we see no objection to that  
15 and would be happy to go along with it.

16                  I might observe that it is my personal feeling  
17 that a three-month period is extremely short, and it certainly  
18 doesn't cover -- it doesn't take into account the fact that  
19 people become angry at each other and in a fit of pique take  
20 steps along these lines which they might not take if they  
21 had to think about them longer. However, anything can happen  
22 to that period in the legislative process, I realize.

23                  As regards the unilateral grounds, that is  
24 a one-year period, and our own preference would be for a two-  
25 year period, but as I say, we acquiesce in the one-year period

1 and would support it.

2           Going to the question of conciliation procedure,  
3 I note that the provisions in the bills which are now before  
4 this Committee, the Joint Committee, provide for conciliation  
5 only in connection with the living apart grounds. They have  
6 no connection with the other grounds for divorce.

7           REPRESENTATIVE SCIRICA: That is correct.

8           MR. MORRISSEY: And the other grounds for  
9 divorce are to be preserved. So, I think there is an in-  
10 adequacy in that regard. I feel that if you are going to  
11 have conciliation procedures, and you should, then they  
12 should go right across the board.

13           I am strongly in favor of what Mr. Fetterhoff  
14 said about the importance of conciliation. I also agree with  
15 Professor Foster, who I understand favors conciliation, too.  
16 I, of course, differ from Mr. Fetterhoff on the matter of the  
17 ground for divorce, unilateral ground, but I don't think you  
18 can overemphasize the importance of conciliation. We should  
19 try to match it, for example, with the legislative finding  
20 and intents of these two bills which are before you.

21           For example, one of the intents is to encourage  
22 and effect reconciliation and settlement of differences  
23 between spouses, especially where children are involved.  
24 That is not only where there is a non-fault no-fault divorce  
25 ground being invoked, but it's any ground by means to effect

1 reconciliation and settlement wherever there is a divorce  
2 involved. They also say it is important to cooperate and  
3 utilize the services and resources which are available to  
4 deal with family problems.

5           If these intents and findings of the legislature  
6 have any meaning at all, I think they have a meaning that  
7 where there is conciliation there should be conciliation  
8 across the board.

9           It is clear that we have a reconciliation to  
10 make here. In passing any divorce law, we have two things  
11 to take into account, as I see it. First, we have to  
12 recognize the fact that husbands and wives become hopelessly  
13 estranged and marriages break apart irreparably, and we  
14 provide means for them in a divorce act to sever their  
15 relationship. At the same time, however, in any preamble  
16 to any act, any divorce act I have ever seen, and particularly  
17 this one, we postulate the transcendent importance of the  
18 family to the nation and the interests of society in  
19 preserving the institution of marriage. That is not merely  
20 a cliché. It is a fact that all of us, when you think about  
21 it, agree it is important to preserve the marriage. There is,  
22 therefore, no way out of it, as far as I can see, that an  
23 effort and a serious effort should be made in any divorce act,  
24 in this one specifically, to do something not only to sever  
25 the relationship but also to provide for holding it together,

1 if it is possible to hold it together, and that is through  
2 conciliation procedure. But, I think there has perhaps been  
3 an oversimplification or a misunderstanding of what concilia-  
4 tion procedure means. We are not only talking about  
5 reconciliation when we talk about conciliation procedure.  
6 The statistics we hear deal with the question of reconciliation,  
7 and the very few marriages are at a certain stage are able  
8 to be reconciled. On the other hand, conciliation procedure,  
9 as every lawyer knows who has been in these things, is very  
10 useful indeed in handling some of the byproducts of the  
11 divorce. Many cases revolve around not the question of  
12 divorce but the question of custody and visitation, property  
13 settlement and support, and conciliation procedure with  
14 expert experience marriage counselors can very frequently  
15 help to work out some of those problems or at least to  
16 mitigate the rigors of the whole breaking apart of the  
17 marriage.

18 In my opinion, this divorce proposal which is  
19 before the Committee is very sketchy in its grounds for con-  
20 ciliation. First of all, as I said, it applies to only one  
21 ground. But, aside from that, there is no structure to it.  
22 There is no elaboration as to what happens in the course of  
23 a -- where a conciliation is asked by one of the parties, and  
24 I have taken the liberty of attaching to the formal statement  
25 which I filed with this Committee an appendix which sets

1 forth a more elaborate procedure where conciliation is  
2 invoked. This appendix is taken from an earlier bill  
3 sponsored by the Philadelphia Bar Association which was  
4 before the Assembly some time ago, and it was not acted upon.

5 I would like to conclude, therefore, in  
6 suggesting that although we recognize that conciliation  
7 procedure has been invoked in this bill, and we support its  
8 good intentions, we do feel that it would be to the advantage  
9 of everybody concerned to elaborate on the matter and to  
10 make it cover, make the conciliation cover those additional  
11 grounds which will remain in the divorce act.

12 REPRESENTATIVE SCIRICA: Thank you very much,  
13 Mr. Morrissey. We will certainly look at your proposal when  
14 we consider this bill in Committee. Thank you very much for  
15 testifying today.

16 MR. MORRISSEY: Thank you, sir.

17 REPRESENTATIVE SCIRICA: Our next witnesses  
18 are Mr. Chris Gillotti of the Allegheny County Bar Association,  
19 former chairman of the Family Law Section of the Pennsylvania  
20 Bar Association, and Mr. Mark Goldberg, who is the chairman  
21 of the Family Law Section of the Allegheny County Bar  
22 Association, who is being escorted by Representative Michael  
23 Fisher of Allegheny County.

24 At this time I would like to acknowledge, for  
25 all of those who do not know her, Miss Mary Woolley, who is



1 our staff assistant on the House Judiciary Committee and  
2 who has done such a fantastic job, not just in setting up  
3 these hearings, but in working with the many groups that  
4 are interested in this problem. Those of you who have worked  
5 with her know the kind of job she has done.

6 Do you have a prepared statement?

7 MR. GOLDBERG: I do. My name is Mark Goldberg.  
8 I am chairman of the Family Law Section of the Allegheny  
9 County Bar Association. I am also on the Executive Committee  
10 of the Family Law Section of the Pennsylvania Bar Association  
11 and a member of the National Academy of Matrimonial Lawyers  
12 and a member of the state chapter, the Executive Committee  
13 of the state chapter. I am here today basically as the  
14 chairman of the Family Law Section of the Allegheny County  
15 Bar Association.

16 For too many years the disenchanting and  
17 unhappily married citizens of this Commonwealth have been  
18 forced to exist in a state of marital discord, hatred,  
19 physical and mental abuse and economic starvation. The  
20 result of the archaic divorce laws of this Commonwealth  
21 has served not to maintain marriages but to increase and  
22 magnify the enormous problems that arise during the crucial  
23 period following separation. What can be done to ease the  
24 burden of the parties and their children?

25 Let us begin with the premise that no law can

1 ever be passed to make people live together as husband and  
2 wife. Experience has shown us that married couples are  
3 separating and divorcing today with ever increasing frequency.  
4 Nothing that you do as legislators can ebb the divorce rate.  
5 It is a social problem which belies all rational thinking.  
6 It then becomes incumbent upon you as the lawmakers of this  
7 great Commonwealth to consider the problem facing our  
8 citizens and to do everything in your power to ease their  
9 trauma. Separation and divorce is a trauma -- to the parties  
10 themselves, to their children and to their families. If any  
11 of you or any members of your family have gone through this  
12 ordeal of divorcing, you know from where I speak. The divorce  
13 process in this Commonwealth is degrading, demoralizing and  
14 dehumanizing. Recognize the problems as they exist today  
15 in Pennsylvania and work together to help solve those  
16 problems over which you have some control, namely, no-fault  
17 divorce, alimony and equitable distribution of property.  
18 As chairman of the Allegheny County Bar Association Family  
19 Law Section, I am here today to wholeheartedly urge the  
20 speedy passage of Senate Bill 450 and House Bill 640.

21 Many people ask "Why is a no-fault provision  
22 so important?"

23 Under the current state of our divorce law  
24 the plaintiff in all divorce cases must be the "injured and  
25 innocent spouse" of the marriage and the defendant must be

1 "at fault" for causing the marital problems. In reality the  
2 blame for most marital breakups must be shared equally by  
3 both the husband and wife. Yet, for the plaintiff to prevail  
4 in the divorce, he or she must testify in court under oath  
5 that he or she is the injured and innocent spouse. Such a  
6 requirement is a mockery of our divorce laws, a mockery of  
7 our courts and a mockery of the witness' oath to tell the  
8 truth. Such a requirement does nothing to encourage married  
9 couples to stay married, although those opposed to the  
10 "no-fault" provisions allegedly claim otherwise.

11           When two people who are married decide, for  
12 whatever reason, to terminate their relationship, should not  
13 their mutual assent be sufficient? These same people are  
14 going through uncontested divorces every day in this  
15 Commonwealth, yet they must commit perjury if a divorce is  
16 to be granted. I have been a master in divorce many times,  
17 and the questions and answers are the same day in and day out,  
18 they vary little in substance. Is it necessary for a public  
19 record to be made in each case built on a foundation of lies?  
20 That is what is occurring in this Commonwealth today and  
21 will continue into the future unless you face the realities  
22 of the situation.

23           The unilateral divorce is probably the most  
24 controversial aspect of the bills before you. I know that  
25 there is a great deal of opposition and disagreement to that

1 provision. But the facts of the situation must be faced in  
2 a logical and realistic perspective. As I stated earlier,  
3 no law can make unhappily married people stay married in the  
4 true sense of the word. It takes two people to make a  
5 marriage and if one of those persons decide that the marriage  
6 is over and separates from the other, do we really have a  
7 marriage? There is no longer any caring, any sharing, any  
8 love, any common interests or goals. Would we not be doing  
9 a much greater service to those persons by helping them make  
10 new, happier lives for themselves, where they can pick up  
11 the broken pieces of an unhappy marriage and go forward with  
12 dignity and economic independence? Of course, there cannot  
13 be any unilateral dissolution without the other two major  
14 provisions of alimony and equitable distribution of property.

15                   However, from my experience in the area of  
16 Family Law, which is considerable, I can honestly tell you  
17 that the overwhelming number of contested divorces in this  
18 Commonwealth, which is really a unilateral divorce action,  
19 are contested for only<sup>one</sup> reason -- until the parties are able  
20 to work out a property settlement agreement. Almost 100  
21 percent of the contested divorce actions are contested solely  
22 for economic reasons. I venture to say that of all the  
23 contested divorce actions pending in the various courts  
24 of this Commonwealth today, not one percent of them are  
25 being contested on moral or religious grounds. If our courts

1 had the power to award a spouse support following the  
2 dissolution of the marriage and to equitably divide the  
3 marital property, are we not doing a greater service to the  
4 economically dependent spouse than what is occurring today  
5 throughout this Commonwealth? How many times have we heard  
6 stories of husbands abandoning their wives, moving into  
7 neighboring states such as New Jersey, Delaware, Ohio,  
8 West Virginia or Maryland and obtaining a legal no-fault  
9 divorce? What are we doing about the abandoned, economically  
10 depressed spouse? We are turning our heads and ignoring the  
11 realities of life in the twentieth century. Our welfare rolls  
12 of ex-wives are growing larger and larger each year. How  
13 long do you intend to sit as lawmakers and continue to ignore  
14 this most serious social problem in our Commonwealth? How  
15 long are you going to continue to hide behind the false  
16 assumption that religion dictates that people stay married?  
17 How long are you going to continue to turn your heads and  
18 pretend that if you do not do anything, the problem will go  
19 away?

20 I urge you as lawmakers of this Commonwealth  
21 to act now, to face the realities of modern life and with  
22 promptness to pass Senate Bill 450 and House Bill 640.

23 Thank you.

24 REPRESENTATIVE SCIRICA: Thank you. Mr.

25 Gillotti?

1                   MR. GILLOTTI: Members of the Committee, my  
2 name is Chris Gillotti. I am presently vice-chairman of  
3 the Family Law Section of the Pennsylvania Bar Association.  
4 I formerly served as chairman of the Allegheny County Bar  
5 Association section on Family Law. I, too, am a fellow of  
6 the American Academy of Family Lawyers. I am married. I  
7 am a Roman Catholic and divorce lawyer, and you can pick any  
8 of those factors to give me status to talk here today. I  
9 submitted copies of a prepared address, but I would like to  
10 leave those. I am not going to refer to those. I want to  
11 talk generally in terms of what I have dealt with there.

12                   I think, first of all, as my colleague has  
13 so rightfully stated, despite what opponents of the bill  
14 seem to indicate, there is absolutely no evidence that a  
15 strong divorce code, a divorce code that makes divorce  
16 difficult, in any way makes marriage better. I have read  
17 my friend Howard Fetterhoff's remarks here, and I talked to  
18 him for a half hour this morning before he left, and I still  
19 seem to feel that the thrust of their remarks is that a no-  
20 fault divorce code or a divorce code which permits a divorce  
21 unilaterally in some way undermines the status of marriage.  
22 I think there is as much validity to that concept as there  
23 is to the idea that stiffer penalties reduce crime or to be  
24 even more absurd that a stronger and more difficult probate  
25 bill would increase longevity of our citizens.

1                   Divorce is inevitable. Separation is  
2 inevitable. Marriage problems are inevitable. To think  
3 otherwise would be to close your eyes to the truth.

4                   The one factor nobody considered which I  
5 think is of paramount importance in your considerations  
6 is what effect does the divorce code that we are burdened  
7 with in Pennsylvania have upon the family unit. My friend  
8 Howard Fetterhoff's remarks included what I think is very  
9 good. He noted in here that children have certain rights,  
10 and he said in his remarks the right to full-time parents  
11 who realize that unselfish love for each other and their  
12 children is a lifelong art. The right to a secure and stable  
13 home life, the right to a decent standard of living, the right  
14 to examples that would promote healthy attitude toward  
15 marriage and family life for their own future. I think  
16 Howard is absolutely right. Let me tell you what has been  
17 going on in Pennsylvania today by virtue of the divorce  
18 code we have.

19                   Number one, in the great majority of cases  
20 neither party can get a divorce. Let's start with that  
21 proposition, because it is true. Either because grounds do  
22 not exist if contested or because one of the parties or both  
23 are not innocent and injured spouses. So, we start with  
24 the concept that two people, albeit having marital problems,  
25 are not going to be able to get divorced. What happens then?

1 All right. If the husband comes to the  
2 attorney and tells the lawyer that he cannot stand the  
3 situation any longer, he has got to get this thing resolved,  
4 he wants out from under, what can you do for me? I am still  
5 at home. The lawyer must tell him do not, under any cir-  
6 cumstances, leave the house. As soon as you leave the house  
7 your wife will be entitled to collect support from you. As  
8 long as you remain at home, she is not entitled to have you  
9 pay her a separate support order. If you leave the house  
10 and she has a support order, negotiations for an ultimate  
11 divorce will be made that much more difficult. Stay. Be  
12 miserable, and make her miserable.

13 The wife sees her lawyer and says the  
14 situation is intolerable. I can't stand it. I have got  
15 to leave. He cautions her, if you leave you are limited  
16 to a certain amount of your husband's income. In all  
17 likelihood there is not enough money to support two house-  
18 holds. You are going to be economically deprived. You  
19 can't, in most cases, leave unless you have your own job,  
20 unless you have your own separate estate.

21 What do we have? We have a situation where  
22 the parties are going to remain together. Now, I ask you  
23 what if there are children in this household? I know of  
24 no child psychologist or psychiatrist who would give any  
25 weight whatever to the old concept of stay together for the



1 sake of the children. As a matter of fact, just the  
2 opposite is true. They have told us over and over again  
3 where this marital cauldron is boiling and bubbling and  
4 there is a constant atmosphere of bitterness and recrimination,  
5 the best thing for the children is for the parents to  
6 separate. Younger children we find feel that when their  
7 parents are having marital problems they somehow are responsible  
8 for those problems. By keeping these people together, we  
9 guarantee the scarring of these children.

10           Let's assume, however, that they do separate.  
11 What happens then? If no negotiation settlement occurs, we  
12 have a contested divorce. A contested divorce only occurs  
13 when no other alternative exists. When somebody now has to  
14 win or lose, where the husband in most cases says I have got  
15 to get that divorce and the wife says I will stop it at any  
16 cost. The most -- I have had many lawyers tell me I would  
17 much sooner try a murder case than try a contested divorce.  
18 Contested divorces are the most difficult, painful and  
19 bitter proposition that any lawyer can get involved in.

20           Let me tell you this: when it comes down  
21 to rock cutting time and now your future is on the line, you  
22 are either going to get your divorce or you are going to  
23 prevent your spouse from getting his or her divorce, you  
24 take off the gloves and you go to the mat. The very personal  
25 and private things that have existed in this marriage over

1 X number of years are now laid bare for the master to hear,  
2 for the other people to hear, and the effect of that is to  
3 create a sense of bitterness, resentment and hatred that is  
4 never going to pass. When two people leave a contested  
5 divorce action, they have inflicted on each other scars that  
6 I guarantee you will never heal.

7           The effect of it, win or lose, is that these  
8 two people are now virtually incapable of reacting and acting  
9 as parents. They have been adversaries in the most bitter of  
10 legal proceedings, and we now say to them, okay, forget your  
11 troubles, you have got kids. Work together for their benefit.  
12 It is ludicrous. It never happens. The loser of that  
13 contested divorce action is going to punish the winner,  
14 and the only way generally that they can punish the winner  
15 is through the children. and, gentlemen and ladies, they do  
16 it. Believe me, they do it. These scars do not heal.  
17 The things that have been said in these actions or the things  
18 that have been said between them while this whole separation  
19 is going on create an atmosphere that is far worse than any  
20 atmosphere that ever existed when the parties were just having  
21 "marital problems." The children are the innocent victims  
22 of this. They should not be subjected to a situation where  
23 the parents, despite their difficulties, can no longer act  
24 as parents. I would like to say that intelligent and well-  
25 meaning people can put these things behind them. They cannot.

1 My experience has been that even the most intelligent and  
2 even the most well-meaning people will inflict on the  
3 children the scars that they themselves have borne from  
4 these marital problems.

5 I don't mean to say that divorce reform is  
6 going to absolutely guarantee that these people can more  
7 properly relate to the children, but I do tell you this:  
8 my experience, and let me say that I have asked other lawyers,  
9 and I have talked to the director of our family division  
10 counseling service, and I have talked to judges and con-  
11 sistentlly they have agreed with me and they say their  
12 impressions are the same. Once a divorce has occurred by  
13 virtue of an agreement -- this is where the parties have  
14 worked out their problems. They have agreed. They have  
15 a property settlement agreement. Now they go through with  
16 the divorce uncontested. Once that has occurred, the relation-  
17 ship between the parties with regard to their children improves  
18 markedly. It is consistent that once the parties are no  
19 longer battling, once the matter is put to rest, they are  
20 now better able to function as parents. This does not take  
21 into consideration the contested divorce. I am talking  
22 where the parties have mutually between them worked out  
23 their problems. When that occurs, they are now no longer  
24 adversaries. They no longer have to punish each other.  
25 The matter of divorce has been put to rest. They are now

1 better able to function as parents.

2 I submit to you that legislation which will  
3 permit this to happen, which will take away from us the  
4 contested divorce, the constant fighting and bitterness and  
5 incrimination, will, I think, have this effect to enable  
6 them to better function as parents, better be able to deal  
7 with each other and their children.

8 I cannot impress upon you strongly enough  
9 the fact that children are these innocent victims. It is  
10 only human that when two people are looking out for their  
11 own individual self-interest that they themselves come first,  
12 and even the most loving of parents inadvertently forget the  
13 rights of their children and are unaware of what pain or  
14 problems they are inflicting on their children.

15 I would suggest that if my remarks are not  
16 persuasive to you that you talk to judges who have this  
17 matter every day. Talk to other lawyers or talk to counselors  
18 who must deal with the parents' relationship with their  
19 children.

20 I will leave you with one sad story, which is  
21 not quite this, but which I think you should take home with  
22 you. I know of a case where a man and his wife separated in  
23 1960. She would not give him a divorce, although he had made  
24 very adequate property settlement arrangements with her and  
25 was fully able and capable of continuing the support for her

1 and the children of that marriage. As a result, subsequent  
2 to his separation, he met and fell in love with another  
3 woman. They moved in together and have lived together since  
4 the early 1960's.

5 Most recently we were able to get him a divorce.  
6 He and the woman he is now living with who he will now shortly  
7 marry have a fifteen-year-old daughter who thinks that her  
8 mother and father have always been married, who is unaware  
9 of the fact that until most recently they were not married  
10 and that she was born out of wedlock. I am now being asked  
11 to do what is necessary to bring about the adoption of this  
12 child and, of course, our adoption code if it comes into  
13 play requires that this child consent. This child to this  
14 moment does not know the true state of affairs. As of this  
15 moment, her birth certificate carries the name of another  
16 man, her father, because her mother at the time the child  
17 was born was still married to, but estranged from, a man  
18 who had been long gone, but nonetheless as of this moment  
19 something must be done to bring into legal, into proper  
20 legal play this girl's status, and I am asked by the father  
21 how can you do this without my daughter finding out.

22 Gentlemen, I tell you here is an innocent  
23 victim of our divorce law, because had we had this kind of  
24 an act at that time, this man would have been divorced from  
25 his wife, would have continued to support her, would have

1 given her the house, as ultimately happened, would have  
2 married this other woman and we would now have at least one  
3 happy family unit. What this divorce code does is to not  
4 keep marriages together but create more unhappy families.

5           Gentlemen, it is your responsibility to do  
6 something about it. It is not the lawyers and it is not the  
7 judges. Our Supreme Court has said over and over again look  
8 to the legislature to change the laws. We recognize the  
9 problems. On behalf of all of the children of Pennsylvania,  
10 I am asking you to do something about it.

11           (Applause.)

12           REPRESENTATIVE SCIRICA: Thank you, gentlemen,  
13 for those eloquent statements. I notice we have Senator  
14 O'Pake with us and Senator Bud Dwyer and Senator Ed Howard.

15           I think you were here this morning. You were,  
16 obviously, and heard the spokesman for the Pennsylvania  
17 Catholic Conference raise certain objections to this legis-  
18 lation. Both of you gentlemen have been here before. I am  
19 afraid to ask you how many times you have been here before,  
20 and I know you have participated in the efforts of the  
21 Pennsylvania Bar Association in drafting earlier versions  
22 of these bills.

23           Specifically, could you address yourself to  
24 the necessity or the lack of necessity for a unilateral  
25 ground, the counseling provisions and whether they ought to

1 be mandatory or whether they ought to remain the way they  
2 are right now, and the award of alimony and distribution of  
3 property with or without regard to fault?

4 MR. GILLOTTI: Well, with regard to the  
5 counseling, I, in my practice, make it a point I will not  
6 recommend a marriage counselor. I sometimes have clients  
7 who ask me that. If they see me early on in the game and  
8 are having problems, they ask me to recommend a counselor.  
9 My experience has been no marriage counseling works. Marriage  
10 counseling will help in a very rare case. When two people  
11 are having problems, they want to solve their problems, they  
12 want to get back to where they once were and they cannot  
13 pinpoint the cause of their problems, in that narrow case  
14 counseling will help. In almost every other case counseling  
15 is an exercise in futility. By the time they come to us,  
16 one or the other of the parties does not want to whole-  
17 heartedly participate in the counseling. We do as much  
18 counseling as any marriage counselor does when we determine  
19 what reasons are you in our office. It is a rare lawyer in  
20 our area who has a client in the office because the parties  
21 are just having vague problems or are just not able to  
22 function on a small, on any narrow area that somebody can  
23 solve.

24 Basically, let me say that I submit that by  
25 the time somebody has taken this step and seeks to obtain a

1 divorce, with all the terror that is involved on both sides,  
2 no marriage counselor is going to be able to put them back  
3 together again. I think counseling is -- creates more  
4 problems because what is a marriage counselor? We don't  
5 know that. If we talk in terms, as the bill has, of who  
6 is qualified, I think we are going to waste an awful lot of  
7 time, because the person who does not want the divorce, does  
8 not want it to go through, if counseling is mandatory is  
9 going to insist upon it for many reasons. One, because of  
10 some vague hope that maybe that they can come back together  
11 again. Possibly more importantly as a negotiating instrument.

12           The judges I have talked to in other  
13 jurisdictions where no-fault exists tell me that by and  
14 large they spend most of their time confirming property  
15 settlement agreements that have already been worked out  
16 between the parties because once it is clear the parties  
17 cannot agree, the court will force an agreement upon them,  
18 the parties now sit down and come up with an equitable  
19 division of their property, adequate support and maintenance  
20 for one spouse or the other and the children, and the judge  
21 does not have to try the case. Since this happens, anything  
22 that will delay or prolong this will be used by one side or  
23 the other to perhaps better -- well, more particularly by  
24 the spouse who doesn't want the divorce, to better his or  
25 her negotiating position toward a settlement.



1           With regard to the concept of fault, I  
2 believe that fault should be considered by the court where  
3 appropriate. I think it should be within the jurisdiction,  
4 within the framework of the whole package so that if appropriate  
5 the court can consider it. My discussion with judges again  
6 and lawyers in other jurisdictions has led me to the con-  
7 clusion that although opponents of considering fault seem  
8 to feel it is going to require the -- a trial of a contested  
9 divorce case in every case, people in other jurisdictions  
10 have told me this doesn't really happen. That they soon  
11 find out that unless there is a clear showing of some fault,  
12 i.e., the wife that moves out of the house and moves in with  
13 another man and now sues her husband on no-fault grounds and  
14 tries to collect alimony, something like that, absolute  
15 clear showing of fault, the courts say in the other juris-  
16 dictions say that after they have heard it all it comes back  
17 to where they were in the beginning. So, the lawyers don't  
18 try these cases or don't try to raise the issue of fault  
19 to any great extent unless they honestly feel it is a major  
20 factor in the case.

21           MR. GOLDBERG: As Chris said, marriage  
22 counseling per se I think is a waste of time, and very often  
23 a great expense to the parties. I have not seen it become  
24 very effective in the course of my dealings with clients  
25 over the last thirteen years. However, there is an organization

1 in Allegheny County called the Center for Children and  
2 Family Crisis. It was one of three in the country. I  
3 believe it is now one of fourteen in the country. But,  
4 this particular agency deals in counseling fathers and  
5 mothers in their dealings and their relationship with their  
6 children, and perhaps some type of counseling along those  
7 lines could be implemented and would be much more effective  
8 in helping the parents who are combating, who are divorcing,  
9 who are separating, to relate and to work towards a common  
10 goal of their children. I think that is what we have to be  
11 concerned about.

12 As far as in my experience has been regarding  
13 marriage counseling between the parties to try to get them  
14 to resolve their problems, to try to get them to reconcile,  
15 to try to get them to reunite in their marriage, I have not  
16 found it to be effective at all.

17 As far as the fault aspect in awarding  
18 alimony, I think it is a consideration that the court should  
19 be permitted to look at the fault for the marital breakdown  
20 and to --

21 REPRESENTATIVE SCIRICA: (Interrupting) With  
22 alimony and distribution of property or just with alimony?

23 MR. GOLDBERG: Particularly with alimony.  
24 Maybe also with equitable distribution of property, but I  
25 say particularly with the alimony aspect the court should

1 be permitted to look into the fault aspect in awarding the  
2 alimony.

3 REPRESENTATIVE SCIRICA: What about the  
4 Catholic Conference spokesman who indicates that it would  
5 be permissible to enact a mutual consent ground but not a  
6 unilateral ground?

7 MR. GOLDBERG: Well, we have mutual consent  
8 today in Pennsylvania. As I said in my remarks, it is nothing  
9 more than an uncontested divorce after the parties have  
10 agreed to a property settlement. It is the unilateral aspect  
11 that I think is most important.

12 REPRESENTATIVE SCIRICA: I believe the state-  
13 ment was made that 90 or 95 percent of all the divorce  
14 problems could be handled if we had a mutual consent ground  
15 plus the equitable distribution of property and some pro-  
16 vision for alimony.

17 MR. GOLDBERG: I don't agree with that at all,  
18 because if we have the equitable distribution of property or  
19 the alimony and one of the spouses does not like the award  
20 of the court, there is no guarantee that the parties are  
21 going to proceed to a divorce. I think it is a very legitimate,  
22 I think it is a very real problem. I think that we must have  
23 the unilateral provision, but we cannot have it without having  
24 also the alimony and the equitable distribution of property.

25 MR. GILLOTTI: We talked to Howard about that

1 this morning, and we strongly disagree that any kind of --  
2 that mutual consent is going to solve any problems. It  
3 isn't. You see, the point we are trying to raise, we are  
4 trying to get across is this: that as long as we have the  
5 kind of legislation that we have here, mutual assent is not  
6 going to solve these problems unless one or other of the  
7 parties knows that ultimately a divorce can occur. The  
8 mutual assent will come by virtue of the parties agreeing  
9 between them what is reasonable and best for both of them,  
10 but under the knowledge that ultimately a divorce will occur.  
11 But unless and until that happens, if they are just asked to  
12 put together something between them and agree to get a  
13 divorce, as Mark says, it is the same thing as we have now.  
14 Most divorces are determined by the parties after a negotiated  
15 property settlement agreement, and that is what mutual consent  
16 is.

17                   Gentlemen, believe me, I have no -- adding  
18 mutual consent is not reforming this divorce law, not one  
19 bit.

20                   I would like to add one thing which this is  
21 off of our subject but something we would like to bring to  
22 your attention. It is a potential problem if, and we are  
23 keeping our fingers crossed, this legislation is passed, and  
24 I don't have the exact section, but it has to do with the  
25 guts of the bill which talks in terms of separation. We

1 would ask you to consider this: does the legislature wish  
2 to define separation? By that I mean does it require  
3 separation in separate homes or separate domiciles? As it  
4 presently stands, could separation be construed to be in  
5 the same house but different rooms?

6           The reason I mentioned this is because this  
7 can be a serious problem, because if some bill like this is  
8 passed and that language is not clear, we could well have  
9 to wait until the Superior Court or Supreme Court has  
10 interpreted that, and I think that should not be the intent  
11 of the legislature to keep that open. So, we would ask  
12 you gentlemen to consider what did you intend by separating.

13           SENATOR O'PAKE: Just as Representative  
14 Scirica recognized the efforts of Mary Woolley from his  
15 staff, I would like to also recognize the efforts of some  
16 people in my staff who have done tremendous work on th's  
17 bill: Marlene Berman from the Senate Judiciary Staff,  
18 and Guy Matthews and the Temple Law School Legislative  
19 Clinic under the direction of Professor Harbaugh. They  
20 have been very, very helpful.

21           What do you lawyers charge for an uncontested  
22 divorce, an indignities divorce in Allegheny County without  
23 a property settlement, without any contest?

24           MR. GILLOTTI: There is no such thing. I am  
25 being honest, Senator. People come in and say we want an

1 uncontested divorce. No problems. We have agreed. And  
2 then we sit down and we say have you considered the capital  
3 gains implication in the transfer of the house. What does  
4 that mean? What about the taxability of what you are going  
5 to pay her? What does that mean? What about your rights  
6 with regard to Social Security benefits that may vest in  
7 six months? Do you want that? What does that mean?

8           There is no such thing. We will not, under  
9 any circumstances, those of us who practice in this area  
10 every day, tell anybody there is any such thing as a simple,  
11 uncontested divorce. So, you asked what do we charge. I  
12 don't think we are allowed to say that because the federal  
13 government talks, I think, in terms of restrain of trade.  
14 I would say, however, that the fee range would be a minimum  
15 of probably of seven hundred and fifty up where there is no  
16 contest and all we are doing is getting a divorce and --

17           SENATOR O'PAKE: (Interrupting) Does that  
18 seven hundred and fifty include the filing costs?

19           MR. GILLOTTI: Our fees -- in Allegheny County  
20 the court costs are minimal. They are about \$85. That would  
21 not be, so --

22           SENATOR O'PAKE: (Interrupting) Who pays  
23 the master?

24           MR. GILLOTTI: The master only gets \$43 in  
25 Allegheny County. The master and court reporter and poundage

1 is only \$43. I know some counties, the bar association  
2 shares in it and the money goes other places, but the court  
3 costs in Allegheny County are relatively small.

4 SENATOR O'PAKE: Under this bill would your  
5 fees be less? Would this be a savings to people who want  
6 to get divorces?

7 MR. GILLOTTI: I think so, because what we  
8 would do would be to negotiate. See, we now charge in a  
9 given case, we charge more, at least I do. I charge on an  
10 hourly rate for negotiations with the other side, and  
11 ultimately the draft, hopefully the drafting and execution  
12 of a property settlement agreement, the preparation of other  
13 documents. In addition, if we have to go through with the  
14 divorce itself, that is something in addition, and a contested  
15 divorce is prohibitively expensive. Most people cannot even  
16 afford to get involved in it. If we have this kind of bill,  
17 all we would be doing, we would be more like business lawyers  
18 than divorce lawyers, because we would be talking in terms  
19 of what are your assets, how do we set them up for the mutual  
20 benefit, how do we take advantage of the tax laws to benefit  
21 both of you people, and we can do it. We can make use of tax  
22 laws in many cases to help both people save money on federal  
23 and state income taxes and end up having more money than  
24 they otherwise would have in a contested area. So, we would  
25 probably charge strictly on an hourly basis, prepare the

1 agreements. I would guess it would have to be cheaper. It  
2 is certainly far cheaper than somebody who is involved in a  
3 contested divorce, which I would say -- I tell my clients if  
4 they want to start a contested divorce action, usually the  
5 husband and the wife is resisting, they have to assume that  
6 the minimum charge to them is going to be \$5,000.

7 SENATOR O'PAKE: Yes, I am not really talking  
8 about contested divorces. Are you saying it would be cheaper  
9 to get a no-fault divorce under this bill than an uncontested  
10 divorce at present in Allegheny County generally?

11 MR. GOLDBERG: Well, let me say this: when  
12 you say uncontested divorce, most cases do not start out  
13 initially as an uncontested divorce. They start out where  
14 one of the parties files a divorce. Most likely it is going  
15 to be contested initially until a property settlement agree-  
16 ment can be worked out. Sometimes it is a lot easier in many  
17 instances to, and in other instances to work out the property  
18 settlement. I think the initial work of the attorney under  
19 the current state of the law is getting the attorneys for  
20 the two parties to sit down and recognize that they are going  
21 to get the divorce and they should work out a property settle-  
22 ment will eliminate a lot of the time because the parties  
23 realize there is going to be a divorce and they better sit  
24 down and negotiate in good faith and try to resolve the  
25 property, the alimony in the future, the custody, the



1 visitation, any other problems, and I am sure -- I know that  
2 the amount of time spent on any case has to be lessened with  
3 the implementation of these bills.

4 MR. GILLOTTI: Let me add this: money is  
5 going to be saved not so much in the representation of the  
6 divorce but the number of times you do not have to go back  
7 to court because the wife is bringing a support action and  
8 the husband doesn't pay, and now you have to go back and  
9 try to enforce it, or the problems with the visitation and  
10 partial custody, and now you have to go back and enforce it,  
11 or you end up with a property settlement agreement which the  
12 husband now under the state of our law ignores, and now since  
13 our courts cannot enforce it after a divorce, I must now  
14 proceed in an action in equity for specific performance.  
15 That is where the money is being wasted.

16 SENATOR O'PAKE: But, in the long run and in  
17 the final analysis the only way you are going to be able to  
18 enforce any of these orders if they are not complied with is  
19 by hauling the other party into court.

20 MR. GOLDBERG: No. It would be much easier  
21 under a contempt citation than it would be filing a new suit  
22 to enforce either in a civil action or an equity action.

23 SENATOR O'PAKE: That wasn't really my  
24 question. My question was the cost for filing and getting  
25 the divorce. What impact, if any, do you think that the

1 economic and property distribution provisions will have on  
2 divorces and property settlements already in effect at the  
3 time this law would take effect?

4 MR. GOLDBERG: As I mentioned to Mary Woolley  
5 on the phone the other day, I would hope that the bills would  
6 have -- the effective date of the bills, the bills would not  
7 be retroactive. I think that you would be opening a can of  
8 worms if you made these bills retroactive where people five,  
9 ten, fifteen years ago were divorced and now one spouse can  
10 come back in and ask for retroactive alimony, retroactive  
11 equitable distribution of marital property. I think that  
12 the bill must be prospective and not retroactive.

13 SENATOR O'PAKE: Do you agree with that?

14 MR. GILLOTTI: I agree. It is inconceivable.  
15 It can't be made retroactive. There would be no way that it  
16 could be.

17 MR. GOLDBERG: One other thing, if I might  
18 mention it, there was one other consideration that I had  
19 with the bill which I don't think the bill has really addressed  
20 point-blank, and that is the fact that upon the remarriage of  
21 the receiving spouse I would advocate there would be some  
22 provision that the alimony would terminate upon the remarriage  
23 of the receiving spouse. I think the bill says change in  
24 circumstances, but it leaves it open to interpretation by  
25 the various courts. I would like to see that cleared up if

1 possible.

2 REPRESENTATIVE SCIRICA: Mike.

3 REPRESENTATIVE FISHER: Chris, you indicated  
4 in response to a question concerning Mr. Fetterhoff's testi-  
5 mony that really the mutual consent divorce which we in fact  
6 have now has its drawback in the formulation of an equitable  
7 property settlement arrangement in the fact that there is no  
8 possibility down the line of an eventual divorce. Isn't it  
9 really a fact now that with all the surrounding no-fault  
10 states that present divorce cases really have the potential  
11 for that out-of-state award and do in fact play a role in  
12 the negotiations under current law?

13 MR. GILLOTTI: A client of mine that I just  
14 sent to Ohio reported that there is an apartment complex  
15 being built which is thirty yards over the Pennsylvania line,  
16 and I know why it is being built, and that is where he is  
17 moving into. And here is the jackpot that the wives get  
18 in when you have that situation: the husband moves to Ohio  
19 or in the east he moves to Delaware and he gets his no-fault  
20 divorce and the court awards alimony. He then turns around  
21 and returns to Pennsylvania. Inasmuch as alimony is against  
22 public policy of Pennsylvania, the alimony award is not  
23 enforceable against him in Pennsylvania unless the wife  
24 wants to wait for six months and take judgment in the other  
25 jurisdiction, bring it back here and sue on it as a foreign

1 judgment, and if he is remarried and now has entireties  
2 property, she can paper her walls with those judgments.

3           The Ohio court or the Florida court or  
4 something says let's distribute the marital property, and  
5 what we will do is we will award the house over there in  
6 Dauphin County to the wife because she has always lived there.  
7 That's fine, except Pennsylvania -- the Ohio court or the  
8 Florida court has no jurisdiction to do that. Courts have  
9 even ruled that where the Florida court ordered a man to  
10 transfer stock, which I always thought the race of which was  
11 always where the owner of the stock was, ordered him to  
12 transfer stock to his wife, and he returned to Pennsylvania  
13 and our courts said he didn't have to do it.

14           So, what we are getting now, and I thought --  
15 I assumed -- I didn't hear Jack and Al this morning, but this  
16 is the most important facet of our practice right now and  
17 that is if you represent the husband you send him over the  
18 line and he commutes and it is not hard to do if you are  
19 living in Allegheny County and certainly if you are living  
20 in Philadelphia County or in Bucks County or anywhere right  
21 on the border, and any of the border counties, you commute  
22 and you get your divorce and the wife has no alternative.  
23 She has got to go to that state and try her best to get  
24 something. If the husband chooses to live up to it, fine.  
25 If he doesn't, he comes back to Pennsylvania and she is out

1 in the cold and that house that our Pennsylvania court, if  
2 we pass this act, could give to her now has to be partitioned  
3 by virtue of a foreign decree and sold and our courts can't  
4 do anything about it. Whether they like it or not, when he  
5 comes back with his Ohio or Delaware divorce our courts have  
6 to accept an action in partition, sell that house that the  
7 wife has lived in all this time and divide the proceeds between  
8 them.

9 REPRESENTATIVE FISHER: Okay, but Chris, what-  
10 ever percentage -- what percentage of cases would you say  
11 from your practice and Mark's and the cross section of the  
12 members of the Family Law Section really end up with people  
13 moving across the line?

14 MR. GOLDBERG: Mike, more and more every day.

15 REPRESENTATIVE FISHER: Well, could you give  
16 me a rough percentage? Twenty percent?

17 MR. GILLOTTI: Mike, much of that has to do  
18 with this: one, you only do it when the negotiations have  
19 brcken down completely.

20 REPRESENTATIVE FISHER: All right. Let's  
21 assume that 15 percent of the cases are ending up in foreign  
22 divorces and the problems which you have explained, and there  
23 are a multitude of them.

24 MR. GILLOTTI: I think you ought to also ask  
25 the Philadelphia people and the Bucks County people, because

1 it is so much easier there than driving from Pittsburgh to  
2 Youngstown.

3 REPRESENTATIVE FISHER: With the problems  
4 that are attendant to those types of foreign divorces under  
5 our current law, the point I was making, it seems to me that  
6 the realistic threat of those types of problems is in fact  
7 today a pretty good wedge to the attainment of an equitable  
8 property settlement under our current law.

9 MR. GOLDBERG: That is not necessarily true,  
10 because many spouses don't believe that their husbands are  
11 going to leave the state until they actually see for them-  
12 selves, and the reality of the situation when the husband  
13 leaves, and it's too late then in many instances to come back  
14 and try to renegotiate that property settlement.

15 MR. GILLOTTI: And again, we must talk there  
16 are only a certain number of clients who are in a position  
17 to do this. Some people just cannot do that. It is economically  
18 impossible. They can't travel that distance every day or  
19 they can't locate -- perhaps they are living with family.  
20 The only way they can get by is by living with their family.  
21 They couldn't rent an apartment or buy a house in Ohio or  
22 West Virginia or Delaware. So, it isn't every client who  
23 can do this, and of course in certain counties it would just  
24 be unrealistic. It would be too far to commute.

25 REPRESENTATIVE FISHER: One final question,

1 what impact would this new divorce code have, in your  
2 opinion, have on the caseload in the family division of  
3 our courts?

4 MR. GILLOTTI: I think it would limit --  
5 I think it would reduce it to a great extent. I think  
6 along the lines of my remarks, I think that the hassling  
7 with regards to visitation and the children would be eliminated  
8 or greatly reduced. So that the parties could work it out.

9 REPRESENTATIVE FISHER: So we might be replac-  
10 ing support and visitation matters with property distribution  
11 petitions?

12 MR. GILLOTTI: Sure. Mike, as you know right  
13 now, when we draft, when we ultimately end up with a property  
14 settlement agreement, which is what we hope is going to  
15 happen if the bill goes in, see -- we are hoping that the  
16 experience of other states will be ours and that is knowing  
17 the divorce is going to occur, let's work it out between  
18 ourselves. We will draft the property settlement agreement  
19 and the court will make that a part of the decree and enforce  
20 it.

21 Now, what we do, as you know in these things,  
22 we build in for the wife an automatic increase. For example,  
23 based upon the increase in the consumer price index, automatical-  
24 ly every year based on the CPI for the end of the year her  
25 payments, her maintenance payments, call it maintenance or

1 alimony or whatever they are, under the agreement are  
2 increased automatically every January. Under the present  
3 situation that wife under a support order has got to keep  
4 going back to court to ask for more money and more money and  
5 more money. That is part of our caseload, the review of  
6 these cases. Come on back in. Our agreements can build in  
7 things that will take care of the future for these people,  
8 will adjust the amount of money or adjust their rights and  
9 responsibilities based on change of circumstances. If that  
10 happens, then they don't have to keep coming back in to court  
11 as they are now doing under support orders.

12 MR. GOLDBERG: Let me add one thing to that.  
13 Two years ago the legislature passed the Protection From  
14 Abuse Act. I cannot begin to tell you the number of cases --  
15 I think it is a great act. We've needed it for years. I  
16 cannot begin to tell you the number of cases that come into  
17 the Allegheny County Family Court each day under the Protection  
18 From Abuse Act. I think that that is a result of marital  
19 frustration in many instances. I think that the new bills  
20 would eliminate or greatly lessen the frustration of the  
21 parties as Chris said where they are required to remain  
22 together for economic reasons, for whatever reasons because  
23 of the counseling and the attorney, and once the people are  
24 able to separate, you are not going to have the abuses  
25 committed on the wives in most cases. In some cases the



1 men, but predominantly the wives that we see today. I think  
2 also that the caseload under the Protection From Abuse Act  
3 will be greatly lessened with the passage of these bills.

4 MR. GILLOTTI: And unfortunately, we have  
5 found that abuses that occur in the PFA are where wives are  
6 trying to get the husband out of the house for negotiation  
7 purposes and will often bring a PFA petition when it really  
8 is not justified, but to use it against the husband to get  
9 him out of the house in the hopes that maybe perhaps once out  
10 he will stay out and now she will get her support order.  
11 Again, this would be no longer a part of the picture if we  
12 have legislation like this.

13 REPRESENTATIVE SCIRICA: Senator Dwyer.

14 SENATOR DWYER: Thank you. In regard to the  
15 property settlements, one of the two things that our courts,  
16 appellate courts, repeatedly attack for their unfairness in  
17 addition to divorce laws are Pennsylvania partition statutes.  
18 That is a whole other can of worms other than our divorce  
19 statute, and I don't think it was the intent of the Committee  
20 to get into that at this particular time, although certainly  
21 it should be addressed. Do you perceive the legislation  
22 before us as having any direct impact on our partition  
23 statutes or will the legislation if it is enacted indirectly  
24 remove some of the problems? They just won't get into the  
25 partition statute area.

1 MR. GOLDBERG: I definitely think that we  
2 will not get into the partition statutes, because of the  
3 equitable distribution it is up to the court as one consolidated  
4 action to provide for the divorce, the future support and the  
5 equitable distribution of property. There would be no need  
6 to get into the partition acts.

7 SENATOR DWYER: A lot of the problems that  
8 are currently created by the combination of the divorce act  
9 and the partition acts, the partition problems would kind of  
10 whither away with this new divorce statute?

11 MR. GOLDBERG: I would say absolutely.

12 SENATOR DWYER: Thank you.

13 SENATOR O'PAKE: Since you indicated that you  
14 advocate that fault should be a factor to be considered in  
15 determining alimony and equitable distribution of property,  
16 how do you suggest that we write that into the bill and  
17 wouldn't whatever we put in provide too much discretion to  
18 the judge? Is one kind of misconduct worth more than another  
19 or is it a question of numbers?

20 MR. GILLOTTI: Well, the Ohio statute, the  
21 only time they refer to fault in the Ohio statute is they  
22 say child support shall be awarded without consideration of  
23 fault. The statute does not otherwise refer to fault, and  
24 it has been my experience in Ohio that the court thus has a  
25 wide discretion to consider it where appropriate. They are

1 not bound to consider -- it doesn't say there that fault  
2 shall be considered, and accordingly, the courts have been  
3 able to pretty well run it themselves, and I think the courts  
4 have to have that kind of leeway and discretion. I am afraid  
5 if the legislature tries to pin down and codify what fault  
6 is -- you know, we haven't been able to do it. Our appellate  
7 courts haven't been able to tell us what indignities are. I  
8 don't think the legislature should be asked to try to tell  
9 us what fault is. So, I would suggest that we leave it open  
10 to the court in its discretion to weigh all of the factors  
11 involved in the breakup of the marriage and hope for the best.

12 SENATOR O'PAKE: Don't you then invite the  
13 replay that we are trying to get away from, the bitterness,  
14 the guilty-innocent battle which we are trying to eliminate?

15 MR. GILLOTTI: Yes, sir, but as I said earlier,  
16 my experience in talking to judges and lawyers in other states  
17 where they do consider it has been that they soon find out  
18 that the courts are not going to let them retry a contested  
19 divorce action on that matter of fault, and unless the fault  
20 is really clear, they soon find out that after all is said  
21 and done it isn't a factor, so they quit trying these things  
22 in the courts. It may happen initially because perhaps we  
23 would have to get the same experience as the other states  
24 have, but I am afraid this is the only viable alternative.

25 MR. GOLDBERG: Senator O'Pake, each case must

1 be decided on its own merits, on the facts of that particular  
2 case. I think the court should have that discretion in look-  
3 ing at the facts. We have that type of a law right now  
4 where there can be on many cases of support the question of  
5 entitlement of the wife. Did she have right to leave the  
6 marital domicile? Of maybe sixty cases a day that is listed  
7 in the Allegheny County Family Court for a support hearing,  
8 I would venture to say not more than two or three are actually  
9 cases where an issue of entitlement is raised. So, I don't  
10 think we are really opening a can of worms here. I think in  
11 certain isolated cases you may get into some of the facts of  
12 what caused the marital breakup. In the vast majority of  
13 cases I think the court will have a pretty good handle on  
14 the facts of that case and be able to decide equitably the  
15 alimony and the distribution of the marital property.

16 REPRESENTATIVE SCIRICA: Mr. Gillotti and  
17 Mr. Goldberg, thank you very much.

18 MR. GILLOTTI: Thank you.

19 REPRESENTATIVE SCIRICA: We may be calling on  
20 you in the weeks ahead as we try to fashion this bill in the  
21 form that is acceptable.

22 MR. GILLOTTI: We are always available.

23 REPRESENTATIVE SCIRICA: Thank you very much.

24 Our next witness is Mildred Hand of the  
25 State Legislative Committee of the National Council of Jewish

1 Women. We are running about forty-five minutes behind, and  
2 we are going to hear everybody today, so I would caution the  
3 members of the Committee.

4 MS. HAND: Well, you are fortunate, because  
5 I have a one-page statement generally in support.

6 REPRESENTATIVE SCIRICA: That wasn't directed  
7 at you.

8 MS. HAND: I feel very conscious about that,  
9 but it is a statement of general endorsement and support.

10 My name is Mildred Hand and I serve as a member  
11 of the State Public Affairs Committee of the National Council of  
12 Jewish Women in Pennsylvania. The National Council of Jewish  
13 Women is a national organization with local sanctions through-  
14 out the Commonwealth.

15 I appreciate the opportunity to comment on  
16 the legislation before us, Senate Bill 450, House Bill 650  
17 and Senate Bill 49.

18 The National Council of Jewish Women is  
19 concerned with the issue of reform of the existing divorce  
20 procedures. We participated in a special task force which  
21 was created to study and offer recommendations which would  
22 indeed effect the much needed changes. Senate Bill 450  
23 and House Bill 640 do, in fact, include those important  
24 provisions which see that there is equitable distribution  
25 of marital property, alimony where necessary for an economically

1 dependent former spouse, two types of no-fault ground for  
2 divorce and notice of counseling and counseling requirements  
3 in certain circumstances.

4 I would like to include a comment here for  
5 historical reference. Although Judaism is acknowledged as  
6 a strong family oriented religion, as far back as the  
7 Biblical period, provision was made for divorce. They are  
8 included in the books of Leviticus and Deuteronomy, two of  
9 the works which make up the Torah.

10 The National Council of Jewish Women has long  
11 supported the need for uniformity in laws dealing with  
12 divorce and enactment of Senate Bill 450 and House Bill 640  
13 would help bring about this result since Pennsylvania is one  
14 of only three states which does not provide for mutual  
15 consent in divorce proceedings. The evidence on this issue  
16 which I have studied seems to agree that the no-fault concept  
17 is working well.

18 I would like to say something here. I have  
19 several close friends who have been through this experience,  
20 and it was interesting to me that never have they ever dis-  
21 cussed it until this whole possibility of reform in the  
22 divorce procedure might happen, and I think it is significant  
23 that when they did come -- they initiated the discussion  
24 when they heard about it. They always used one term about  
25 their own experiences and that word was humiliating, which

1 I think is one of the horror stories that you have probably  
2 heard time and time again.

3 The bills under consideration offer an  
4 opportunity for an inherently difficult and often ugly  
5 experience under the present laws, to become dignified,  
6 equitable and honest. We therefore urge the passage of  
7 Senate Bill 450 and House Bill 640.

8 REPRESENTATIVE SCIRICA: Thank you very much,  
9 Mrs. Hand. We note your participation in formulating this  
10 legislation, and we thank you very much for that.

11 Is there any questions for Mrs. Hand?

12 Thank you very much.

13 I am also pleased that we have with us Mrs.  
14 Greta Aul, who is the counsel for the Commission of Women  
15 who was instrumental in formulating the latest draft of this  
16 legislation, and we are going to have to draw on her expertise  
17 in the coming weeks as well.

18 Our next witness is Jean Kohr. Jean was also  
19 very active in the task force on the Commission of Women in  
20 formulating the present bills, and we are delighted to have  
21 her with us today.

22 MS. KOHR: Thank you, Mr. Scirica. I am very  
23 happy to be here. As a wife and mother of three teen-age  
24 children and a woman who has spent much of my time working  
25 with other women and, of course, being friends with many

1 other women I feel as if much of my activities in the past  
2 ten years have directed me to be at this spot today. I  
3 think that this bill, these two bills now before the Pennsyl-  
4 vania Assembly are two of the most important pieces of  
5 legislation to affect the lives of women and their children  
6 in this Commonwealth. Many of the things that have been said  
7 by the attorneys I, of course, agree with. The suffering  
8 and misery that women and children are suffering in this  
9 state due to the present law is widespread and severe, and  
10 we desperately need to have this new legislation.

11 I have prepared some statements which you  
12 have before you, but I would like to skip briefly to some  
13 of the issues raised in your questions to the other attorneys.

14 One of the important factors of this proposed  
15 legislation is the fact that fault is not stated as a con-  
16 sideration in the award of alimony. I have attached to my  
17 statements Judge Spaeth's dissenting opinion in a case, a  
18 support case called Hellman v. Hellman, and in Judge Spaeth's  
19 opinion he details very carefully the problems raised when  
20 we talk about fault when the court is considering an award  
21 of support under present Pennsylvania law. I think the  
22 problems that Judge Spaeth outlines are the same kinds of  
23 problems that the courts will have if in fact fault is a  
24 factor in the award of alimony.

25 The Pennsylvania support law provides that



1 where a spouse leaves the home "without reasonable cause"  
2 that he or she is obligated to pay support.

3 Now, that phrase "without reasonable cause"  
4 has been interpreted by the Pennsylvania courts to incor-  
5 porate all the concepts of fault in our present divorce law.  
6 We have a tremendously strong tradition in this state arising  
7 out of our concept of fault as expressed in our divorce law.

8 Judge Spaeth writes, and I would refer to  
9 page 976 of the Atlantic Reporter which is attached, suppose,  
10 for example, that the wife is a middle-aged woman, has no  
11 ability to support herself, not simply because of her age  
12 but because she has no marketable skills, this being the  
13 case she has spent most of her adult life taking care of  
14 her husband and raising their children.

15 This is, of course, a very common situation  
16 in this state. This is the very woman who now cannot allow  
17 a divorce to go through because she is left with no support  
18 whatsoever.

19 Suppose further that the couple separates,  
20 and that the wife has a single discreet affair. To say, as  
21 the law now does say, that thereupon she loses all right to  
22 support, even if her husband has been openly having one affair  
23 after another, seems manifestly unfair. It is all very well  
24 to cite occasional laws and court decisions to the effect  
25 that women should be treated on the same basis as men; the

1 fact remains that more often than not they are not treated  
2 equally. Given the economic structure of our society and  
3 its social attitudes, the middle-aged woman who has spent  
4 most of her adult life caring for her husband and children  
5 is likely to find, if her marriage breaks up, that she is in  
6 a precarious position indeed.

7           It seems once to have been the case that  
8 depriving such a wife as I have described of the right to  
9 support was not regarded as manifestly unfair. I suggest,  
10 however, that this was so because of the widespread male  
11 attitude that infidelity on the part of the husband, while  
12 perhaps not quite his prerogative, was nevertheless to be  
13 expected as an aspect of his virility; women, on the other  
14 hand, were expected, at their peril, to remain chaste. We  
15 now recognize this double standard to be mere hypocrisy.

16           That situation is precisely the situation  
17 that women will find themselves in if in fact fault becomes  
18 an aspect of the alimony award. A subsequent case to the  
19 Hellman case now in the court in this state is a case involv-  
20 ing a contractor in the Philadelphia area who left his wife  
21 of 25 years and moved in with his girl friend. Three years  
22 after he left the wife indeed had a simple discreet affair.  
23 Her support award was immediately terminated because of her  
24 adultery. His adultery was not a particularly relevant  
25 factor there.

1                   This issue of fault in support in my practice,  
2 in my law practice, is a very serious one, and I am finding  
3 that in fact it is the women who suffer. A husband moves  
4 out, or in the words of a Lancaster County farm woman, has  
5 been running other women for five years, if she in fact  
6 engages in even conduct which is/now we call indignities,  
7 she is subject to the loss of support. I think that tradition  
8 is so strong in our courts that to write into this statute  
9 the concept of fault in the award of alimony would be a  
10 grievous mistake. We would be litigating the issue of fault  
11 regarding alimony. Alimony awards should be based on need  
12 and ability to pay. The factors outlined in this statute  
13 are fair and judicious and they give the court an excellent  
14 base on which to make a decision.

15                   So, I would state that I strongly support  
16 the passage of this bill regarding alimony as it stands  
17 now.

18                   I would like to speak briefly now on the  
19 issue of no-fault. Many women when I have talked to them,  
20 women who are not familiar with this statute and who have  
21 read only the press coverage of the proposed legislation,  
22 are very concerned when they hear the words "no-fault." As  
23 you know, I am here as a result of work that many women have  
24 done on the Pennsylvania Commission for Women, and we have  
25 firmly supported the concept of no-fault, unilateral no-fault,

1 in this legislation, but when many women out there hear that  
2 phrase "no-fault" they are immediately afraid that their  
3 husband is going to just be able to walk off and leave them  
4 without any reason whatsoever.

5 I strongly support that concept and that  
6 aspect of this bill. I feel that we have given people  
7 protection, those people who do not want the divorce to  
8 take place, protection by creating this two-tiered system.  
9 We have allowed a divorce to go through in three months where  
10 both parties consent. The consent to be evidenced solely by  
11 a written form to be filed with the court. In that twelve-  
12 month period, however, after the complaint is filed, the  
13 spouse who does not want the divorce is given time and the  
14 support of the court, because he or she, usually she, can  
15 call upon the court to supervise a property settlement and  
16 alimony award which should give her the economic protection  
17 she needs.

18 If we proceed to pass the so-called reform  
19 legislation without including that unilateral aspect, it will  
20 put attorneys such as myself in a difficult position, because  
21 this is what I would be obligated to do. If a woman comes  
22 into my office and says we have this amount of property over  
23 here and my husband has this amount of money in his bank  
24 account and he owns stock here and has a boat down on the bay  
25 and he wants a divorce, if there is no unilateral provision

1 here, I must tell her to do the same thing that I must tell  
2 her now, and that is don't let that divorce go through. If  
3 you pressure him, if you refuse to consent, he might come  
4 around and give you all of the property instead of half or  
5 even three-quarters. He might be forced into giving you  
6 more than the court would award him.

7                   Therefore, we are in a position where if the  
8 spouse does not want the divorce, she has to be advised that  
9 it is certainly her right to hold out as long as possible,  
10 to put pressure,, economic pressure on that other spouse. I  
11 think that this is one of the most devastating aspects of  
12 our present divorce law situation which allows the parties  
13 to fight it out between themselves, to pressure each other  
14 with these extra-legal tactics. I think the allowance of a  
15 unilateral provision in this legislation will eliminate that  
16 kind of blackmail.

17                   I would like to also state that many church  
18 groups, as you heard from a prior witness, do support this  
19 legislation. The Society of Friends at their Philadelphia  
20 yearly meeting strongly endorsed no-fault divorce reform  
21 with alimony and equitable property distribution. This  
22 endorsement was the result of a consensus. This is not a  
23 majority vote, but a consensus of all those persons there,  
24 and from a conservative group such as the Quakers, we felt  
25 that this was a real sign of the tremendous concern that our

1 society has for the problems created by our present divorce  
2 law.

3           Very quickly, the last thing that I would  
4 like to emphasize is that I think the legislature needs to  
5 ask itself what is the state's interest in divorce legislation.  
6 The object of state legislation on this issue is hopefully  
7 not to force people to stay in the legal status of marriage  
8 when in fact the marriage is over. The object of divorce  
9 legislation from the state's point of view ought to be to  
10 protect the economic welfare of the state's citizens, and I  
11 think that this legislation does that. It keeps people off  
12 the welfare rolls, and it ought to be from that point of view  
13 a piece of legislation that the taxpayers should favor.

14           Thank you.

15           REPRESENTATIVE SCIRICA: Jean, thank you  
16 very much. Are there any questions for Ms. Kohr? Senator  
17 O'Pake?

18           SENATOR O'PAKE: This morning it was contended  
19 by one of the witnesses that the unilateral provision would  
20 actually encourage separation and divorce. What is your  
21 response to that argument?

22           MS. KOHR: It has been my experience that  
23 both as an attorney and as a person who is involved frequently  
24 in other people's counseling that people's behavior on the  
25 issues of love and marriage and divorce has very little to

1 do in terms of their decisions to stay together or move  
2 with someone else, has very little to do with the divorce  
3 law. It has a lot to do with economic repercussions, but  
4 the fact that unilateral divorce is available is not going  
5 to encourage people to get divorces. I predict that there  
6 will be an increase in divorces because I personally have  
7 at least two dozen clients who will put an end to ten,  
8 fifteen years of misery living apart or abusing each other  
9 in the same house and they will take advantage of this  
10 legislation.

11 REPRESENTATIVE SCIRICA: Representative Berson.

12 REPRESENTATIVE BERSON: Just one short  
13 question: It is true, is it not, that the Hellman case  
14 involved the civil procedural support law; is that correct?

15 MS. KOHR: That is correct.

16 REPRESENTATIVE BERSON: This legislation  
17 would not affect that statute per se. It would open up a  
18 whole new avenue of recovery for support, but those who were  
19 bringing support proceedings not in the context of the divorce  
20 would still be under the civil procedural support law with  
21 all its inconsistencies, infirmities or whatever you want  
22 to describe.

23 MS. KOHR: That is correct, Senator Berson.  
24 I used that case as an example of the kind of problems that  
25 I think we will have if fault is an issue in the alimony

1 award.

2 REPRESENTATIVE SCIRICA: Jean, I have one  
3 last question. We heard no testimony on the provision that  
4 provides for the consolidation of actions. Could you give  
5 us your opinion on that, why you think this is beneficial?

6 MS. KOHR: Yes. I have had mixed feelings on  
7 that personally as an attorney. There are to me some benefits  
8 in having the actions separate and having the divorce action  
9 separate from the support action separate from the custody  
10 action. However, more and more in my practice I am seeing  
11 that this separation works a hardship on the people who are  
12 involved in those proceedings.

13 First of all, it means that they are more  
14 expensive. Second of all, our society is one where people  
15 move around, and the time involved in bringing about separate  
16 actions on all these different fronts is very great. This  
17 can cause a divorce case, so to speak, with all its ramifications  
18 to go on for years and years, and I think that it would be  
19 greatly beneficial to our court system and to the people  
20 involved to have these actions consolidated as they are in  
21 this bill.

22 REPRESENTATIVE SCIRICA: Thank you very much  
23 for your testimony.

24 Our next witnesses are Neil Hurowitz,  
25 distinguished lawyer from Montgomery County, who is president



1 of the Pennsylvania Trial Lawyers Association, and Mr. Bruce  
2 Desfor, who is the secretary of the Pennsylvania Trial  
3 Lawyers Association.

4 SENATOR GEKAS: Distinguished member of the  
5 Dauphin County Bar.

6 Mr. Chairman, despite my personal relationships  
7 with these two, I don't mind listening to their testimony.

8 MR. DESFOR: We appreciate your consideration.

9 REPRESENTATIVE SCIRICA: But do you have their  
10 vote, George?

11 MR. DESFOR: Always.

12 SENATOR GEKAS: That is a different matter.

13 MR. HUROWITZ: Mr. Chairman, thank you for  
14 the introduction. I am not yet the president of the Pennsyl-  
15 vania Trial Lawyers Association. Some day perhaps. I have  
16 been an active trial lawyer for the last eighteen years,  
17 having tried domestic cases in particular in the last eight  
18 or ten years throughout most of the counties in the eastern  
19 part of the state. I have lectured extensively for the State  
20 Trial Lawyers Association on domestic relations, matrimonial  
21 work. I have authored a major article in a national legal  
22 magazine on support. I am presently under contract with a  
23 major legal publisher in the matrimonial field, and have done  
24 extensive research the last two years in the field primarily  
25 in support. I am also, as some of my predecessors, a fellow

1 and member of the American Academy of Matrimonial Lawyers.

2 I am presently on the Board of Governors of the Pennsylvania  
3 Trial Lawyers Association, have been a past state committeeman  
4 for the American Trial Lawyers Association. I practice in a  
5 small three-man firm in Montgomery County, King of Prussia.

6 I also would like to state at the outset that  
7 I am in favor of the no-fault provisions of the act. I think  
8 it has been -- there has been a void too long in our statutes  
9 and in our practice in Pennsylvania where two people that are  
10 irreconcilably dedicated to not liking each other must remain  
11 married or where even one party decides for whatever basis  
12 that he or she does not want the marriage, it just hasn't  
13 really been working with any type of integrity.

14 However, I would urge this body, and I can  
15 only underline the word urge, to not discard the entire  
16 concept of fault, and what I would call the doctrine of  
17 responsibility should be part of any proposed no-fault  
18 legislation. I think the word fault has many connotations,  
19 as my predecessor speaker just mentioned, how women react  
20 to the word no-fault. I would like to rather discuss what  
21 I call responsibility.

22 The act of marriage is a legal contract, and  
23 it is also a social contract. I understand that behavior  
24 psychologists now in one of the vogues in psychiatry directs  
25 itself to the responsibility of the individual to himself.

1 This is a whole new field. I fortunately or unfortunately  
2 represent several therapists. I/<sup>use</sup>them constantly in my work  
3 in the courtroom, and it is a very poignant new concept, but  
4 it doesn't say disregard one's responsibility to another, and  
5 I don't think we ought to prevent the dropping of the values,  
6 and there has been an increase and an alarmingly drop in  
7 values in our society in Pennsylvania as demonstrated with  
8 teen-agers now, as demonstrated with all types of no-fault  
9 legislation, some of it good, some of it worthwhile, but it  
10 is always pointed at dropping certain values. What I am  
11 saying is simply this: if the family is the basic unit in  
12 our society, and its protection and preservation is of para-  
13 mount public concern as the act so states in the very first  
14 two lines, then the spouse who elects to voluntarily breach  
15 that family concept must be held for the responsibility of  
16 terminating the marriage and disrupting the family unit.

17 In short, when one party wishes to break that  
18 contract, he must be accountable for the reasons why he wants  
19 to break it. Let him have the divorce. Let her have the  
20 divorce, no problem about the fault, but there should be an  
21 accountability as to the division of the property and as to  
22 the concept of alimony. This would be -- bring into the  
23 vogue the concept of comparable fault or comparable  
24 responsibility bearing in mind that no one is absolutely  
25 perfect. I think that our court should look to the question

1 of who is responsible for breaking the family unit, or if  
2 you would, who is at fault, and take that into consideration  
3 when dividing up the property and in the area of alimony.

4 I have taken the liberty of conferring with  
5 an attorney in the state of Delaware, Mr. Charles Keil, and  
6 I give his credentials in my presentation. Suffices to say  
7 he was an ex-state legislatureman himself, is the present  
8 vice chairman of the Domestic Relations Committee in the  
9 state of Delaware, and he has given me the authority to just  
10 quote him. He sent me a report in response to certain  
11 questions and he did review our act at my request, and he  
12 states that there have been in the state of Delaware, which  
13 incidentally I believe our act is very closely aligned as to  
14 the equitable distribution and the alimony and no-fault, that  
15 there have been some very serious problems where fault has  
16 been discarded entirely, and he is aware of some very  
17 horrendous situations because the wrong-doing spouse is  
18 free to go and get his or her property, his or her alimony  
19 without any basis in regards to this doctrine of responsibility  
20 or fault.

21 I do quote three or four lines from Mr. Keil.  
22 I would ask that this panel look at those statements and  
23 consider that. Delaware is close to the central eastern  
24 part of our state. Some or many of our residents -- I have  
25 no opinion as to the percentage. I don't think it is a large

1 percent, incidentally. And incidentally, Mr. Keil tells  
2 me that what was feared in Delaware to be an inflight or  
3 influx of people from Pennsylvania didn't really happen  
4 when they passed the no-fault divorce laws, but certainly  
5 there have been those who have gone and traveled to that  
6 state.

7                   The rationale behind this doctrine of no-fault  
8 is that the ten points which is laid out in the proposed act  
9 under Section 401(d) are all very good. My suggestion is to  
10 add an eleventh. Let the court consider the concept of fault  
11 as well as the source of property, the need for property and  
12 so forth. I can give one or two examples.

13                   Mr. Keil tells me has up on appeal in the  
14 state of Delaware an example of a woman who had had extra-  
15 curricular activities in her twenty years of marriage for the  
16 last five or six years, finally found a man who would have  
17 her or who she would have, left the marital abode, obtained  
18 her no-fault divorce and has been awarded substantial alimony,  
19 and he is appealing that, although he is not too hopeful he  
20 tells me of reversing or making new law. It just seems to  
21 go to the very quick of the concept of values to have a woman  
22 receive support and alimony for breaking up the marital  
23 unit when her husband didn't want it, when the children  
24 didn't want it, when her husband was not at fault.

25                   Incidentally, just because someone decides to

1 enter into an intimate relationship may not necessarily  
2 mean that he or she is at fault. . That would be up to the  
3 court to decide the cause and origin of these practices.  
4 That is one instance.

5           The other instance which has also been hit  
6 upon is that when we have equal equality in Pennsylvania under  
7 the Equal Rights Amendment, in practice it isn't quite that  
8 way, and when we have a woman who has dedicated fifteen years,  
9 ten years or twenty-four years, and I am thinking of three  
10 cases immediately that I have, raising three, four and five  
11 children, perhaps going to college, majoring in English  
12 Literature and anthropology -- and again these are actual  
13 cases -- never having worked one day, having the judge say  
14 young woman you will have to<sup>at</sup> least earn minimum wages. You  
15 will have to share the burden of living as two families,  
16 even though you may wish to stay at home with your teen-age  
17 children, I don't think is a situation that our act or court  
18 should force upon a woman in that kind of situation. I  
19 think that a woman who expresses a desire and has good  
20 evidence behind that desire to stay with her family when  
21 they return home from school, even up to the fifteen and  
22 sixteen years of age of their children, to be a supervisor  
23 or custodian or a counselor, so to speak, for her children  
24 and not be at work and not have to return home 5:30 or 6:00  
25 o'clock and have a hiatus of three or four hours that she

1 doesn't know and her husband doesn't know what the children  
2 are doing, I think that that individual woman should have  
3 the privilege to maintain and remain in part of the family  
4 unit even though the husband may not want that.

5           So, what I am saying is in those instances  
6 fault should be considered as to her alimony and support, if  
7 she so desires to remain home, and she should in essence be  
8 rewarded for wanting to maintain the family unit.

9           Enough on that point. I really have two  
10 major points, that being one. The second is the procedural  
11 ramifications of the proposed acts pertaining to the support,  
12 alimony, custody, visitation and equitable distribution  
13 concepts. I think the question was asked, and I would  
14 like to address that to this panel. I think the act now  
15 proposes a procedurally impossible burden on the judges to  
16 hold a full hearing on matters that have heretofore been  
17 given separate full hearings, some of these hearings lasting  
18 days, and I am referring to child support, to custody. The  
19 act is silent on the mechanics of ordering these hearings and  
20 holding these hearings on the above issues. Every party is  
21 entitled to a full hearing, and we mustn't lose sight of  
22 this particular concept. Our judges all too often want to  
23 move cases and get rid of their twenty-two and twenty-five  
24 listed cases per diem and overlook the meaning of giving  
25 each person their fair trial in court.

1                   I have had some embarrassing situations. It  
2 doesn't matter that this particular woman was a psychiatrist's  
3 wife. We waited two and a half months in one of the counties  
4 surrounding Philadelphia for a very heavy hearing on support  
5 for both the wife and the three children. When we got to  
6 court the judge turned to us when our turn came and said:  
7 Mr. Hurowitz, you have ten minutes to state your case, which  
8 of course was impossible, but what was worse, was that my  
9 client stood up and demanded to be heard and that she has  
10 waited for over two months not to abbreviate her case with  
11 ten minutes, and the judge did listen but told us the problems  
12 that he has.

13                   In another instance that happened last week  
14 in a custody battle for five children that involved a chief  
15 of cardiology in one of the major hospitals in the Philadelphia  
16 area where I represent his wife, the judge -- we had a full  
17 day set aside. That particular judge wanted to give us a  
18 couple of hours. He happens to know me and hopefully he  
19 respects me, and he listened to my plea. We went into  
20 chambers at about five after ten. At a quarter of one we  
21 walked out of chambers and he finally agreed that yes, this  
22 case should have a two or three-day session, and we perhaps  
23 resolved a very sticky issue of custody because this judge  
24 was willing to listen to a very important issue involving  
25 the custody of five children.



1                   So that I have fears that when an act says a  
2 judge has a power to handle all these five areas without the  
3 mechanics being fully set up that many judges will spend a  
4 two or five-minute period of time and handle a factual situation  
5 that needs far more than a cursory examination. I, therefore,  
6 would propose that the present system be maintained wherein  
7 either party may file a petition for custody, visitation,  
8 child support in the regular Courts of Common Pleas. The  
9 proposed act would give the hearing judge enough additional  
10 duties hearing the case on the equitable distribution issues  
11 and on the issues of alimony. In this fashion the hearing  
12 judge under the proposed act may concentrate and apply his  
13 role in the all important new areas leaving the traditional  
14 areas of custody, visitation and child support to the procedures  
15 already established and in operation at the present time.

16                   I also have a section -- I will be brief on  
17 that -- that the judge should have the discretionary power  
18 to order prompt hearings in custody, visitation and child  
19 support. He may direct the Domestic Relations Office, the  
20 court administrator or whatever other type of administration  
21 the county may have, to immediately list that particular  
22 case, and I think this would go a long way in giving a prompt  
23 remedy to any particular case.

24                   I also talked to the definition of comparative  
25 fault, and I will allow the panel to read that one paragraph,

1 and I also state one or two cases where the wife should be  
2 given the opportunity if she is not at fault to remain with  
3 the remaining family unit.

4           So in conclusion, gentlemen, I do believe that  
5 the act has moved a long way in giving us the type of no-fault  
6 provisions we have long needed in this state. I think with  
7 some modification along the lines that I am suggesting, along  
8 the lines of the doctrine of responsibility make that individual  
9 be responsible if he or she wants to walk out on the marriage,  
10 fine. Give him or her the divorce, but let there be an  
11 aligned responsibility for that person who wants out of the  
12 marriage to devote and to dedicate to the other spouse who  
13 was comparatively not at fault.

14           I am in agreement with the other provisions  
15 of the proposed no-fault act, and I accept them as proposed.  
16 Thank you.

17           REPRESENTATIVE SCIRICA: Thank you very much,  
18 Neil.

19           We will take a five-minute recess.

20           (Whereupon a short recess was held.)

21           REPRESENTATIVE SCIRICA: We are going to  
22 proceed. I have got to leave momentarily because I am wanted  
23 for a vote, but I imagine some other House members will be up.

24           MR. DESFOR: Thank you, gentlemen. My name  
25 is Bruce Desfor. I am a practicing attorney in Dauphin

1 County. I am presently chairman of the Political Action  
2 for the Eastern Twenty States for the American Trial Lawyers,  
3 and I am chairman of the Political Action for the Pennsylvania  
4 Trial Lawyers, secretary of the Pennsylvania Trial Lawyers  
5 Association, and within the last two years have lectured,  
6 taught seminars to over 1500 practicing attorneys on domestic  
7 relations in the Commonwealth of Pennsylvania.

8 I share Neil's feelings and philosophies  
9 for the most part with this act. In dealing with this act,  
10 it reminds me of the no-fault auto insurance fight that we  
11 had in the Commonwealth of Pennsylvania. It is all a question  
12 of how you define it. The concept of no-fault auto insurance  
13 is fine. The concept of no-fault divorce is fine, but just  
14 what do you mean by no-fault. I feel that the present no-fault  
15 bill which has been proposed would turn out to do injustice  
16 to the citizens of this Commonwealth just as the no-fault  
17 auto insurance act has done great injustice to the people  
18 of this Commonwealth.

19 I have reviewed in preparation for this  
20 testimony my files for the last year and a half in the  
21 domestic relations field. We run a very active practice  
22 in domestic relations, and we had about 550 cases during  
23 the last year and a half, and out of those 550 cases  
24 approximately 60 percent were women within the age bracket  
25 of thirty-five to fifty-five. Out of that 60 percent,

1 approximately 70 percent of them were nonworking women who  
2 had worked not at all or not for the better part of their  
3 marriage, and who had children. In most of those cases  
4 these women would not be able to get back into the employment  
5 market, either because their skills had been outdated or  
6 because they were of such an age that getting back into  
7 the employment market would be very difficult. I am talking  
8 about basically the Central Pennsylvania area.

9           Given that situation and looking at the  
10 proposed bill, I find that the three-month provision, that  
11 is the consensual provisions, is most acceptable and terribly  
12 needed in this Commonwealth. It is ridiculous where both  
13 parties agree to a marriage you force the people into  
14 committing perjury as we now do in this Commonwealth. I  
15 am sure other speakers have touched on that. In fully 90  
16 percent of all cases, consensual cases, there is agreement,  
17 and yet, you must say there is no agreement when you testify.

18           However, as to the twelve-month provision  
19 I have serious reservations. I have serious reservations  
20 in that I don't believe that in most cases there can be  
21 equitable distribution of property. I think that a person  
22 in the category that I have referred to needs more than  
23 equitable distribution of property, and the way to get the  
24 more than is to keep the fault concept in the divorce code,  
25 to keep the innocent and injured spouse in the divorce code.

1 Make it a situation where if that man wants out, he is going  
2 to have to give more than the equitable distribution would  
3 allow. You have a woman who you don't know what is going  
4 to happen in the next ten, fifteen or twenty years. You  
5 don't know what is going to happen to those kids. How can  
6 you possibly set an equitable distribution at the present  
7 time that is going to last for the next ten or fifteen years?

8           In that regard I should note some procedural  
9 problems that I have with the act. First of all, in terms  
10 of alimony by       where there is a divorce by agreement, I  
11 find that in many cases now even where we can agree for  
12 voluntary payments after a divorce it is very difficult to  
13 enforce those provisions because we have no alimony in this  
14 state. What you do is enter into an agreement which provides  
15 for payments over the next five to ten years, and if the  
16 woman then says to her attorney: Well, how can you assure  
17 me that he is going to pay? And, we say: Well, you have  
18 got a contract. If he doesn't pay, then you have got to  
19 sue on the contract which can take many, many months. I  
20 have a case just like that right now where a dentist wanted  
21 out for a younger woman. He made an agreement. Three months  
22 after the agreement he refuses to pay. He comes up with some  
23 reason for not doing it. We go into Common Pleas Court. It  
24 takes us about a month and a half to get in there. We get a  
25 judgment there. He then appeals it to the Superior Court.

1 He now has appealed it to the Pennsylvania Supreme Court.  
2 He is still not paying, and a year and a half later we still  
3 don't have the money. What does she do?

4 If we had a provision that allowed alimony  
5 where there is a divorce by agreement, you could then  
6 incorporate that into the decree and instead of having to  
7 sue civilly you could take him right in on a contempt action  
8 under the alimony provision, and I would suggest that that  
9 be included in the new law.

10 In addition to that, in talking about the  
11 procedural niceties of the act, the act refers to an affidavit  
12 being filed and that that would be sufficient proof of  
13 separation. I would feel that in both cases, both the  
14 consensual and nonconsensual, that more than an affidavit is  
15 required, that there ought to be actual testimony. The filing  
16 of an affidavit can easily be forged. It can easily be some-  
17 thing that isn't true, and a party may not find out for years  
18 thereafter that they have actually been divorced, especially  
19 when they are out of state or out of the country, and I would  
20 feel that that should be required both as to the three-month  
21 or the twelve month divorce.

22 I do note that the actual testimony of the  
23 corroborating witness is necessary, which is inconsistent  
24 with the affidavit only being filed.

25 In terms of the court at only one hearing --

1                   SENATOR O'PAKE: (Interrupting) Both are  
2 required under page 6 lines 20 to 24.

3                   MR. DESFOR: Yes. I am saying the parties  
4 only have to file an affidavit. The witness, you need  
5 testimony.

6                   SENATOR O'PAKE: The affidavit is that the  
7 parties consent to the divorce and the witness has to give  
8 testimony that they have lived separate and apart for at  
9 least three months.

10                  MR. DESFOR: What I am saying is an affidavit  
11 isn't sufficient. You need actual testimony from the party.  
12 Why do it just by an affidavit?

13                  In terms of the court holding only one hearing,  
14 I agree absolutely with Neil that for the court to get  
15 involved in hearing all of this at one time is going to put  
16 an unbearable burden on the court, not only on the court, but  
17 on the litigants. Right now we can go in on a visitation  
18 petition and get a hearing on visitation within one or two  
19 weeks. If the court is burdened with hearing all of these  
20 other things at one time, it would take months to get in on  
21 a visitation petition.

22                  Also, this act does not talk at all about  
23 discovery proceedings in domestic cases and divorce cases,  
24 support or alimony. Under the recent changes in the  
25 Pennsylvania Procedural Rules Act, a court order is required

1 to get discovery in these cases. I feel that that is  
2 improper. I think that as a matter of right, just as in  
3 every other case, an attorney should be able to file  
4 interrogatories, take the positions, use subpoenas to get  
5 the information that is necessary to get financial records  
6 in these cases. So often where the spouse is a self-employed  
7 individual it is impossible to determine their earnings unless  
8 you can actually subpoena their records. I think this act  
9 should talk to allowing full discovery proceedings in these  
10 type of cases.

11 I find the jury trial requirement very  
12 interesting. I think that would bring about a lot of  
13 settlements in these cases where settlement would not  
14 otherwise take place.

15 I disagree with Section 401(e) that says  
16 that all marital property regardless of title is to be  
17 considered marital property. I find this very offensive  
18 in terms of the individual rights of a person to obtain  
19 their own property. Consider a situation where a man has  
20 a closely held corporation. Do you mean to tell me that  
21 the stock in that corporation is going to be considered  
22 marital property? Why? For what reason? If you have a  
23 professional person who sets up a professional corporation --  
24 and incidentally a nonprofessional person is not allowed  
25 under the present rules to own any stock in that corporation --



1 you would give that stock the term marital property. I  
2 think that the rest of the provisions in 401(e) are good  
3 and would work well.

4 In terms of only 50 percent of alimony being  
5 allowed, again, I feel that the 50 percent restriction is  
6 unwarranted. I think there are many cases where a spouse  
7 should give more than 50 percent in terms of support for a  
8 wife and a number of children. I think that should be left  
9 in the discretion of the court.

10 MARY WOOLLEY: The 50 percent pertains to  
11 arrearages, the amount a court can award in back payments.

12 MR. DESFOR: I am saying that that 50 percent  
13 restriction should be in there. I think it should be left  
14 in the discretion of the court as to what amount should be  
15 paid. There are times when, for example, earnings go up and  
16 they should be allowed to get more of the wages. In that  
17 same provision an attachment is allowed when there is arrears.  
18 Attachments should be allowed ab initio from the start, not  
19 only in alimony but also in support.

20 Thank you.

21 SENATOR GEKAS: Either or both of you can  
22 answer as we go along here. I want to ask the first  
23 hypothetically.

24 Assuming that the General Assembly will not  
25 adopt any pure no-fault legislation this term, are you willing

1 to support legislation that would allow mutual consent type  
2 of divorce reform? That is to say the bill which I introduced  
3 and which I have been touting for the last couple of years  
4 would in essence reform the indignities part of the statute  
5 as we know it today, and in referring to what Bruce had  
6 testified about how 90 percent of our cases in today's courts  
7 are as a result of an agreement having been reached by the  
8 parties, in any event, still compelling one to go in to  
9 testify, wouldn't this type of approach, assuming that the  
10 total package here will not be accepted by the General  
11 Assembly, would that be worthy of your support?

12 MR. DESFOR: Absolutely. I feel strongly that  
13 is needed. I feel, however, it should contain a provision  
14 for alimony where the parties agree after a divorce, again,  
15 because of the problems with enforcing payments after a  
16 divorce decree only by property agreements.

17 SENATOR GEKAS: This was brought up by a  
18 previous witness. Another one said we ought to have  
19 equitable distribution of property in these cases as well.  
20 How can you have it if one person does not get what he wants,  
21 which is one of the reasons people want pure no-fault? He  
22 or she would not consent in the first place, so how do they  
23 consent and then be compelled on an alimony and equitable  
24 distribution?

25 MR. DESFOR: I am talking about allowing

1 alimony where the parties agree to alimony and they agree  
2 to a divorce. Why not let the court approve the divorce  
3 decree with an alimony provision? Thereafter, a woman could  
4 get alimony and enforce it through a court of law rather  
5 than go through a civil proceeding.

6 SENATOR GEKAS: Are you lumping in with that  
7 equitable distribution of property?

8 MR. DESFOR: No.

9 SENATOR GEKAS: You see that that is mutually  
10 inconsistent, do you not?

11 MR. DESFOR: Yes.

12 SENATOR GEKAS: That is what I could not  
13 understand in the previous bit of testimony. Okay. Now,  
14 as to Neil's hypothetical on the spouse who leaves, moves  
15 in with a paramour, and then gets the old man for alimony  
16 while living with the paramour, which is another example  
17 that I brought up about how injustice can be perpetrated if  
18 you leave this statute as it is now. You think it is  
19 blatantly unfair, Neil, I take it, to reward that person,  
20 letting that person begin a meretricious relationship with  
21 no thought of marriage, perhaps, with the new individual,  
22 and still be able to get alimony to support the meretricious  
23 relationship from the first marriage, from the marriage.

24 MR. HUROWITZ: The way you have stated it,  
25 Senator, yes, I do, but it is not a black and white proposal

1 that I follow. I think that that portion of the alimony  
2 which is related to the children or to some payment for what  
3 was contributed by this, for instance, woman in the past, I  
4 would be in favor of, but not as you have stated it. I  
5 agree. I don't think that any husband or any spouse, let's  
6 put it that way, should have to reward or pay his spouse or  
7 her spouse for living with another man or woman.

8           SENATOR GEKAS: But you are willing to allow  
9 that departing spouse to get a divorce, even though she  
10 would be totarly at fault in this hypothetical?

11           MR. HUROWITZ: Yes, I would, and let me just  
12 add to that. Perhaps instead of a two or a four or a six-  
13 year period of alimony there should be a "responsibility"  
14 or "accountability" attached to her, wherein maybe she  
15 would only receive six months to get herself back on her  
16 feet, financially back on her feet. In other words, apply  
17 the doctrine of fault to responsibility. If she wants to  
18 take it upon herself to break up the family unit, live with  
19 another man, then make her accountable to support herself  
20 in the same vein.

21           SENATOR GEKAS: I have no further questions  
22 at this point.

23           SENATOR KELLEY: Senator Dwyer?

24           Gentlemen, on behalf of the Joint Committee  
25 of the Judiciary in the House and Senate I want to thank you

1 both for your preparation and presentation of your testimony.

2 MR. HUROWITZ: Thank you.

3 SENATOR KELLEY: The next witness is Joan  
4 Weingarten. Is she present?

5 SENATOR GEKAS: Neil, come back often if  
6 you can.

7 MR. HUROWITZ: Okay.

8 SENATOR KELLEY: I understand you have Ms.  
9 Posner with you?

10 MS. WEINGARTEN: Right.

11 SENATOR KELLEY: You have prepared testimony  
12 that you are circulating right now?

13 MS. WEINGARTEN: Yes, I have.

14 SENATOR KELLEY: Who is going to speak first?

15 MS. WEINGARTEN: I am.

16 SENATOR KELLEY: You are?

17 MS. WEINGARTEN: Joan Weingarten.

18 SENATOR KELLEY: Ms. Weingarten, I want to  
19 welcome you to the Committee and thank you for your prepara-  
20 tion and taking time. I am Senator Kelley, and the other  
21 present members of the Committee is Senator Gekas to my far  
22 left. You may proceed.

23 MS. WEINGARTEN: Thank you. My name is Joan  
24 Weingarten, and I have been family counselor with Family  
25 Service of Philadelphia for seven years. I received my

1 Masters Degree in Social Service from Bryn Mawr School of  
2 Social Work in 1972, and my certification as a family  
3 therapist from the Family Institute of Philadelphia in 1977.  
4 Sitting with me is Mary Posner, Director of Family Advocacy  
5 for Family Service.

6 Family Service of Philadelphia is a voluntary,  
7 community sponsored, social service agency which has been  
8 serving Philadelphia for 100 years. We are accredited by  
9 the Council on Accreditation of Services for Families and  
10 Children, Inc. We are a member of the Family Service  
11 Association of America, the national standard setting body  
12 for our field, and of the United Way of Southeastern  
13 Pennsylvania.

14 As defined in our bylaws and charter, the  
15 purpose of Family Service is "to foster the development and  
16 maintenance of sound family life." The major emphasis of  
17 our program is to provide counseling services to families,  
18 individuals and groups with problems involving marriage,  
19 parent-child relationships, and social and personal adjust-  
20 ment. During the 1977-78 year we provided professional  
21 counseling to 3200 families; marital problems accounted  
22 for one-third of our caseload. A second focus is Family Life  
23 Education which provides community groups with the opportunity  
24 to discuss such topics as family relationships, problems of  
25 growing up, courtship and marriage. During the last year,

1 our Family Life Education division conducted 730 sessions  
2 involving 3300 persons. We come before you today to offer  
3 our strong support for Senate Bill 450 and House Bill 640.

4           During the last legislative session, Family  
5 Service presented detailed testimony on the impact of  
6 Pennsylvania's current fault-based divorce law on the  
7 individuals, the couple and the children. Today, we would  
8 like to highlight our earlier remarks.

9           As an agency dedicated to the preservation  
10 of marriage and the family, Family Service seeks to prevent  
11 divorce when at all possible. Indeed, our counseling services  
12 with couples in marital conflict often achieve that result.  
13 However, a century of experience with marriage and its  
14 problems has taught us that there are situations when divorce  
15 is the only healthy and constructive alternative; and has  
16 even proven to be beneficial not only to the marital partners  
17 but to the children as well. The divorce need not be  
18 destructive.

19           There seems to be no question here today of  
20 the need to revise our antiquated divorce laws and to provide  
21 for no-fault divorces. Therefore, I will skip over that  
22 part of our testimony which addresses that issue, and we  
23 will go on to discuss our commitment for need for unilateral  
24 divorces. I will resume my testimony at the second paragraph  
25 of page 4.

1                   Family Service believes that any no-fault  
2 legislation is incomplete unless it contains provision for  
3 unilateral divorce. While the mutual consent provisions  
4 in the bills before you will meet the needs of most of those  
5 who must divorce, there is a smaller but no less important  
6 group for whom mutual consent is not possible, but for whom  
7 divorce is the only healthy solution.

8                   As we mentioned earlier, the fundamental  
9 commitment of Family Service is to strengthen, preserve  
10 and stabilize the family and family life. At the same  
11 time our practice has repeatedly shown that not all marriages  
12 can or should be preserved. A bill which does not allow for  
13 unilateral divorce reflects an unrealistic view of the human  
14 condition and of the causes of marital breakdown. If one  
15 spouse has moved out and refuses to continue the union --  
16 then there is no marriage and no law can make one.

17                   In the vast majority of divorces, both  
18 partners do agree to end the marriage; in a few instances,  
19 one party refuses. A husband or wife might be afraid to  
20 admit a marriage has failed and cannot or will not accept  
21 the reality of letting go of a former mate. An individual  
22 might fear living alone or being a single parent. A  
23 vindictive or possessive spouse might want to hold up a  
24 divorce indefinitely just for revenge.

25                   It is our professional experience that if a



1 couple have lived "separate and apart because of estrangement  
2 due to marital difficulties" for at least twelve months and  
3 have had the opportunity to work together with a professional  
4 counselor (as required under both bills), then there is no  
5 marriage. To allow one spouse to cling to the illusion of  
6 marriage in such instances is harmful to the unwilling spouse,  
7 the spouse seeking the divorce, and the children.

8                   It is a painful and lengthy process for anyone,  
9 even a consenting spouse, to admit a marriage has failed and  
10 that it is time to start a new life. Our experience shows  
11 that, in the long run, it is better for all involved to  
12 terminate the marriage. How could anyone be happy in an  
13 unworkable marriage? How could parents possibly do justice  
14 to their children in such a situation? Time and again, we  
15 have observed clients who, because of fear, anger, hostility,  
16 dependency, or vindictiveness, fought a divorce. Once they  
17 adjusted, they found their lives to be more satisfactory --  
18 they are now healthier and happier individuals, partners  
19 in new relationships and better parents.

20                   Opponents of so-called unilateral no-fault  
21 divorce argue that many persons, mostly older women who  
22 have spent most of their lives as homemakers, would be  
23 harmed under such a provision. This is not true economically.  
24 Both bills provide economic protection for such women,  
25 specifically stating that the contribution of a spouse as

1 homemaker and her (or his) earning ability considered in  
2 determining alimony and property distribution. Indeed, for  
3 many their economic situation would be improved under the  
4 legislation.

5 Opponents also are concerned about protecting  
6 her (or his) emotional needs. What protection is there for  
7 any person (male or female) who must live in a sham marriage?

8 The legislation also provides safeguards  
9 against one party obtaining a hasty divorce by requiring  
10 a twelve-month separation period and providing counseling in  
11 cases of unilateral divorce.

12 Family Service is further concerned that if  
13 the provision for unilateral divorce is stricken, the amended  
14 legislation would merely substitute one wrong for another.  
15 The existing law, through its required adversary proceeding,  
16 forces many couples to engage in collusion and perjury in order  
17 to obtain a divorce. A bill which only allows mutual consent  
18 divorce substitutes the potential for extortion. It would  
19 allow one spouse to blackmail the other into an unfair  
20 alimony or property settlement, and it is rife with potential  
21 for extortion and entrapment.

22 For these reasons Family Service of Philadelphia  
23 urges the retention of the language allowing for unilateral  
24 no-fault divorce.

25 We would now like to address the counseling

1 provisions in the legislation before you. Family Service  
2 believes that there should be provision for counseling  
3 especially in instances of unilateral divorce. However,  
4 it is our experience that counseling is only productive  
5 when both parties are willing to participate in making it  
6 work. If, after one mandated session both spouses are not  
7 committed, couples counseling is generally not worthwhile.

8           It is important that all communications of a  
9 confidential character made during counseling be treated as  
10 privileged and inadmissible as evidence. We understand that  
11 while Section 703 does not specifically refer to qualified  
12 professionals, the intent is that they should be afforded the  
13 protections of that Section.

14           Family Service strongly endorses the provisions  
15 for alimony and equitable distribution of property in Senate  
16 Bill 450 and House Bill 640. You cannot have a rational  
17 and humane no-fault divorce law without such protections.

18           Thank you.

19           SENATOR KELLEY: Thank you, Miss Weingarten.  
20 Representative Scirica, Chairman of the House Judiciary  
21 Committee, has returned, is now with us. Senator Gekas,  
22 do you have a question?

23           MS. POSNER: I was going to add to that that  
24 we ask those other family agencies in the state if they  
25 endorsed it. I would just like to read the counties. Not

1 all counties have Family Service agencies, but the Family  
2 Service agencies in Lancaster County, Chester County, Beaver  
3 County, Luzerne County, Lackawanna, Allegheny and Philadelphia  
4 County endorse our statement on the two bills, 640 and 450.

5 Also, Episcopal Community Services, which  
6 serves Philadelphia, Delaware, Bucks, Montgomery and Chester  
7 County, and Jewish Family Service, which serves Philadelphia,  
8 Montgomery and Delaware, have endorsed this statement. There  
9 are at least three other agencies who have not yet had board  
10 meetings where the staff and executive and committees of the  
11 board support our statement, but they have not yet had full  
12 board meetings. I did want to share that those agencies  
13 have joined with us and all of them are members of the Family  
14 Service Association of America and accredited.

15 SENATOR GEKAS: I would like to ask the one  
16 statement that you made -- Mrs. Weingarten, is that your  
17 name? -- of the divorces that are consummated in the Common-  
18 wealth, are you now as a product of mutual consent or agree-  
19 ment to the parties and, therefore, you agree that the  
20 passage of this legislation would help a few cases or  
21 relatively few cases where a resolution by way of mutual  
22 consent has not come about. It seems to me, and I would  
23 like your comment on this, that a few in number would be  
24 susceptible of the injustice of having one have his own way  
25 just as much as it would be subjected to injustices of keeping

1 people married where they didn't want to stay married --  
2 what I am saying is this: you seem to put a lot of emphasis  
3 on the fact that these few cases that are unresolved which  
4 would be resolved by unilateral should have the benefit of  
5 unilateral, because why compel someone to hang onto a useless  
6 thing. Is that correct?

7 MS. WEINGARTEN: Correct.

8 SENATOR GEKAS: You feel that that is unjust  
9 in these few cases. That's all right. You may editorialize.

10 MS. WEINGARTEN: Maybe you have a response  
11 also to that. I think a lot more people would be filing  
12 under a no-fault ground if that were available to them.  
13 I am not sure exactly about the number.

14 SENATOR GEKAS: What I am wondering is if  
15 these are just a few cases and within those few cases there  
16 are also just a few cases of the people feel very strongly  
17 that they cannot do anything but contest the divorce, as a  
18 question of justice cannot permit a wrongdoer spouse from  
19 committing adultery, leaving his responsibilities or hers,  
20 and as a matter of justice will not agree to a divorce.  
21 Have you come to the decision that we should not honor that  
22 ever anymore under the new unilateral divorce?

23 MS. WEINGARTEN: Yes.

24 SENATOR GEKAS: Even though it is just a few  
25 cases and --

1 MS. POSNER: (Interrupting) It's a small  
2 percentage. It is not in numbers of people. It's not a  
3 few people. I think the statistics show that most people  
4 would get mutual consent divorces, but there is a group  
5 of couples, maybe a small percent, twenty, 30 percent, who  
6 would come under the unilateral counseling.

7 MS. WEINGARTEN: I think it would be a lot  
8 more helpful for the partner in that kind of situation when  
9 he feels wronged to be able to have counseling help available  
10 to him, to be able to work through their feelings, to be able  
11 to work through their anger and their pain rather than have  
12 the legal channels available to them to express all these  
13 feelings in a destructive, unhealthy way.

14 SENATOR GEKAS: You are talking about the  
15 social parts of it. There is a body of thought that attaches  
16 legal significance to the contract where one has not breached  
17 it but is victimized by the breach of the other party, and  
18 then is compelled to allow the breacher, so to speak, to gain  
19 the fruits of freedom from that contract.

20 MS. POSNER: Under the bill as written you  
21 have a twelve-month separation period.

22 SENATOR GEKAS: Yes, I understand.

23 MS. POSNER: There is the option for counseling.  
24 There is -- let's face it, there is no marriage then.

25 SENATOR GEKAS: Yes.

1 MS. POSNER: And there is the marriage in the  
2 eyes or in the imagination of the person that is the unwilling  
3 spouse, but there is no marriage. There is no union in those  
4 kinds of situations, and if you didn't allow for mutual  
5 consent or unilateral divorces, you just allow this person  
6 to keep following an illusion of marriage when there is no  
7 marriage.

8 SENATOR GEKAS: I think you are right the way  
9 you look at it. What I am wondering, and it has always  
10 trouble me about, Miss, about, as I said, the what I consider  
11 to be an injustice of having someone thrust into a situation  
12 where they must yield to divorce whether one likes it or not.  
13 That is a very bothersome concept.

14 MS. POSNER: Well, it probably -- Joan is a  
15 counselor, I am not, but it has been our experience that the  
16 person that doesn't want the divorce -- there are a number  
17 of reasons why they might not want the divorce. One is  
18 revenge. Another is when you have someone to go off with  
19 and I don't yet -- if I should find another partner, I might  
20 grant you the divorce.

21 Another is fear, fear of living alone, and I  
22 might say that that fear exists even when you have mutual  
23 consent. There is always that fear of living alone, but  
24 people hold on because they are afraid to live by themselves.  
25 And, it has been our experience that once that divorce and

1 once that separation period has been dealt with, once they  
2 have gone through this and understand, those people frequently  
3 come out much happier, much happier individuals, but they  
4 were resisting the divorce.

5 SENATOR GEKAS: But the one who wants to  
6 break away from the marriage, goes and lives with a paramour,  
7 does all these things, and is rewarded, that person doesn't  
8 need anything except the divorce.

9 MS. WEINGARTEN: I am not sure what the  
10 rewards are for the spouse that doesn't want the divorce.

11 SENATOR GEKAS: That is just it.

12 MS. POSNER: But what have they got?

13 MS. WEINGARTEN: Just a marriage certificate.

14 SENATOR GEKAS: That is to them. That is  
15 their own value is what I am saying. That is one thing  
16 that we cannot, it seems to me in some of these circumstances,  
17 interfere with. That is the point. It's like the right of  
18 privacy or the sense of justice that that person has, et  
19 cetera.

20 MS. WEINGARTEN: Yes. I think what is pretty  
21 painful in all that is that often times what we are suggesting  
22 is helping people deal with the reality of their situation.  
23 That it is an illusion. The marriage is an illusion at that  
24 point. It's a hope. It's a lot of dreams. It has probably  
25 been a lot of hard work that they have lost. That is pretty



1 painful, but I am not sure how helpful it is to maintain the  
2 illusion.

3 SENATOR GEKAS: I have no further questions  
4 at this time.

5 MS. KOHR: May I address Senator Gekas'  
6 question? Is that proper?

7 SENATOR KELLEY: What was your proposition?

8 MS. KOHR: May I address Senator Gekas'  
9 question?

10 SENATOR KELLEY: I think it is a little out  
11 of order on this basis, and I would not like to digress from  
12 the standard procedures. I am sure Senator Gekas has always  
13 been cooperative and would like to have private dialogue with  
14 you, but it would be a very bad precedent for us to set at a  
15 public hearing in testimony to do that. I hope you under-  
16 stand.

17 MS. KOHR: I understand.

18 MS. POSNER: If we might continue, it was not  
19 in our written statement, but there has been a lot of dis-  
20 cussion today about conciliation proceedings and about amend-  
21 ing the legislation and what happens in Arizona, and if we  
22 may we would like to respond to that and also to the idea of  
23 the ninety-day waiting period.

24 Perhaps we should talk about -- it was mentioned  
25 briefly, and we skimmed the testimony by Mr. Fetterhoff that

1 would provide for a ninety-day cooling off period. As I  
2 understand it, the ninety-day cooling off period would be --  
3 would be -- the current indignities language would be amended  
4 to include a ninety-day cooling off period. Such an amend-  
5 ment would make the current law more difficult, more burden-  
6 some for the people who would be seeking divorce under the  
7 indignities grounds.

8           It would also be -- the amendment, the ninety-  
9 day amendment would be added in cases where you have mutual  
10 consent. The bills currently provide for mutual consent  
11 after ninety days, three months. This would add another  
12 ninety days. It is not clear where he is adding the ninety  
13 days, because I haven't seen the actual amendment, but that  
14 makes it six months, and that is a long time.

15           Joan can give you from her caseload and from  
16 other caseworkers' experiences the fact that when most people  
17 in a mutual consent situation file for a divorce they have  
18 already had that cooling off period, and people don't run in  
19 and file for a divorce. They have already really come to  
20 the realization that they need the divorce, and we think  
21 that the three-month protection that is in there is enough.  
22 To add ninety days is just stringing it out further.

23           As to ninety days for the unilateral, that  
24 would make it fifteen months. I don't feel as strongly about  
25 that. I think it just makes the process longer and more

1 painful and keeps people from getting on with the business  
2 of readjusting, realigning their lives and relationships.

3 Do you want to comment on that conciliation?

4 MS. WEINGARTEN: Yes. I just -- one of the  
5 things that we feel very strongly about is that counseling  
6 is really only helpful when it is a voluntary process. We  
7 are not opposed to counseling. We think counseling has a lot  
8 of benefit. I think it's questionable whether three sessions,  
9 mandated sessions, are necessary. I think it is possible in  
10 one session for a couple and a trained, professional counselor  
11 to be able to determine is there any interest or not in  
12 pursuing the possibility of a reconciliation.

13 Counseling is a long, hard process. If a  
14 couple decides that they are interested in the reconciliation,  
15 they are probably going to be interested in more than three  
16 sessions on an ongoing basis in terms of working out some  
17 issues. After one session if one or both parties have no  
18 interest in a possible reconciliation, and I am not sure  
19 how valuable mandated counseling becomes at that point.

20 SENATOR KELLEY: Miss Weingarten, is it your  
21 opinion that, as an experienced counselor, that counseling  
22 is only beneficial when it is voluntary by both parties?

23 MS. WEINGARTEN: We have had a lot of voluntary  
24 referrals from courts and schools, et cetera. Oftentimes  
25 the clients' initial resistance has to do with a lot of fear

1 and unknown and not knowing what is going to be required of  
2 them. Once they are given that as a choice and once they  
3 understand what the situation is and what counseling is all  
4 about, at times they do decide they want to file.

5 SENATOR KELLEY: So you are not saying that  
6 you would disagree with mandatory counseling?

7 MS. WEINGARTEN: No. I am questioning it.

8 REPRESENTATIVE SCIRICA: Is mandatory  
9 counseling where one party requests it?

10 MS. WEINGARTEN: Absolutely. Yes.

11 REPRESENTATIVE SCIRICA: You would have no  
12 objection to it?

13 MS. WEINGARTEN: Right.

14 MS. POSNER: For one.

15 MS. WEINGARTEN: For one session.

16 REPRESENTATIVE SCIRICA: For one session?

17 MS. WEINGARTEN: Right.

18 REPRESENTATIVE SCIRICA: It is your experience --  
19 are you saying that if it doesn't take after one session it  
20 is really fruitless to go ahead --

21 MS. WEINGARTEN: (Interrupting) Yes.

22 REPRESENTATIVE SCIRICA: -- any further.

23 MS. POSNER: I would like to respond here to  
24 something that was said earlier. In Phoenix the county pays  
25 for it. I don't think that Pennsylvania is going to pay

1 for it. It puts the burden of the cost -- Mr. Fetterhoff  
2 suggested that a lot of clergy, ministers, rabbis, what  
3 have you, could do counseling. There are a lot of people  
4 who don't want to avail themselves to them, and we ought  
5 to remember that in any language that you have in regarding  
6 counseling that it is expensive and there are a lot of people  
7 that can't now afford divorces.

8                   We are funded by the United Way. I think  
9 maybe 90 percent of our money comes from United Way. The  
10 rest is public, Title 20 moneys. Our fee is \$35 a session.  
11 We do have a sliding scale fee and very few people pay \$35.  
12 I think psychiatrists, psychologists are going at 40, 45 and  
13 more. I think that we ought to consider that is that you  
14 are asking if you mandate counseling and the state doesn't  
15 pay for it, you are asking the United Way agencies or the  
16 public agencies to take up these people or asking these  
17 people to pay another hundred dollars. I just want to raise  
18 that.

19                   SENATOR GEKAS: Mr. Chairman. On that point  
20 you might want to know that as a matter of history on divorce  
21 reform in Pennsylvania that when the House of Representatives  
22 took this matter up back in 1969 or '70 that the original  
23 concept had the county picking up the costs which made the  
24 bill reside in committee for months. Finally when it did  
25 come out, the only way that it could proceed on the floor

1 was with an amendment which I offered really, and that is  
2 why I can authentically report to you, to place the cost on  
3 the litigants themselves much as part of the divorce costs  
4 in the first place. Then it was able to pass. So, I want  
5 you to know that we are talking about practical application  
6 of financial, fiscal consideration.

7 MS. POSNER: When we come to you for more  
8 Title 20 money, we hope you will give it to us.

9 REPRESENTATIVE SCIRICA: Do you have any  
10 indication as to how well the counseling in Arizona is  
11 working? We have heard testimony that it is doing quite  
12 well.

13 MS. POSNER: It is our understanding -- now,  
14 we have not seen a report other than what was included in  
15 Mr. Fetterhoff's testimony. We did have a chance to talk  
16 very briefly with the executive of the Family Service agency  
17 out there who have a couple of concerns. One is he said in  
18 many cases people don't go past one or two visits. It is not  
19 always three visits, which I think we might want to track  
20 down. His concern was that there was no follow-up with the  
21 cases.

22 Now, according to these orange and yellow  
23 sheets here, there is a 95 percent -- this is from the  
24 Maricopa County statistics -- they say that 95 percent of  
25 the couples reconciled one year later were still together.

1 But, that is whom the court has been able to contact. I  
2 don't know how many couples the court did not contact. That  
3 is the kind of thing you can't tell without seeing the actual  
4 statistics. But, there was a concern by the Phoenix Family  
5 Service agency that there was little follow-up.

6 REPRESENTATIVE SCIRICA: What are your  
7 statistics on reconciliation as marriage counselors?

8 MS. POSNER: If it is mandatory or voluntary?

9 REPRESENTATIVE SCIRICA: Just the cases that  
10 you handle.

11 MS. WEINGARTEN: That is a real tough  
12 question to answer. We don't keep ongoing statistics such  
13 as that. I was able to consult with a couple of my colleagues  
14 yesterday very quickly and the feedback I got -- and again  
15 this is not a long study of any kind -- is roughly somewhere  
16 between 60 and 75 percent of people who come in who are  
17 either currently separated, very seriously thinking of  
18 separation and divorce or have already filed for divorce  
19 getting back together again.

20 REPRESENTATIVE SCIRICA: Sixty to 70 percent,  
21 and these are parties that come to you voluntarily?

22 MS. WEINGARTEN: Absolutely, yes.

23 REPRESENTATIVE SCIRICA: Okay.

24 MS. POSNER: The other concern is that --

25 SENATOR KELLEY: (Interrupting) Pardon me,

1 ma'am. Along those lines, I don't want to get into it too  
2 deeply, but would that percentage vary dependent upon what  
3 status the marriage relationship was when they chose to come  
4 in to you. In other words, like Ms. Posner indicated that  
5 there was a -- once people decided to file for divorce, it  
6 is pretty well over in their mind and so forth, and if that  
7 is the state of mind it is much more difficult for recon-  
8 ciliation I would believe.

9 So, would you asterisk your percentage  
10 speculations, 60 to 75 percent, that it would, as the  
11 intensity of the rift of the marriage was greater, the less  
12 chance it was for success at reconciliation. Is that an  
13 inverse percentage?

14 MS. WEINGARTEN: I think that would be fair  
15 to say. Yes.

16 MS. POSNER: If you would like, we weren't  
17 aware that this was going to be discussed today, but if you  
18 would like, we can try and see what kind of statistics we  
19 can get of more in detail on Arizona and some of the other  
20 states from Family Service Association of America. I am not  
21 sure what we can come up with.

22 I would also like to say that we did get this  
23 feeling from the Arizona Family Service agency that this  
24 report, the yellow report here, is the report of a public  
25 agency. I don't know how to put it nicely, but they are



1 trying to justify their existence. I don't know whether  
2 the statistics are right, but we might want to look at them  
3 more carefully before believing them, because everybody  
4 wants to prove how wonderful they are. It would be nice  
5 to know if it is really true.

6 REPRESENTATIVE SCIRICA: Thank you very much.

7 MS. WEINGARTEN: Thank you.

8 REPRESENTATIVE SCIRICA: We are grateful for  
9 your testimony. We have one more witness, I believe, Ms.  
10 Sarah Duffey, Pennsylvania State Delegate of the National  
11 Association of Women Lawyers. Is Ms. Duffey here?

12 Our final witness will be Mr. Charles  
13 Matthews, who represents Parents Without Partners.

14 MR. MATTHEWS: I am an unscheduled witness  
15 that was fortunate enough to get the ear of the Committee  
16 here at the last moment. My name is Charles Matthews. I  
17 am the president of Parents Without Partners, Cumberland  
18 Valley Chapter, which entails four counties in the south  
19 central portion of Pennsylvania. In addition, I am on the  
20 Board of Directors for the Mid-Atlantic Regional Council,  
21 which includes Maryland, Virginia, West Virginia, Delaware,  
22 Washington, D.C. and a portion of Pennsylvania.

23 We see our position in this hearing as being  
24 the only representative, the only true organized and authorized,  
25 recognized representatives of the divorced and separated

1 community in Pennsylvania. We appear here with no special  
2 interest. As I see this, we sit here much akin to a medical  
3 situation where those of you proposing this legislation are  
4 akin to a board of directors operating a hospital. We saw  
5 the attorneys who came in who can be likened to the doctors  
6 and surgeons who operate on the patient. Some special  
7 interest group came in, they can be akin to the recovery  
8 room --

9 REPRESENTATIVE SCIRICA: (Interrupting) Excuse  
10 me, sir. We are going to be terminating these hearings very  
11 shortly, and we do have one more scheduled witness. I think  
12 if you want us to listen to you, you better get to the point  
13 pretty fast. I apologize to you, but you were not scheduled  
14 but we have a commitment here. We are in session today.  
15 Please proceed.

16 MR. MATTHEWS: Parents Without Partners  
17 across the board supports the bill as presented by Senator  
18 Gekas. The portion of Parents Without Partners which I  
19 represent does not agree with the Senate Bill 450 or 640  
20 from the House. There are certain assumptions that must be  
21 drawn in making this, and with only one day for the hearings  
22 to be held, inasmuch as there are other organizations who  
23 certainly have something to contribute, who should be heard  
24 as well before this final legislation is done.

25 I shall try to make this as brief as possible,

1 | however, I would welcome the opportunity to come back and  
2 | give more specifics, which I am sure will be of great  
3 | assistance to the Committee. There is probably about ten  
4 | more minutes of material I would like to cover, but I under-  
5 | stand you would like me to terminate.

6 |           REPRESENTATIVE SCIRICA: It is a question that  
7 | we are not going to be here. We are already at 4:30 and we  
8 | are still in session. Do you have written testimony, sir?

9 |           MR. MATTHEWS: No, sir, but I shall get it  
10 | to you.

11 |           REPRESENTATIVE SCIRICA: Could you? If you  
12 | could, we understand that you are supporting Senator Gekas'  
13 | bill. Perhaps he would have some questions here, and I  
14 | don't want to cut you off unnecessarily. If you would, just  
15 | tell us the reasons why you are supporting it, and if you  
16 | would give us some written testimony, we would be happy to  
17 | pass it around to all the Committee members, but I am afraid  
18 | you are not going to have an audience if you continue to go  
19 | on.

20 |           MR. MATTHEWS: Yes, sir. I understand. I  
21 | will take what I have and have it written and presented and  
22 | sent to your office, sir. We will try to be more specific  
23 | as to why we support Senator Gekas' bill and why we are  
24 | opposed to the bills that seemingly everyone else supports.

25 |           REPRESENTATIVE SCIRICA: That would be helpful.

1 SENATOR GEKAS: We will let it go with that.

2 REPRESENTATIVE SCIRICA: Thank you very much.

3 Ms. Duffey, I am afraid we are under some  
4 time constraints here. Do you have a prepared statement  
5 for us?

6 MS. DUFFEY: Yes, I do.

7 REPRESENTATIVE SCIRICA: As I told the last  
8 gentlemen, we have unfortunately lost some of our members  
9 and the House is still in session. I think it would be a  
10 good idea if you would summarize your testimony. We will  
11 make your written testimony -- your written testimony will  
12 become a part of the record. We will make sure it is  
13 circulated to all members of the Committee. If you would  
14 highlight the aspects of this testimony, then perhaps we  
15 will have some questions.

16 MS. DUFFEY: Certainly. Thank you, Mr.  
17 Scirica.

18 The National Association of Women Lawyers  
19 has never endorsed no-fault divorce where it is granted at  
20 the request of one party and over the opposition of another.  
21 The women lawyers in other states have indicated that this  
22 has been disastrous for the women in those states economically.  
23 We think that the certain sections of the first two bills at  
24 640 and 450 are particularly dangerous to dependent spouses  
25 and that they are contrary to the Equal Rights Amendment of

1 the Pennsylvania Constitution and Equal Protection Clause  
2 of the Federal Constitution.

3 First of all, there is Chapter 4 property  
4 rights and Section 401(b). Initially, it would appear that  
5 the divorce could be granted -- that no divorce could be  
6 granted unless the decree also set forth alimony, property  
7 rights, child support, et cetera. However, in the very  
8 next breath the board takes that away. The legislation  
9 takes that away and provides that in the event that the  
10 court is unable to reach a decision within thirty days after  
11 the master's report has been filed, that it may enter the  
12 decree in divorce so long as it holds on to the matter and  
13 disposes of it later.

14 It is a rare court that would decide these  
15 matters within thirty days when the legislature is giving  
16 it such a perfect out, and this section insures that the  
17 dependent spouse could be divorced without fault and left  
18 for many years without property. During this period of time  
19 she wouldn't be getting alimony, either, so she is left  
20 without even any funds with which to fight for the money.  
21 We have cases now where the property rights have been pending  
22 for years. This section in effect makes this bill a no-  
23 fault no alimony divorce bill, because justice delayed is  
24 justice denied.

25 When you get to Chapter 5 alimony and support,

1 first of all, provides that it can only be granted if the  
2 person seeking it lacks sufficient property, including the  
3 property she got and that she is unable to support herself.  
4 I submit that that section would require the dependent spouse  
5 to use her savings and even sell her family home before she  
6 could get any alimony.

7 Another section which we object to is the  
8 section that provides that the determining whether alimony  
9 is necessary the court will consider the extent of the  
10 dependent spouse to seek employment outside the home. In  
11 about 95 percent of the cases the custodian of the minors  
12 is the mother. As a mother and homemaker she already has  
13 a full-time job. This section would permit a court to force  
14 her to take a second job or else would reduce alimony  
15 accordingly.

16 Now, it has been held that courts cannot  
17 require a man to secure a second job, even though he had  
18 two jobs right up until the day of the support hearing,  
19 even though he is a Philadelphia fireman and works only  
20 four days a week and is off three days a week, and I submit  
21 where a support order cannot be based on a judge's ordering  
22 a man to get a second job, a support order for a woman cannot  
23 be based or reduced on the basis that she should secure a  
24 second job, and we should recognize the fact that homemaking  
25 is a full-time job. The mere fact that some homemakers may

1 have two jobs is immaterial. So do some men have two jobs,  
2 but the courts don't require a support order on the ground  
3 that the man should get a second job.

4 Another problem with this, it refers only to  
5 minor children. There are disabled children. There may be  
6 physically handicapped children that may be fully adult that  
7 may require a mother to stay home and care for them. We  
8 have suggested an amendment where the dependent spouse shall  
9 not be required directly or indirectly to seek employment  
10 outside the home and there shall be no reduction in alimony  
11 or support on the ground that she could obtain such employment.

12 The one on privileged communications, it states  
13 that privileged -- that confidential communications won't be  
14 revealed, but that would leave it up to the judge to decide  
15 what communications are confidential and which aren't. That  
16 should be amended to provide any communications concerning  
17 the marriage to any of those persons would be inadmissible  
18 regardless of whether they are made alone to that person or  
19 in the presence of the spouse.

20 Senate Bill 49 does not set forth the type  
21 of consent necessary to the divorce. In view of the fact  
22 that other states have indicated that voluntary living  
23 apart can be interpreted as consent to the divorce, we have  
24 set forth on something appended what should be the actual  
25 type of consent required in that bill. It is kind of an

1 Exhibit A at the end in brackets.

2 Thank you for your time.

3 REPRESENTATIVE SCIRICA: Thank you very much.

4 Are there any questions?

5 SENATOR GEKAS: Are you saying if Senate Bill  
6 49 incorporated your concepts of consent you would favor such  
7 a bill?

8 MS. DUFFEY: Yes. I think we could. I do  
9 think that twelve months is an awful long wait if the people  
10 agree to it. I think that first we would like alimony in any  
11 bill, but we have no opposition to divorce by consent where  
12 it is a really truly informed consent.

13 SENATOR O'PAKE: I think that your input that  
14 would represent such a professional organization is most  
15 beneficial to this Committee, and I am wondering, the thought  
16 occurred to me you are probably well aware there is a case  
17 where the court in measuring the separation and division of  
18 property valued as an asset the professional status of one  
19 of the parties. It so happens it was a situation I think  
20 where the wife had helped and assisted in the attainment  
21 of that professional status in the course of the marriage,  
22 and do you have any opinions of whether or not some definition  
23 should be in the statute that would include to make it manda-  
24 tory that the courts would evaluate such unique measurable,  
25 tangible or unique intangible?



1 MS. DUFFEY: I think that would be an  
 2 excellent idea. I think that should be incorporated because  
 3 certainly if it is a professional person, depending on the  
 4 age, the income can certainly increase and could be an asset.

5 SENATOR O'PAKE: My experience has been that  
 6 quite a few marriages, divorces, have come about by situations  
 7 where usually the wife has helped, assisted the husband  
 8 attain this profession by working outside the home and  
 9 helping with tuition, and then when he becomes successful  
 10 with the attainment of professional status --

11 MS. DUFFEY: (Interrupting) She is dumped.

12 SENATOR O'PAKE: I don't like to be so hard  
 13 on my fellow males, but he for some reason or other can't  
 14 take success and looks for other pastures.

15 MS. DUFFEY: I certainly think if she  
 16 contributed to it that should be deemed an asset of the  
 17 entire marriage, not just his personal asset.

18 I also recommend that we -- I didn't get to  
 19 this, but I think it is very important before you do anything  
 20 else, I think you should get a bill passed immediately to  
 21 provide -- there is no public policy in this state against  
 22 alimony and wherever there has been a divorce in another state  
 23 where alimony has been awarded in that state that we will,  
 24 if we recognize the divorce, we will enforce the alimony  
 25 provisions. Because the big objection that a lot of people

1 have is that the courts have said that you can't enforce a  
2 decree of foreign alimony even when they recognize the divorce,  
3 and that is why we need some changes. I think if we get  
4 that other bill through where we recognize the alimony --

5 SENATOR O'PAKE: (Interrupting) Even before  
6 we passed our own divorce proceedings?

7 MS. DUFFEY: We have alimony -- you have no-  
8 fault divorce in other states which we don't have in  
9 Pennsylvania. If we recognize a decree for no-fault divorce,  
10 which we do not recognize in Pennsylvania, in another state,  
11 then we should recognize the decree for alimony in another  
12 state, too.

13 SENATOR O'PAKE: That is in a different  
14 jurisdiction, the status as opposed to continuing obligation.

15 MS. DUFFEY: No. It seems to me if somebody  
16 has been divorced without fault and that is one of the  
17 problems --

18 SENATOR O'PAKE: (Interrupting) Regardless  
19 of the basis of the theory in force in the sister states, the  
20 fact is we are dealing with the status -- I have difficulty  
21 constitutionally about giving recognition of the alimony.

22 MS. DUFFEY: Why do you recognize the divorce  
23 without fault when you don't recognize that?

24 SENATOR O'PAKE: Because I am distinguishing  
25 the jurisdiction for the two, one being unique in establishing

1 status and the other being an obligation. It is a different  
2 status but deals with the obligation of a person.

3 MS. DUFFEY: I think that is extremely unfair.  
4 I think if you give full faith and credit to the divorce you  
5 have to give full faith and credit to the alimony.

6 SENATOR O'PAKE: Who said life is to be fair?

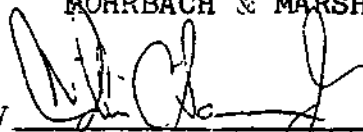
7 REPRESENTATIVE SCIRICA: Thank you.

8  
9 (Whereupon the hearing was concluded  
10 at 4:40 o'clock p.m.)

11 --oOo--

12  
13 I hereby certify that the foregoing is a  
14 true and correct transcript of my stenotype notes taken by  
15 me during the hearing on the above cause, at the herein  
16 indicated time and place, before the Judiciary Committees  
17 of the Senate and House of Representatives of the Common-  
18 wealth of Pennsylvania.

19  
20 MOHRBACH & MARSHAL, INC.

21  
22 By   
Official Reporter

23 REPORTED BY:

24 WILLIAM C. SOMMER, JR.  
25 Mohrbach & Marshal, Inc.  
27 North Lockwillow Avenue  
Harrisburg, Pennsylvania 17112