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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: Senate Bill 431

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Stenographic report of hearing held  
in Room 140, Majority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Tuesday,  
September 17, 1991  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN  
Hon. Keven Blaum, Subcommittee Chairman on Crimes  
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. David W. Heckler
Hon. Daniel F. Clark	Hon. Kenneth E. Kruszewski
Hon. Frank Dermody	Hon. David Mayernik
Hon. Gregory C. Fajt	Hon. Robert D. Reber
Hon. Lois S. Hagarty	

Also Present:

Hon. Thomas E. Armstrong  
David Krantz, Executive Director  
Galina Milahov, Research Analyst  
Ken Suter, Republican Counsel

Reported by:  
Ann-Marie P. Sweeney, Reporter

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1                   CHAIRMAN CALTAGIRONE: This is the public  
2 hearing on Senate Bill 431 by the House Judiciary  
3 Committee. I'm Chairman Tom Caltagirone, and for the  
4 benefit of the people here today and for the court  
5 reporter, I would appreciate if everybody on the panel  
6 would introduce themselves, and we'll start over to my  
7 left with Frank.

8                   REPRESENTATIVE DERMODY: I'm Frank  
9 Dermody from Allegheny County.

10                  REPRESENTATIVE BLAUM: Kevin Blaum, city  
11 of Wilkes-Barre.

12                  REPRESENTATIVE KRUSZEWSKI: Ken  
13 Kruszewski from Erie.

14                  MR. SUTER: Ken Suter, Republican  
15 Counsel.

16                  REPRESENTATIVE HAGARTY: Representative  
17 Hagarty, Montgomery County.

18                  REPRESENTATIVE REBER: Representative  
19 Reber, Montgomery County.

20                  MS. MILAHOV: Galina Milahov, Research  
21 Analyst with the committee.

22                  REPRESENTATIVE CLARK: Representative Dan  
23 Clark from Juniata County.

24                  And if there's a maintenance man in the  
25 room, I would like a light here. I don't want to

1 burden anybody or anything like that.

2 REPRESENTATIVE BIRMELIN: Representative  
3 Birmelin, Wayne County.

4 CHAIRMAN CALTAGIRONE: Representative  
5 Armstrong, if you'd like to start, sir.

6 REPRESENTATIVE ARMSTRONG: Okay. Well,  
7 thank you very much.

8 First of all, I want to take the  
9 opportunity to thank Representative Caltagirone and the  
10 rest of the committee to be able to be a part of this,  
11 have the opportunity to appear before them to address  
12 the issue of the grandparent visitation rights.

13 For the record, I would like to state  
14 that I would much prefer to be addressing something  
15 that reflects the positive elements of our society  
16 rather than the negative, such as the circumstances  
17 that have arisen which have called for the need to try  
18 to correct the advance situations within the family  
19 structure. This is a sad commentary of the demise and  
20 the disintegration of our family structure. However,  
21 the matter is before us and we need to address it.  
22 Hopefully, we can address it in a fair and  
23 compassionate manner.

24 I became aware of this bill quite a few  
25 months ago and have been following its development

1 through the Senate. It's my understanding that the  
2 Senate has worked diligently to draft a bill that will  
3 try to be fair to all those involved, and I believe  
4 they have done an extraordinary job in drafting a piece  
5 of legislation that provides consistency in our law.  
6 However, there are a couple points that I would like to  
7 raise that I feel we need to address that I believe  
8 have been mistakenly overlooked in the Senate.

9           The first such point that I would like to  
10 raise is that smattered throughout the legislation is  
11 reference to great-grandparents. In other words, the  
12 law provides the opportunity for great-grandparents to  
13 also petition the courts for visitation rights. This,  
14 I believe, in conversation with various individuals,  
15 including grandparents in my district, is going too  
16 far. Needless to say, I believe it would also create a  
17 heavier burden upon our court system. I would kindly  
18 ask you to consider deleting the reference to  
19 great-grandparents in this legislation. As a matter of  
20 fact, I have an amendment for your consideration in  
21 trying to solve this particular situation.

22           The second and third points have to deal  
23 with how these visitation rights for grandparents  
24 impact upon the adoption process. Before I go any  
25 further, I would like to state that I believe it is the

1 intention of the Senate and the House to recognize that  
2 an adoption is an adoption and that once that new  
3 family unit is formally recognized through the adoption  
4 process that we all should provide that new family unit  
5 the time and environment whereby all of the family  
6 members, especially that of the adopted individual, to  
7 adapt to their new family unit.

8           The first of these next two points that I  
9 would like to raise can be found on page 5, lines 14  
10 through 17. This particular part of the legislation  
11 specifies that the visitation rights will be terminated  
12 once there is a petition filed for the child's  
13 adoption. This, I believe, is premature. For example,  
14 what would happen if visitation rights were terminated  
15 because a petition was filed and then the adoption fell  
16 apart? Do the grandparents then petition the courts  
17 for visitation rights all over again? I believe that  
18 the grandparent or grandparents should maintain those  
19 visitation rights until the last "T" is crossed and the  
20 "I" is dotted in the adoption process.

21           Mr. Chairman, I also believe that your  
22 consideration -- I have for your consideration an  
23 amendment which will correct a particular flaw that I  
24 see in the legislation relating to the point that I  
25 just raised.

1           The second point in the legislation that  
2 deals with the adoption process pertains to the  
3 termination of the grandparents' visitation rights. As  
4 the legislation now stands, it merely states that the  
5 grandparents' visitation rights will be terminated once  
6 an adoption is realized. My concern about this  
7 particular aspect deals with that of trying to make the  
8 law somewhat compassionate in dealing with the emotions  
9 of the grandparents themselves. I've tried to put  
10 myself in the shoes of grandparents who had such  
11 visitation rights and asked myself how I would feel if  
12 I were to wake up one day and realized that I would no  
13 longer be able to see my grandchild or grandchildren  
14 again because my grandchild or grandchildren were just  
15 adopted and I was not aware of the fact that I would  
16 not be able to see them again once the adoption was  
17 completed. I have very strong feelings that this could  
18 actually serve as a cold reality of the law, a slap in  
19 the face, have you. Let us, Mr. Chairman and  
20 committee, stop and consider the emotions that one may  
21 go through.

22           Mr. Chairman, I am of the very strong  
23 opinion that once a petition is filed for an adoption  
24 that the grandparents should be notified that their  
25 visitation rights may be terminated upon the completion

1 of an adoption. This, Mr. Chairman, will give the  
2 grandparents the opportunity to emotionally prepare  
3 themselves to the reality that a certain chapter in  
4 their lives will shortly be closing. I believe that  
5 this is our responsibility in drafting this  
6 legislation, that we consider all of the sensitivities  
7 involved.

8 For your consideration also, I have a  
9 third amendment to Senate Bill 431 which will provide  
10 for the notification to a grandparent holding  
11 visitation rights that the adoption proceedings have  
12 been started on their grandchild and that their own  
13 visitation rights may be terminated once the adoption  
14 is completed. I will gladly work with you and anyone  
15 else in your committee in amending this piece of  
16 legislation to better address the situation that now  
17 faces us.

18 Finally, Mr. Chairman, since I have been  
19 following Senate Bill 431, I have also taken the  
20 liberty to redraft the legislation, and in so doing it  
21 would contain the amendments that I have just spoken of  
22 today. I have circulated a memo as of August 2nd  
23 asking for cosponsorship of this piece of legislation  
24 to which 46 legislators have relayed their desire to  
25 attach their names. It is not my desire to claim



1 ownership of this bill. As a matter of fact, I would  
2 like to regress on that a bit. When I first circulated  
3 a memo quite a few months ago on the piece of  
4 legislation I was not sure if Senate Bill 431 was going  
5 to move, so I thought if maybe we could introduce it  
6 into the House and see if it could move in the House.  
7 Fortunately, it has moved and since then I have just  
8 taken the liberty to just redraft it with my  
9 amendments.

10 I believe it is important to realize that  
11 many members on both sides of the aisle and in both  
12 chambers of the legislature believe that it is a matter  
13 that needs to be addressed. Should you decide to move  
14 Senate Bill 431, as well as I would hope that you  
15 consider that many other members of the House would  
16 appreciate your consideration of the three amendments  
17 that I have raised. Should you wish to move the bill  
18 that I would like to introduce shortly to show the  
19 support of this issue in the House, then so be it. You  
20 have the authority to do what you would like to do on  
21 this issue, but again I believe it is an issue that  
22 needs to be remedied.

23 One final point that I would like to  
24 raise is should the bill be retroactive to apply to  
25 those grandparents that now have visitation rights, who

1 actually their grandchildren are adopted to separate  
2 families, I do not have a strong opinion at this point  
3 on this issue but I do believe it is something that you  
4 should consider.

5           Once again, thank you very much for this  
6 opportunity to appear before you and to participate in  
7 the process of this legislation.

8           Thank you.

9           CHAIRMAN CALTAGIRONE: Thank you, Tom.  
10          Are there any questions from the members?

11          (No response.)

12          CHAIRMAN CALTAGIRONE: Thank you.

13          REPRESENTATIVE ARMSTRONG: Thank you.

14          CHAIRMAN CALTAGIRONE: Victor Vouga.

15          MR. VOUGA: Good morning, Mr. Chairman  
16 and members of the committee. I want to thank you also  
17 for the opportunity to appear before you today.

18                 For the record, I am an attorney from  
19 Butler, Pennsylvania, which is on the western part of  
20 this State, and I am currently involved in a lawsuit  
21 involving the current statute, 23 Section 5312 relating  
22 to the grandparent visitation. That case is currently  
23 on appeal before the Superior Court raising a number of  
24 constitutional questions on the current status of that  
25 law. Because of that, I have a very keen interest in

1 the current bill that is before the House relating to  
2 grandparent visitation.

3 In light of the challenges that I am  
4 raising in front of Superior Court, I'd like to address  
5 just briefly some of the questions that I have  
6 regarding Senate Bill No. 431.

7 Initially, in the declaration of policy  
8 it states that it is the public policy of the  
9 Commonwealth to assure continuing contact of the child  
10 or children with grandparents or great-grandparents  
11 when continuing contact is in the best interest of the  
12 child. Part of the reasons that I have challenged the  
13 constitutionality of the prior statute is regarding  
14 this best interests standard. In my opinion, this  
15 standard is not applied within constitutional confines.  
16 Many times the assumption begins and ends that all  
17 grandparent visitation is good and the lack of it is  
18 bad, and the courts use this to justify an interference  
19 into the family unit. It is my position that before  
20 that standard can be applied, there has to be a showing  
21 of a compelling State interest to justify an intrusion  
22 into the family unit. I submit that this best  
23 interests standard can only be applied once there has  
24 been a showing of parental unfitness or if there is  
25 harm to the child. At that point then it can be

1 determined what is in the child's best interest. And  
2 my concern immediately in the statement of policy is  
3 that this gives a continuing green light to the courts  
4 to warrant any intrusion that they see fit into the  
5 family unit.

6 Moving on to -- well, I would like just  
7 to add at this point that the concern here on allowing  
8 this type of visitation without -- outside of any type  
9 of constitutional confines allows the possibility of  
10 further litigation into the family unit. Essentially,  
11 when you get to a situation where grandparents feel  
12 compelled that they have to resort to a legal process  
13 to enforce visitation is indicative that there are  
14 substantial problems within the family. In my opinion,  
15 this type of conflict is a moral issue that needs to be  
16 resolved between the grandparents and the parents and  
17 should not be the proper focus of court action.

18 Moving to Section 5311(A), the general  
19 rule, again, the best interests standard is simply set  
20 forth without any constitutional threshold. This  
21 section also provides that grandparent visitation  
22 should not interfere with the parent-child  
23 relationship, but there's no guidance provided in the  
24 statute as to what would constitute interference. It  
25 would appear that the very existence of a lawsuit

1 implies that there is already some interference  
2 occurring in the parent-child relationship, and I  
3 believe that there needs to be some clarification as to  
4 what is intended here. I think also it needs to be  
5 established which party carries the burden of proof.  
6 Oftentimes in these situations because of the court's  
7 presumption that all grandparent visitation is  
8 beneficial the burden of proof is often unfairly  
9 shifted to parents to prove that there is harm or that  
10 there is interference, and I believe that there needs  
11 to be adequate provision made to ensure that regarding  
12 interference with the child-parent relationship that it  
13 be the burden of the grandparents to show that there is  
14 no such interference.

15           Subparagraph 1 of the proposed 5311(A)  
16 states that as an additional condition, the parents are  
17 not currently cohabitating on a permanent basis or are  
18 cohabitating on an indefinite basis. This appears to  
19 be a very vague condition and open for litigation, as  
20 there is not any specific guidelines as to what is  
21 meant by "an indefinite basis." It seems to me that  
22 this is open for a lot of questioning. And again,  
23 there's a question of burden of proof as to who has to  
24 show what constitutes an indeterminate or an indefinite  
25 relationship.

1           Moving on to one of the other criteria,  
2           which would be 5311(A)(4), provides that grandparent  
3           visits can occur if one parent joins in the petition  
4           with the grandparents. I question whether or not this  
5           provision is necessary. It is unclear as to what is  
6           being accomplished since if one parent is able and  
7           willing to join in the petition, why doesn't that  
8           parent simply see to it that the visitation is allowed?

9           The other concern that I have from a  
10          legal standpoint is if a parent does not have  
11          visitation or custody rights via a court order, does  
12          this provision allow for a quid pro quo collateral  
13          attack? What I envision here is a situation in a  
14          divorce where one party may be limited in the amount of  
15          visitation they get. Does this statute allow for them  
16          to side with some grandparents and say, well, I'll sign  
17          on your petition to enable visitation if in turn I can  
18          get some extended visits myself? And I think that this  
19          is a concern that needs to be looked at a little bit  
20          more closely on this provision.

21          I'm also concerned that it's not very  
22          clear in this provision whether or not this would apply  
23          to intact nuclear families that have not been  
24          devastated by divorce or by a death of one -- well,  
25          obviously it wouldn't apply to a death situation, but

1 in a divorce situation. I'm assuming from the tenor of  
2 the statute that this is applying in situations where  
3 there are broken relationships, but this provision is  
4 not clear. It would appear that even in a situation  
5 where the family's intact that there could be  
6 grandparent visitation granted.

7 5311(C) provides for an expedited  
8 resolution of visitation of partial custody petitions  
9 filed by grandparents. There is no explanation  
10 provided as to why these types of cases should receive  
11 preferential treatment over what I've termed normal  
12 custody cases between parents. This expedited  
13 treatment could conceivably be viewed as being  
14 discriminatory in that it allows grandparents to have a  
15 quicker and more immediate access to the court system  
16 as opposed to an underlying custody dispute between  
17 parents. This could create a certain amount of  
18 judicial confusion and backlog because conceivably you  
19 could have a custody issue between grandparents and  
20 parents being litigated and heard before the courts  
21 before the underlying custody issue is resolved.

22 Section 5311(D) prohibits a parent from  
23 interfering with the visitation or partial custody  
24 rights of grandparents. Again, I believe that there  
25 needs to be some direction as to what is meant by

1 interference and what sanctions are to be imposed if in  
2 fact it was proven that there was interference?

3 Another question that I have is whether or not this  
4 provision means that a parent would be prohibited from  
5 leaving the jurisdiction prior to an order being  
6 entered as it is in normal custody cases. And if so,  
7 are we not essentially putting grandparents on the same  
8 standing as parents? And from a constitutional  
9 standpoint, I would have a problem with that.

10 Moving on to Section 5314, which  
11 enumerates various exceptions to the general rules set  
12 forth in Section 5311, subparagraph 4, states that the  
13 general rule would not apply in cases where the parent  
14 with primary physical custody is the son, daughter,  
15 grandson or granddaughter of the petitioner, unless  
16 after a hearing the court determines that the  
17 visitation of partial custody is in the child's best  
18 interest. The first question I have regarding this  
19 exception is whether or not the legislature is  
20 intending to set up a two-step procedure to determine  
21 whether or not this type of action can take place when  
22 grandparents may be suing their own children. My  
23 initial reading from that sounds like that is what is  
24 intended here, and my question is if that is the case,  
25 does this mean that the best interests question is



1 being litigated twice - once simply to see whether or  
2 not the petition should be allowed to be filed and then  
3 once to determine the propriety of visitation?

4           Of more concern, however, is whether or  
5 not this exception truly is an exception to the rule.  
6 Given the trend of the courts, it seems unlikely that  
7 this exception would be of any merit. If we're going  
8 to simply resort to the best interests standard, I find  
9 it highly unlikely that a court would simply decide  
10 that it was not in the best interest and really put any  
11 force behind this particular exception. I believe that  
12 at the very least the bill should simply prohibit  
13 grandparents from suing their own children. If the  
14 family is so distraught that they must sue each other,  
15 no amount of legislation can heal the rift, and the  
16 children involved can only suffer as a result. And I  
17 feel very strongly about this because the case that I  
18 am involved with now is such a scenario. It genuinely  
19 presents a worst case scenario where a grandmother has  
20 sued her own daughter for visitation, and the case has  
21 gotten so out of hand that my client has been compelled  
22 to leave the jurisdiction of the court with her child.  
23 There's no visitation. The rift in the family is  
24 greater than ever before, and it's largely due to the  
25 fact that there has been an intrusion into a family

1 unit, and I believe that this is a very sad state of  
2 affairs where the law comes in and can allow these  
3 types of actions.

4 Thank you.

5 CHAIRMAN CALTAGIRONE: Questions from the  
6 panel?

7 BY REPRESENTATIVE CLARK: (Of Mr. Vouga)

8 Q. Let me go over your case maybe as far as  
9 you would like to reveal it to us. I'm looking at the  
10 way the law is written now in front of me. Apparently,  
11 if you look at that law, in your situation there must  
12 have been some contact with that grandparent and that  
13 child prior to the application.

14 A. There was some at one point. However, in  
15 this particular situation there had been a period of  
16 over a year where there was no contact. However, at  
17 the trial court level, that particular argument was  
18 discounted based on the fact that the court believed  
19 from the testimony and the evidence provided that my  
20 client had deliberately withheld visitation and the  
21 court did not feel it appropriate to consider at that  
22 time the prior contact between the children.

23 Q. Okay. That was one test that the court  
24 applied that it needed to--

25 A. Correct.

1 Q. That the grandparent needed to establish  
2 that.

3 A. Correct.

4 Q. And how the court weighs the evidence in  
5 a case-to-case basis is something really the  
6 legislature can't control, to a large extent. You  
7 understand that?

8 A. Yes, I would agree with that.

9 Q. Okay. Number two, apparently the  
10 grandparent felt compelled to file some papers or  
11 something to see that child, to see the grandchild.  
12 And if the grandparent hadn't seen the child in the  
13 year before or for some reason, something must have  
14 triggered or caused that grandparent to feel that they  
15 needed some kind of contact with the grandchild and  
16 needed a court order to guarantee that, okay?

17 A. That's correct. There had been no -- my  
18 client was not allowing visitation -- well, let me  
19 rephrase that. My client did allow visitation, but it  
20 was not as frequent and as often as the grandmother  
21 desired it to be. There was a substantial amount of  
22 conflict between my client and her mother. My client  
23 decided that based on that conflict and different  
24 issues that were involved, that it was not in her  
25 child's best interest to have a substantial amount of

1 contact with her own mother. She believed that it was  
2 her right as a parent to be able to determine who her  
3 child would see and for how long and under what  
4 conditions. When this was not satisfactory to her own  
5 mother, then the lawsuit was filed.

6 Q. Okay. And the law as it's currently  
7 written now does not give that unfettered right to a  
8 parent to make that absolute decision on who that child  
9 will see and when they will see that person because  
10 they permit the court to come in and where there's some  
11 kind of prior contact, the court will permit those  
12 contacts to continue if they feel that it doesn't harm  
13 the child or is in the best interests of the child to  
14 continue?

15 A. That's correct. Unfortunately, the  
16 courts do not apply, do not make the constitutional  
17 determination of whether or not the parent is unfit or  
18 there's actually harm being done to the child. The  
19 best interests standard, unfortunately, most judges  
20 that hear these types of cases are either grandparents  
21 themselves or do not wish to be betrayed as being  
22 anti-grandparent. And I wish to emphasize that the  
23 problems that we have with this statute are not in any  
24 way to be construed as anti-grandparent but pro-family.

25 Q. All right. Can we pass legislation then,

1 or my opinion is we can't pass legislation to change  
2 the attitude of grandparents generally.

3 A. No, we cannot do that, but we can put  
4 legislation into place that can continue to protect the  
5 integrity of the family unit. Historically, the  
6 Supreme Court of the United States has made repeated  
7 decisions that have established the family unit as a  
8 protected interest. And the only time that there is  
9 any type of intrusion by the State permitted is when  
10 there is a compelling State interest. I submit that  
11 the best interests of the child standard does not rise  
12 to the level of a compelling State interest unless it  
13 is first proven that the parent or parents are unfit or  
14 there is a discernible harm being done to the child.

15 Q. Well, obviously previously the  
16 legislature has rejected your argument.

17 A. Obviously from the statute that is in  
18 place that would be correct.

19 Q. Okay. Then there appears that, number  
20 one, that a grandparent goes to court, shows prior  
21 contact, shows a desire to continue those contacts, and  
22 number three, the judge considers if that's in the best  
23 interest, or probably realistically he probably says  
24 what's the harm in permitting that previously  
25 determined prior contact to continue? And how is that

1 anti-family?

2 A. Because it is allowing an intrusion into  
3 the family. It's allowing the State to dictate to a  
4 parent who the child should be allowed to associate  
5 with. There has been -- the State, obviously, we have  
6 protected the family to the extent that the State would  
7 not come in and dictate where a parent would decide to  
8 send their children to go to church, what religious  
9 training they have, whether or not they should be with  
10 different neighborhood children, what schools they  
11 attend, whether it be a public school or a private  
12 school. The State, our Constitution and the courts  
13 have zealously guarded the family unit in allowing the  
14 parent and the parents to make those types of  
15 decisions. What we're doing here is allowing, we'll  
16 say, well, if it's in the best interest of the child,  
17 then the State can move in and dictate who the child  
18 can see.

19 Q. And basically following your argument  
20 through, you would prefer to do away with grandparents'  
21 rights absolutely because of the parents' 100-percent  
22 control who their child associates, who their child  
23 visits with and who their child sees? So you would  
24 probably, and I don't want to put words in your mouth,  
25 would ask that the rights of grandparents as they

1 currently exist be repealed?

2 A. From a historical and constitutional  
3 standpoint, yes.

4 REPRESENTATIVE CLARK: I have no further  
5 questions.

6 CHAIRMAN CALTAGIRONE: Representative  
7 Hagarty.

8 REPRESENTATIVE HAGARTY: Thank you.

9 BY REPRESENTATIVE HAGARTY: (Of Mr. Vouga)

10 Q. In your testimony you indicated that the  
11 bill could be interpreted to allow grandparent  
12 visitation possibly even in an intact family, and I  
13 wonder what section -- I think you may have referred to  
14 a section and I missed it. What section you're  
15 referring to and how that interpretation could be  
16 reached.

17 A. What I was referring to was in 5311(A),  
18 the general rule. What is proposed as a general rule  
19 is that visitation or partial custody can be awarded to  
20 a grandparent or great-grandparent if it's in the best  
21 interest of the child, does not interfere with the  
22 parent-child relationship, and one or more of the  
23 following conditions apply, and there are four  
24 provisions enumerated there. My concern was with the  
25 fourth provision where it states that one of the

1 parents joins in the petition with the grandparents or  
2 great-grandparents.

3 Q. Okay. So I understand your  
4 interpretation then. So your suggestion is that a  
5 couple could be perfectly happily married and the  
6 husband, for example, doesn't want the child to see the  
7 wife's mother but if the wife's mother joins with the  
8 wife, that the court could actually interfere an intact  
9 family?

10 A. Correct.

11 Q. And I would have to look at it again  
12 carefully. I would agree with you though that that has  
13 not been the intent of the grandparent visitation law  
14 to interfere with intact families.

15 My other question to you was your concern  
16 which I shared regarding (C) and the possible  
17 interpretation that this could lead to speedier  
18 expedited rights for grandparents than for parents. My  
19 other thought was it has been my experience, at least  
20 in drafting other legislation, that whenever we attempt  
21 to tell the court any matter of procedure they  
22 supersede us. I'm curious, do you agree that this is a  
23 matter of procedure and really cannot be legislated  
24 because the rules of the Supreme Court would supersede  
25 on this matter?



1           A.    Yes, I believe that would probably be the  
2 case.

3           Q.    Okay. Thank you.

4           CHAIRMAN CALTAGIRONE: Are there any  
5 other questions?

6                   (No response.)

7           CHAIRMAN CALTAGIRONE: Thank you.

8                   Dr. Andrew Vogelson.

9           DR. VOGELSON: Good morning. My name is  
10 Dr. Andrew Vogelson. I am a licensed psychologist in  
11 the Commonwealth of Pennsylvania and I specialize in  
12 helping people deal with issues around divorce,  
13 particularly child custody determination and  
14 grandparents' visitation. I am approved as a neutral  
15 professional for assisting the court in custody cases  
16 by the Family Law Committee of the Montgomery County  
17 Bar Association, and I have testified as an expert in  
18 custody before courts in Philadelphia, Montgomery,  
19 Bucks, Delaware, Lackawanna, Pike and Blair Counties.  
20 I am testifying today in support of Senate Bill 431. I  
21 would like to make several comments and suggestions for  
22 modification of this bill.

23                   Suggestions regarding grandparents and  
24 great-grandparents visitation. There is agreement in  
25 the professional literature that fostering the

1 relationship between children and grandparents is  
2 generally in the children's best interests.  
3 Grandparents may contribute to child development  
4 through their direct caregiving interaction, by  
5 providing stimulation and nurturance, and indirectly as  
6 a social support to the parents.

7           Pennsylvania law recognized that some  
8 factors may interfere with the ongoing relationship  
9 between children and their grandparents. These include  
10 when one parent dies or when parents divorce. Where  
11 there has been a good grandparent-child relationship in  
12 the past or when the child has resided with the  
13 grandparent for an extended period of time but there is  
14 now resistance on the part of a parent to support this  
15 continued relationship, Pennsylvania courts are now  
16 mandated to review situations and make rulings using  
17 the best interests standard as a key, as well as  
18 concern for possible interference with the parent-child  
19 relationship.

20           In certain circumstances, fostering the  
21 grandparent-child relationship may not be in the  
22 child's best interests. These include when  
23 grandparents' behavior or attitudes are inconsistent  
24 with acceptable child caregiving practices, or when  
25 there is a significant conflict between the

1 grandparents and the child's parent or parents. Under  
2 these circumstances, the potential benefits may well be  
3 slight. If severe intergenerational conflicts exist,  
4 regular contact between grandparent and child may even  
5 have a harmful effect.

6 In my professional experience, certain  
7 cases which get to the stage of litigation between  
8 parents and grandparents fall into that category where  
9 one might seriously question whether visitation will be  
10 in the child's best interests or will only further  
11 involve children in the adults' conflicts. That does  
12 not mean to say that in cases where there is conflict  
13 between parents and grandparents visitation should be  
14 denied categorically. Each family must be considered  
15 individually.

16 I have evaluated several families where a  
17 parent has died and the surviving parent remarried.  
18 These cases got to the point of litigation, in my  
19 opinion, because grandparents, who are always the  
20 parents of the deceased parent, had difficulty of  
21 accepting the restructuring of their grandchildren's  
22 families and the addition of a stepparent. They feared  
23 that their own child, the children's deceased parent,  
24 would be replaced and forgotten. I felt for these  
25 grandparents, but could also recognize that their

1 behavior was undermining the relationships of the  
2 children and their primary caregivers, their parents,  
3 be they biological, step or adoptive. Examples might  
4 include saying to your grandchildren, "You can never be  
5 happy when your mother dies." Or repeatedly comparing  
6 a stepparent to the child's deceased parent. In these  
7 and other intergenerational conflicts, family  
8 counseling may be ordered by the court and may be  
9 helpful in reducing the basis for these conflicts, thus  
10 permitting the resumption of grandparent-grandchild  
11 visitation.

12                   When parents and grandparents are unable  
13 to agree on a reasonable visitation schedule, the  
14 services of a qualified, independent mental health  
15 professional should be encouraged strongly or ordered  
16 to assist the court in gathering and evaluating  
17 relevant data.

18                   The courts face a delicate balance in  
19 attempting to recognize the emotional needs and legal  
20 rights of children, their parents, and grandparents.  
21 The relationship between children and grandparents is  
22 generally a valuable one. However, care must be taken  
23 to assure that if the court is to be supportive of this  
24 relationship for a particular family, it not result in  
25 interference with the parent-child relationship. My

1 experience is that when a parent goes so far as to come  
2 to court to object to a continuing relationship between  
3 their children and grandparents, it should be a signal  
4 to the court that they should look very, very  
5 carefully. Something may be happening which is quite  
6 important, and the decision that a judge makes will  
7 strongly affect the welfare of the children involved.  
8 Children look first and foremost to their primary  
9 caregiving parent or parents for guidance and support  
10 in their development. This relationship should not be  
11 undermined.

12                   The second set of suggestions and  
13 comments I would like to make are more general and they  
14 concern child custody determination. It was my  
15 impression that it fell within the general dictates of  
16 this bill, and I would like to present this brief  
17 material now.

18                   Pennsylvania statute notes that child  
19 custody should be what is in the best interests of the  
20 child, not interfere with the parent-child  
21 relationship, and assure a reasonable and continuing  
22 contact of the child with both parents following  
23 marital separation or divorce. It also supports  
24 sharing the rights and responsibilities of child  
25 rearing by both parents. However, unlike a number of

1 other States, relevant criteria to be considered in  
2 determining the most appropriate custody arrangement  
3 are not specified.

4 Psychological research, writings, and  
5 professional experience suggest a number of important  
6 factors which, if considered, would increase the  
7 probability of developing a custody arrangement that  
8 would foster a child's development optimally and assure  
9 the most reasonable continued relationship between the  
10 child and both parents.

11 Many of these criteria are known to  
12 judges and mental health professionals who conduct  
13 child custody evaluations for the courts. However,  
14 without clear standards and criteria, inadequate  
15 evaluations are at times conducted, and I fear judges  
16 may not always attend to all the factors we have reason  
17 to believe may be highly relevant in determining the  
18 best custody arrangement for a child.

19 Based on a review of the mental health  
20 and legal literature and personal experience, I would  
21 suggest the following criteria for consideration in  
22 custody evaluations and court determinations and would  
23 recommend that these be incorporated into this bill:

24 1. Each parent's sense of responsibility  
25 to the child.

- 1                   2. The mental stability and  
2                   psychological adjustment of each parent.
- 3                   3. The love, affection and emotional  
4                   ties between the child and each parent.
- 5                   4. Each parent's capacity and  
6                   disposition to provide the child with love, affection,  
7                   guidance concerning physical, emotional, moral and  
8                   educational development.
- 9                   5. Each parent's capacity to provide the  
10                  child with food, clothing, shelter, medical and  
11                  remedial needs.
- 12                  6. The length of time the child has  
13                  lived in a stable, satisfactory environment, and each  
14                  parent's ability to maintain continuity in the child's  
15                  relationship to peers, school and relatives.
- 16                  7. The permanence of each parent's home  
17                  as a family unit.
- 18                  8. The moral character of each parent.
- 19                  9. The physical health of each parent.
- 20                  10. Each parent's willingness to support  
21                  the child's continuing relationship with the other  
22                  parent.
- 23                  11. The parenting skills and sensitivity  
24                  of each parent.
- 25                  12. The parents' anger toward each other

1 and their ability to separate these feelings from their  
2 parenting behavior and attitudes.

3 13. The biological relationship when one  
4 parent is a stepparent or adoptive parent, also  
5 considering the length of time each parent has resided  
6 with the child and each parent's involvement in child  
7 caregiving.

8 14. Keeping siblings together.

9 15. The child's wishes, considering the  
10 child's chronological age and emotional maturity.

11 16. The child's psychological adjustment  
12 in the present residential or custody arrangement.

13 17. Any other factors deemed relevant in  
14 a particular family situation.

15 If parents are not able to agree on a  
16 reasonable custody arrangement, the court should  
17 strongly encourage or order the appointment of one  
18 qualified independent mental health professional to  
19 gather and evaluate data concerning both parents and  
20 children which are needed to make a considered  
21 recommendation on custody.

22 Thank you for giving me this opportunity  
23 to comment on Senate Bill 431, which is an important  
24 one for the children, parents and grandparents of the  
25 Commonwealth of Pennsylvania.



1 CHAIRMAN CALTAGIRONE: Thank you, Doctor.  
2 Questions?

3 Representative Hagarty.

4 REPRESENTATIVE HAGARTY: Thank you.

5 BY REPRESENTATIVE HAGARTY: (Of Dr. Vogelson)

6 Q. Somewhere early in your testimony I guess  
7 you indicated that each case having to do with  
8 grandparents needed to be considered on an individual  
9 basis, to which we all agree. Do you have any comment  
10 on the I guess presumption that our last witness  
11 indicated that is now in law that the statement that it  
12 is in the best interests of the children to have  
13 continual contact with their grandparent?

14 A. I think that it should be a presumption  
15 unless there is objection raised by the primary  
16 caregiving parents, at which time I think the position  
17 taken by the parents should be given prominence unless  
18 there is strong reason to feel otherwise. I think in  
19 the end it's the parents who the children are looking  
20 for for guidance and support primarily, and if that's  
21 undermined, a very difficult situation develops which  
22 is not going to be in the children's best interests.

23 Q. Do you feel that the way the language  
24 exists in the current law fosters that result or gives  
25 too much emphasis to a grandparent's position without

1 regard to a parent's objection, possibly?

2 A. My opinion, based on a number of years of  
3 experience in dealing with these cases, is on the  
4 surface the wording of the law makes sense, but in  
5 practice, the emphasis does not seem to be on  
6 recognizing the primary importance of parents and  
7 maintaining the parent-child relationship.

8 Q. So you feel that the families would be  
9 better served by a statutory, more a statutory  
10 recognition of that factor?

11 A. Yes. Of the parents' rights, yes.

12 Q. In your experience, I'm not familiar with  
13 what's happening in the courts on this issue. Are  
14 there many cases today in which grandparents are  
15 litigating custody rights?

16 A. My impression is that it is growing. My  
17 impression from reading the psychological literature  
18 and the legal literature is across the country there is  
19 a growing strength in numbers of grandparents seeking  
20 their rights when there are problems, and I'm not  
21 against grandparents having contact with their  
22 grandchildren.

23 Q. I understand.

24 A. Not at all. But when there are problems,  
25 I think it's very important that the laws state very

1 clearly that the situation must be considered and that  
2 if somebody has to be accepted, the first person's  
3 rights that should be accepted are the primary  
4 caregiving parents, in my opinion.

5 Q. You had mentioned in your testimony  
6 dealing with general factors that the court should  
7 consider when determining what is in the best interests  
8 of a child in a custody case that several States in  
9 fact enumerate factors for the court's consideration,  
10 and I'm not familiar with other States. Could you give  
11 me some States that do that? I'm interested in looking  
12 at what those factors are.

13 A. Sure. I believe the first State to do it  
14 was Michigan several decades ago, and this is  
15 considered a model law in this regard. I have provided  
16 the committee with copies of several articles on  
17 custody and grandparents' visitation which enumerate  
18 considerations that research has shown that judges and  
19 mental health professionals consider relevant. And the  
20 enumerated list that I have provided have taken all  
21 those into consideration to consider both custody and  
22 also shared custody considerations.

23 Q. So you believe the Pennsylvania courts  
24 would be better guided by a list of factors to consider  
25 when determining the best interests of the child?

1           A.    I strongly do.  And the reason I say that  
2   is most recently I've had several opportunities to  
3   compare evaluations done by other mental health  
4   professionals who have either been court appointed or  
5   have been approved by the courts as experts, and I was  
6   brought in because of my experience in doing  
7   evaluations, but I was very uncomfortable in having to  
8   go before a judge and present research on criteria that  
9   are considered relevant by mental health professionals  
10  across the country as well as in other States and point  
11  out how certain evaluations were very sorely lacking  
12  and inadequate because of that.  And I did not make  
13  comments about the conclusions drawn, which were the  
14  most important parts, but simply the method used to  
15  draw the conclusions was inadequate, and one reason it  
16  was inadequate was because there are no standards in  
17  Pennsylvania that state what should be in the  
18  consideration.

19           Q.    Are there any specific criteria that you  
20  believe the courts are using that are inappropriate or  
21  that other mental health professionals are using that  
22  are inappropriate?

23           A.    My first instinct is to say no, but one  
24  area that I had some difficulty in formulating my own  
25  wording had to do with the rights of adoptive or

1 stepparents following a future separation. And I think  
2 it's very important while the laws in most States seem  
3 to emphasize the primary importance of the biological  
4 parent, I think you really have to also look at the  
5 parenting involvement of each individual and the  
6 duration of that parenting involvement. Children know  
7 their parents not based on their biological origins but  
8 who has parented them.

9 Q. I agree. Thank you.

10 I had one other question. You had  
11 indicated that you thought it was important for the  
12 courts where there is a disagreement to appoint a  
13 mental health expert. Don't you find today that in  
14 most cases the courts do that? I mean, I'm just  
15 curious if they're not. It was my impression, and you  
16 had mentioned Montgomery County, that in almost every  
17 custody case in which there's a disagreement there is  
18 someone appointed, some expert to advise the court.

19 A. I think it varies greatly. Right now  
20 Montgomery County is doing a very fine job in that they  
21 have developed a list of experts. The courts tend to  
22 push to have one expert appointed. In many of the  
23 other counties this is not done for a number of  
24 reasons. It may be suggested rather weakly. It's not  
25 forced on people. There are issues about the expense

1 that may be involved and how that will be shared.  
2 Frequently, in some of the counties it's quite common  
3 for people to seek two different experts, each parent,  
4 assuming that the person who they retained is going to  
5 give a favorable recommendation, which may not be the  
6 case, and I think this should be discouraged.

7 Q. Thank you.

8 BY REPRESENTATIVE CLARK: (Of Dr. Vogelsson)

9 Q. As you went down over that list of 17  
10 items that you suggested be included in statute, many  
11 of those ring in my ears as currently contained in case  
12 law. Are those 17 items basically consolidating our  
13 case law? And if so, which ones are, and if not, which  
14 ones have you added to that?

15 A. Okay, not being an attorney, I really  
16 couldn't comment on that. I do try to keep up with  
17 case law in this area and I don't see any clear  
18 inconsistency, but I couldn't say with any authority at  
19 all.

20 Q. All right. I thought maybe in order to  
21 set the criteria when you interview parents or children  
22 or something that you had to maybe do research in case  
23 law and came up with 12 of these or something plus you  
24 had 4 or 5 of your own that you impressed upon the  
25 court.

1           A.    I think what I would be starting with, if  
2 I were beginning right now doing custody evaluations,  
3 would be criteria stipulated in the laws which don't  
4 exist in Pennsylvania.  The reference that most  
5 psychologists and mental health professionals refer to  
6 are the Michigan statutes, which are considered the  
7 model, and then additional research which has been  
8 conducted on what factors judges consider.  And there  
9 has been a rank ordering that's been done which I  
10 pretty well attempted to do in my list, and there have  
11 been research studies done on what mental health  
12 professionals find important, which generally is quite  
13 consistent with what judges do.  There are slight  
14 differences, and some of the articles that I presented  
15 have that in it.

16           Q.    My other question is, do you think that  
17 there's a problem with Pennsylvania law as it's  
18 currently written, the Section 5312, or do you feel the  
19 problem is more with the judiciary's interpretation and  
20 application of that statute?

21           A.    I really don't think I would be qualified  
22 to comment on that, sir.

23           Q.    All right.  Well, I go through this, the  
24 5312, and as I did with the last witness they talked  
25 about, well, the courts consider the amount of personal

1 contact. Number two, that when they have an order,  
2 they are to grant reasonable rights. You know. Number  
3 three, they are to do it in the best interests of the  
4 child. Number four, it's not to interfere with the  
5 parent-child relationship. It seems that the  
6 legislature has drafted guidelines at least in order to  
7 have these issues resolved, and my question is, you  
8 know, is it the problem that we have to reinvent the  
9 wheel here or is it the judiciary who's not following  
10 through on the advice in the legislation that's been  
11 passed by the legislature?

12 A. Okay. My reaction to that, quite  
13 honestly, is the words that you are giving, that are in  
14 the statutes are perfectly reasonable and clear. They  
15 are highly legal and in that regard very distanced from  
16 the human beings that you're working with, from the  
17 children and their parents. They fail to look at the  
18 interpersonal characteristics of the child rearing  
19 situation. Everything that you've said makes complete  
20 sense and is reasonable, but when it comes down to  
21 trying to decide who the primary caregiving parent  
22 should be, where should the home base for this child  
23 be, what arrangement is going to work best, whether it  
24 will be alternating weekends and so many continuous or  
25 discontinuous weeks in the summer, whose house, when



1 there can be a shift. There are a lot of subtleties  
2 that I think a more mental health evaluated orientation  
3 could assist the courts in providing, or for that  
4 matter that judges could look at. These are not just  
5 criteria that psychologists or social workers or  
6 psychiatrists can use.

7 Q. Then your thrust is that the judges need  
8 professional help from the mental health industry  
9 professions in order to come up with the proper  
10 visitation of the child?

11 A. Okay. I would partly say yes, and  
12 certainly--

13 Q. Because I'm afraid there would be some  
14 judges that aren't going to agree with that.

15 A. Okay. What I would say is there are  
16 certainly a range of judges, many excellent, excellent  
17 judges who are very experienced and who have this list  
18 right in their heads and I think use it. And when  
19 professionals go into court and can provide succinct  
20 testimony on these criteria for a judge, he or she is  
21 appreciative and makes use of it. There are some  
22 judges, in my experience, have not been that attentive  
23 to some of these type of human characteristics or  
24 criteria and rather have stuck just with the law and  
25 not always come up with a custody arrangement that

1 works best for children.

2 Q. And my impression is that the mental  
3 health professionals are brought into a case by the  
4 parties of the litigation, not the court.

5 A. That is sometimes true. In some  
6 counties, such as Montgomery County, when parties meet  
7 with the conciliator, if they are not able to agree to  
8 a reasonable custody arrangement, he usually recommends  
9 that they seek professional assistance to reach a  
10 conclusion or to, for that matter, develop an  
11 evaluation that if necessary will be used in court.

12 Q. And my impression is that once that  
13 evaluation is done and becomes knowledge to both the  
14 parties and both attorneys to those parties, that  
15 generally resolves the issue.

16 A. Not always. It would become the party--

17 Q. Generally. Well, then you come to the  
18 point where one party's bucking the tide, so to speak?

19 A. (Indicating in the affirmative.)

20 Q. And then you get into the problem where  
21 if that fellow has an attorney who has the time to go  
22 into court and that fellow has the money to pay him,  
23 then the case proceeds, bucking the tide, so to speak.

24 A. (Indicating in the affirmative.)

25 Q. So really, you know, these things can be

1 resolved, they can be reasonably resolved, but you get  
2 to a point in time where you have an unreasonable  
3 person or a person who wants to buck the tide on this  
4 thing and make their point right in court. And that, I  
5 think, is where you get into the whole rub, and that is  
6 why people then come to the legislature.

7 A. (Indicating in the affirmative.)

8 Q. Now, we can't change those peoples'  
9 attitudes. If someone wants his day in court and he  
10 can afford it and an attorney has the time to do it,  
11 that's going to continue to be done, I believe,  
12 regardless of what we write.

13 A. (No response.)

14 Q. I'm waiting for you to agree with me.

15 A. Okay. I can only partly agree with you.  
16 I really feel that in those situations, and those are  
17 the most uncomfortable because we know that the factor  
18 that most adversely affects children is conflict.

19 Q. Right.

20 A. And if we can avoid that conflict, we're  
21 doing every child a major service, and every parent,  
22 really. I don't think it helps anybody. I think if  
23 the criteria can be stated more clearly, then you will  
24 still avoid some of those conflicts which go to  
25 litigation, and if they get to litigation, the basis

1 for a determination will be more clear-cut.

2 Q. All right, thank you.

3 BY MR. SUTER:

4 Q. You testified that you support Senate  
5 Bill 431. Can you just give us an idea of why you  
6 support the bill? How does it improve the law, in your  
7 view?

8 A. Okay, my impression is that it is saying  
9 in terms of grandparents' visitation that this is  
10 generally good and should be supported, although there  
11 are times where grandparents should not be considered  
12 to continue to have the right to litigate for  
13 visitation, but it really should be up to the primary  
14 caregiving parents.

15 Q. So it establishes more criteria as far as  
16 when grandparent visitation should be permitted?

17 A. Yes.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 DR. VOGELSON: Thank you.

20 CHAIRMAN CALTAGIRONE: Mark Turetsky,  
21 attorney.

22 MR. TURETSKY: Good morning.

23 Mr. Chairman, members of the committee,  
24 ladies and gentlemen, my name is Mark Turetsky. I'm a  
25 resident of Montgomery County, Pennsylvania, where I

1 practice law. I'm a partner in the law firm of Miller,  
2 Turetsky & Rule, which is located in Norristown, and I  
3 am a member of the Bar of the Supreme Court of  
4 Pennsylvania.

5 I learned of this public hearing from my  
6 former clients, Jan and Dean Rodeheaver. I appreciate  
7 your gracious invitation to allow me to share my  
8 thoughts regarding Senate Bill No. 431, in particular  
9 its provisions amending Title 23 of the Pennsylvania  
10 Consolidated Statutes concerning grandparent  
11 visitation.

12 In my profession, I have what could best  
13 be described as a general practice with an emphasis on  
14 litigation. I've handled many custody trials and would  
15 suggest that any litigation in this area should at all  
16 times be avoided when possible, but should promote  
17 family harmony and benefit the children who, in most  
18 instances, are victims of failed marriages.

19 As we all know, the primary focus of a  
20 custody battle is to fashion an order which furthers  
21 the best interests of the child and maximizes the  
22 child's exposure to both its parents. It is the  
23 unusual case when grandparents or other third parties  
24 become embroiled in a custody dispute. I feel the  
25 circumstances when such intrusions are sanctioned

1 should be limited. The reasons must be compelling,  
2 otherwise the rights of the parents to raise their  
3 children as they wish as well as family harmony will be  
4 seriously jeopardized.

5           The Rodeheaver case is an example. What  
6 compelling circumstances justified a court to tell the  
7 parents that they had to give up their children to  
8 people who they viewed as strangers? Did the contested  
9 and rancorous battle benefit the children? And why  
10 simply because the children's mother and biological  
11 father were divorced did the current law take away the  
12 adoptive father's and mother's right to decide when or  
13 if the grandchildren would see the grandparents? Why  
14 were the Rodeheavers treated different than any other  
15 intact or fit family?

16           In short, I view the situation faced by  
17 the Rodeheavers as an assault on their right of privacy  
18 and equal protection under the law to enjoy the same  
19 rights of all parents to raise their children as they  
20 see fit. While I don't advocate the repeal of child  
21 abuse statutes, compulsory school laws or mandatory  
22 health measures, shouldn't parents have the right to  
23 decide who their children will associate with, who they  
24 will live with, the lifestyle they will be exposed to?  
25 Of course, there are limits to everything, but I feel

1 strongly that parents, like the Rodeheavers, should  
2 have the right to determine what role the grandparents  
3 will play in their children's lives, unfettered by  
4 governmental intrusion.

5           The experience that will be described by  
6 Mrs. Rodeheaver, who you will hear from, is truly  
7 tragic. Under the current law, the petitioning  
8 grandparents had standing, notwithstanding the fact  
9 that the Rodeheavers presented an intact family and  
10 were yet compelled to show cause why they should permit  
11 their children to have contact with the family neither  
12 parent had any interest in associating with.

13           The current law is a good example of good  
14 intentions gone awry. Because of my experience with  
15 the Rodeheavers, I commend the efforts taken by the  
16 legislature to amend the current grandparent visitation  
17 law, in particular the revisions limiting the  
18 situations under which grandparents can petition for  
19 visitation, especially in regard to situations  
20 involving adoptions.

21           The current law allows grandparents to  
22 petition the Common Pleas Courts for visitation under a  
23 variety of circumstances. The current law provides  
24 grandparent visitation in situations involving the  
25 death of the parent, the divorce of the parents, when

1 the child has resided with the grandparents, and even  
2 in limited situations where an adoption has taken  
3 place.

4 In the Rodeheavers' case, the children  
5 were adopted by a stepparent. The petitioning  
6 grandparents were not related by blood to either of the  
7 parents, yet under the current law they had standing to  
8 petition the court for custody. It is submitted that  
9 this is contrary to a parent's natural right to  
10 supremacy in the care and raising of their children.

11 The Rodeheavers presented an intact  
12 family and my comments are limited to an intact family  
13 situation. While I recognize the need to address  
14 situations involving parents who are not cohabitating  
15 or where one of the parents is deceased, I believe the  
16 proposed amendments are protective of traditional  
17 parental rights as well as the legitimate interests of  
18 grandparents.

19 The current law should be amended for the  
20 following reasons:

21 First, the Supreme Court of the United  
22 States, as well as the Supreme Court of Pennsylvania,  
23 have traditionally held that natural parents have a  
24 fundamental right to control the care, custody and  
25 management of their children. In the case of



1 grandparents seeking custody, a third party is seeking  
2 the court's assistance in interfering in a sacrosanct  
3 relationship. Generally, in all cases the parents  
4 strongly disapprove of the grandparents' involvement  
5 with the children. As an attorney who has read as many  
6 of the Pennsylvania cases that involved grandparents  
7 seeking custody or visitation of their children, they  
8 are all generally horror stories - deaths, car  
9 accidents, cancers. Anything that you wouldn't want in  
10 your house are in those cases when you read what the  
11 circumstances are and what these people are dealing  
12 with.

13           It would seem to me that to allow such an  
14 interference to take place there must be some  
15 compelling State interest. Since the common law  
16 grandparents had no right to interfere with the  
17 parents' custody, why should it be different in the  
18 situation when the children are adopted? Why should an  
19 adopting stepparent have less rights than a natural  
20 parent to decide who the children will have contact  
21 with? This is inconsistent with the purposes of  
22 adoption, and it is a decision that all parents should  
23 be free to make absent some compelling State interest.

24 At the present time, the grandparents' wishes alone  
25 should not be deemed a compelling State interest.

1           Second. It seems fundamental that when  
2 push comes to shove, the parents' decision regarding  
3 who the child should associate with must take precedent  
4 over the wishes of the grandparents. Since our society  
5 imposes upon parents and not grandparents the  
6 obligation to care and support their children, the  
7 current law undermines these responsibilities by taking  
8 away from the parents their right to decide which third  
9 parties, even when such third party is a grandparent,  
10 may have contact with their children.

11           In most families, the child-grandparent  
12 relationship is an integral part of growing up. But  
13 when things sour, should a court impose its will in  
14 what is a private and personal matter? People enjoy  
15 longer lives these days, so it is the unfortunate child  
16 that isn't growing up with grandparents. This is still  
17 not enough of a reason to recognize a right in the  
18 grandparents to sue their children for visitation or  
19 custody of the grandchildren. In the context of the  
20 parent-child relationship, the parents and not  
21 grandchildren should be free to decide the parameters  
22 of the child-grandparent relationship. The idea that a  
23 court should intervene and patch things up between the  
24 parents and grandparents is pure folly. When you have  
25 a custody fight between parents and grandparents, you

1 have two parties whose hatred toward one other is so  
2 settled that all that is achieved is additional rancor  
3 which further fuels the hatred. Putting the children  
4 through this for no other reason than the grandparents'  
5 belief that the parents are no good or they love their  
6 grandchildren and want to see them is pathetic. This  
7 is a terrible legacy to grow up with, and as in the  
8 Rodeheaver case was unnecessarily caused by the right  
9 given the grandparents under the present law to sue for  
10 custody.

11           If the parents of an intact family,  
12 whether natural or adopted, say no to grandparents,  
13 their word should be final. While the grandparents'  
14 concern may or may not be benign and positive, the law  
15 has no right to second guess the parents' decision.  
16 Can it ever be in the best interests of the children to  
17 participate in a nasty contest between the parents and  
18 the grandparents?

19           Third. While it is clear to me that the  
20 current law was adopted with a belief that the  
21 relationship between children and their grandparents is  
22 generally a rewarding and sound relationship which  
23 should be fostered, I have never experienced a more  
24 bitter, rancorous or painful proceeding than one waged  
25 between parents and grandparents. In the Rodeheavers'

1 case it was traumatic, financially devastating, and I  
2 believe created scars which will never heal.

3           The current law creates unnecessary  
4 hardship. While a situation involving a divorce  
5 frequently involves a custody battle between two  
6 parents, was it really necessary for the legislature to  
7 open the door to parent-grandparent clashes which serve  
8 no purpose? In these cases, the relationship between  
9 the parents and grandparents is usually beyond hope,  
10 and the idea that some good will follow by granting  
11 jurisdiction in the Courts of Common Pleas to enforce  
12 grandparents' claims for custody is a mistake.

13           Certainly, in the normal scheme of things  
14 children benefit from their grandparents. They learn  
15 about family traditions, they learn old ways, old  
16 customs, and grandparents are a connection to the  
17 child's past. They are also babysitters. In the  
18 situation where the parents and grandparents do not see  
19 eye to eye, the parents should be free in the exercise  
20 of their parental rights to decide whether or not their  
21 children should have contact with their grandparents.  
22 The suggestion that by means of legislation or by  
23 access to the courts this problem can be solved is pure  
24 lunacy. A forced relationship never succeeds.  
25 Litigation involving a child should be avoided at all

1 costs, and the proposed amendments are a step in the  
2 right direction.

3           The current law mistakenly elevates  
4 grandparents' rights above those of the parents. This  
5 has resulted in many unhappy and unnecessary battles  
6 damaging to all the concerned parties. Grandparents  
7 who cannot see or have contact with their children  
8 ought to be pitied, but this is not a problem for the  
9 legislature, it's a purely family matter.

10           Senate Bill No. 431 as amended limits  
11 those instances when a petition by a grandparent can be  
12 filed to situations where the parent's marriage is  
13 dissolved, where the parents are separated, or one of  
14 the parents is deceased, or if one of the parents joins  
15 in the petition with grandparents. These are  
16 situations where the child's best interests may be at  
17 stake. Furthermore, the exceptions appearing in  
18 Section 5314 provides positive protection in the event  
19 of an adoption by an individual not related to the  
20 biological grandparents of the child. The amendments  
21 promote privacy, the rights of the parents and family  
22 harmony.

23           I know there will be some unhappy  
24 grandparents, but the law cannot be all things to all  
25 people. If the best interests of the child is to be

1 furthered, avoidance of a custody battle between the  
2 parents in an intact family situation and the  
3 grandparents is certainly in the best interests of the  
4 child.

5 Now, I had the benefit of hearing the  
6 testimony given by my colleague from Butler County, and  
7 I believe his comments regarding the particular  
8 sections of the act are very well taken. My direction  
9 and my feeling is really directed toward the situation  
10 involving adoptions, where I feel the old law clearly  
11 created a situation which was inconsistent with the  
12 adoption laws in Pennsylvania. Mrs. Rodeheaver will be  
13 able to fill you in on the details of her case. I  
14 could, but she lived through it and I think her  
15 testimony will be a bit more compelling.

16 But we had a situation where there was a  
17 final adoption and on the very day that that adoption  
18 went through the petition for custody and visitation  
19 was filed in Montgomery County. They were under the  
20 belief that once you've got an adoption you've severed  
21 all relationship between the biological father as well  
22 as his parents and grandparents, and so forth, and when  
23 you sat down and read our old law, that is just not the  
24 case.

25 In Montgomery County, Pennsylvania, we

1 have a custody conciliator, Mr. Bullet, and we were in  
2 front of Mr. Bullet. He said, "I'm reading this act  
3 and I think it cuts it off." And I had told my  
4 clients, I said, "You know, I understand what Mr.  
5 Bullet is saying, but I wouldn't take that to the  
6 bank." When we went in front of the judge, he was of  
7 the opinion that, he said to me, "Mark, you know, I  
8 hear your constitutional articles and I know you don't  
9 hate grandparents, but my hands are tied. The way this  
10 law is written, it seems to me thatt if it's in a  
11 stepparent adoption, those grandparents, even though  
12 they are not related by blood, can come in and petition  
13 for custody."

14 So those are my comments. I appreciate  
15 the opportunity to have a chance to read the bill and  
16 give you my thoughts on it, and I would suggest that  
17 with some of the suggestions that my colleague from  
18 Butler County suggested that the amendments represent a  
19 reasonable compromise, and I would urge your support  
20 for this needed legislation.

21 Thank you.

22 CHAIRMAN CALTAGIRONE: Representative  
23 Hagarty.

24 REPRESENTATIVE HAGARTY: Thank you.

25 BY REPRESENTATIVE HAGARTY: (Of Mr. Turetsky)

1           Q.    You're satisfied then with the language  
2 in the adoption section that it accomplishes the policy  
3 purpose you've stated?

4           A.    I think it does.  I probably could write  
5 the language a little clearer by simply forbidding the  
6 filing of a petition where the child has been adopted,  
7 period.

8           Q.    I was a little concerned because I read  
9 it a couple times and I was not 100-percent sure that  
10 it did that.

11          A.    I believe it says that but it's sort of  
12 cockeyed.  It comes in backwards.  What you may do, and  
13 I certainly don't have your experience as legislators,  
14 but the Adoption Code might want to be amended to make  
15 it very clear that when a child is adopted in  
16 Pennsylvania, it is the same as the natural child and  
17 you cut off the rights, just as you cut off the rights  
18 of the father who in this case agreed to terminate his  
19 parental rights, and they cannot inherit from the  
20 father's line and so forth.  Why do you then open the  
21 door for these people who say, you know, we love these  
22 children and we miss them, let's go to court.  I think  
23 it's a balance, and I think the parents and the intact  
24 family should win on that balance.  It's unfortunate,  
25 but I think that's the way it is.  It's tough to call.



1           Q.    I think looking at the Adoption Act is a  
2 good suggestion.

3                    I had one other question.  You agree then  
4 -- well, let me -- in your testimony you indicated that  
5 these situations as limited by this bill are okay and  
6 you said that one of them -- or you recited one of the  
7 situations being that if one of the parents joins in  
8 the petition with the grandparents.  Do you share the  
9 concern of the prior speaker, two speakers back, I  
10 guess, that that could be interpreted to allow  
11 grandparent visitation of an intact family?

12                  A.    I do because, frankly, it wasn't brought  
13 to my attention until I heard that testimony.  And when  
14 I originally looked at it, you would have the situation  
15 of not an intact family but a parent and a grandparent  
16 in a divorce or some situation where the parent who was  
17 against it was sort of on the outs and then you had a  
18 parent who wanted contact and the grand -- I didn't  
19 look at it the way the gentleman from Butler County  
20 did.

21                    One thing, when you talk about an intact  
22 family, I also think in terms of fit parents in any  
23 circumstance.  Even if you had a situation where there  
24 was a deceased parent or a divorce or a separation, if  
25 the one parent or the two parents are fit parents and

1 they are not child abusers and there's no reason why  
2 the arm of the State should go into their house and  
3 sort of tell them how to do things, the grandparent  
4 petition should be bounced right out of the courthouse.  
5 Tough. They are a happy family. For whatever reasons,  
6 you know, that should be the law, what they say.

7           One of the constitutional issues that I  
8 raised but never went anyplace was the idea that in  
9 let's say my family, my wife and my children live a  
10 happy life. Neither of us are deceased, there's no  
11 divorce, we just live as happy as a family can live.  
12 The law makes no provision for my parents or my wife's  
13 parents coming in and saying, well, we're not seeing  
14 the kids enough, so we want to file a petition. I  
15 found that to be a violation of their equal protection  
16 right. In other words, especially in the situation of  
17 an adoption, what's the difference?

18           Q. I agree.

19           A. Just because I'm adopted, where do you  
20 come off coming in? If you're going to allow the  
21 grandparent visitation and you have a lobby or you have  
22 doctors who say per se contact between the grandparents  
23 and the children is always in the best interests and  
24 you can prove that, well, maybe you have a compelling  
25 State interest. But I don't think you do. I think we

1 still, at this late date, at the end of the 20th  
2 Century, parents have control over the children. They  
3 are the caregivers and their rights should be  
4 respected. And we have a lot of lobbying force placed  
5 upon legislators, and I know there are a lot of  
6 grandparents and people are members of AARP and so  
7 forth, but still, I think the protection should be on  
8 the family, the intact and fit family. They shouldn't  
9 have to go to court. They shouldn't have to be  
10 evaluated. They shouldn't have to answer to the  
11 question of who's a better parent, who's a fit parent,  
12 and so forth.

13 So those are my concerns, and I don't  
14 know that I found many cases that talked about that,  
15 but it was something that I noticed right off the bat  
16 when I sat down with my clients and heard their story.

17 Q. Thank you.

18 A. Thank you.

19 BY MR. SUTER:

20 Q. Doesn't leaving that section in, that  
21 Section 4, address your equal protection claim because  
22 then the intact family would have a means of taking it  
23 to court if one parent agrees?

24 A. Could I have that question again, Mr.  
25 Suter? Section 4--

1 Q. On page 4 at the top of the page, number  
2 4, leaving that section in addresses your equal  
3 protection claim because it's an intact family where  
4 one parent agrees that the grandparents should have  
5 rights--

6 A. I wouldn't view that as an intact family  
7 because that to me means you have one parent that  
8 agrees and the other parent doesn't.

9 Q. But intact as far as they're together.

10 A. Well, I can't tell. Well, 1, 2, and 3.  
11 Yeah. To me, where you have a situation of mother and  
12 her parents versus father, that's not an intact family  
13 to me. You've got a lawsuit there, you've got  
14 plaintiff versus defendant.

15 Q. But what about the situation that was  
16 raised earlier where the parents are together and  
17 mother sides with her parents that the grandparents  
18 aren't seeing the kids enough? Doesn't that address  
19 your equal protection claim?

20 A. No. The equal protection claim that I  
21 was talking about is that under the current law, intact  
22 families were treated differently than adoptive  
23 families, and that's the distinction I made, that there  
24 was no entry into that family under the current law.  
25 Okay? Looking at number 4, after listening to the

1 speaker from Butler County, I would agree with him.  
2 The more I think about this, and I'll be honest with  
3 you, I haven't given it all that much thought.

4 Q. Neither have I until now.

5 A. Yeah. That could be a scary lawsuit when  
6 you have an intact family that you've described where  
7 the husband and wife are living together happily but  
8 they have this one little lawsuit pending which  
9 involves the mother and her parents suing the father  
10 over the issue of we'd like to see the kids every  
11 Friday night for dinner. I mean, I just don't think  
12 this is an area where the courts should tread. Only in  
13 cases where there is a compelling State interest, where  
14 it really, truly is in the best interests of the child  
15 to get involved, but the current law opens the doors up  
16 for all sorts of problems, particularly with people  
17 that have gone through the adoption process and to find  
18 out that they've only got maybe 95 percent of the  
19 rights that they thought they had with this adoption.  
20 And it really subjects them to an unfair pressure on  
21 the part of strangers to them, and that's not the way  
22 our law should be.

23 I mean, you can come up with all sorts of  
24 ridiculous extensions of these arguments that I'm sure  
25 none of us are perfect parents and there may be people

1 out there that would probably do our kids good to  
2 associate with, but those people don't have standing to  
3 come in and say, you know, I could do good for these  
4 kids. It just doesn't work that way. That's why we  
5 have variety in our society and why all people are  
6 different within that bell-shaped curve of normal  
7 behavior, and that's what makes us a great society. So  
8 I really think your limitations are good. The old act  
9 has to be amended.

10 Q. Thank you.

11 A. Thank you.

12 CHAIRMAN CALTAGIRONE: Dr. James Gillock.

13 DR. GILLOCK: Let me say that I do not,  
14 I'm not going to be reading from the prepared  
15 statement.

16 My name is James B. Gillock. I have  
17 lived through one of -- I've lived through an  
18 experience similar to what you have heard testimony to  
19 already. I just happen to be a licensed psychologist  
20 whose practice is limited to child and family problems.

21 I'm here today to speak to you not as a  
22 psychologist, however, but as a person who has lived  
23 through this experience.

24 Without going into unnecessary detail, I  
25 would like to share a few of the highlights of my

1 experience. My first wife was diagnosed as having  
2 cancer when she was seven months pregnant. In order to  
3 make a reasonable attempt to save her life, the child  
4 was born prematurely. At four days of age, the child  
5 just about died, but due to modern day medicine and the  
6 miracles inherent with that, the child survived and is  
7 free of any longstanding problems. The child was on  
8 oxygen for the first year of his life. My wife died a  
9 year later. I was told by the doctors that there was  
10 no hope for her, and indeed they were correct.

11 Up to the death of my wife I enjoyed a  
12 very positive, supportive, albeit somewhat distant  
13 relationship with my in-laws. They lived in Oklahoma,  
14 and we would visit once or twice a year for weekend  
15 visitation. They never got involved in my marriage.  
16 They were everything that in-laws were supposed to be -  
17 they were supportive, they were there when I needed  
18 them. However, things did change once my wife passed  
19 away.

20 I had accepted the medical doctor's  
21 prognosis that my wife was terminal. In my opinion,  
22 her parents, my in-laws, did not. I believe they were  
23 in a state of denial, and when my wife passed away, I  
24 was ready to get on with my life. I was the sole  
25 parent of a 3 1/2-year-old and a 1-year-old who was

1 just off oxygen that was needed to sustain life.

2 I found a very wonderful person, we got  
3 engaged relatively quickly, and in about eight months  
4 we were married. The moment we walked into our home as  
5 a married couple, the problems had started. Our  
6 in-laws were babysitting for us while we were on our  
7 honeymoon and our 3 1/2-year-old had informed us, he  
8 was very upset, very angry, and he was so excited when  
9 we went away because my wife -- he was going to have a  
10 new mommy. He had this concept that we were going to  
11 go away and I was going to buy him a new mommy. For a  
12 3 1/2-year-old I thought that was okay. But he was  
13 delighted to have a new mommy and he was really looking  
14 forward to that.

15 When we came back, he was very upset. We  
16 asked him what the problem was, and he had informed us  
17 that his grandmother had told him that my new wife was  
18 not going to be his mommy, that he had a real mommy and  
19 she was dead. He let us know that he thought we were  
20 liars because we had told him that we were going to --  
21 he was going to have a mommy when he came back, but his  
22 grandmother told him that wasn't so.

23 The situation progressed. Obviously, and  
24 I think one would have to ask one's self as a new  
25 spouse, a reasonable person would have to ask



1 themselves, what am I getting myself into? This is a  
2 hornet's nest. Why should I bother to stay? There's  
3 just no positive way this is going to come out.

4 My wife and I, you know, from the moment  
5 we walked into our house had conflict because of this  
6 situation. Nevertheless, I had promised my in-laws  
7 that there would be visitation, and somewhat  
8 reluctantly I have to admit I agreed to send the  
9 children out with somebody they knew to visit in  
10 Oklahoma that summer. The very last thing I remember  
11 saying to my father-in-law was, you know, to give them  
12 the phone number of the facility that we were staying  
13 at, a resort in the Poconos, and asked them to please  
14 call me if there were any problems.

15 I did get a phone call the day we  
16 returned not alerting me to a problem but very  
17 matter-of-factly stating that the children were not  
18 coming home on time, that it just so happened that my  
19 youngest, the boy with all the medical problems,  
20 Russell, was in the hospital and the doctors needed my  
21 insurance information and they wanted to ask me some  
22 questions about his medical history.

23 To make a long story short, they had  
24 taken it upon themselves to medicate my child on two  
25 separate occasions without my knowledge or consent,

1 choose a hospital without my knowledge or consent, and  
2 it just happened to be a general adult hospital when a  
3 perfectly fine children's specialty hospital was a half  
4 hour down the road, and mind you this was a child who  
5 had severe medical problems for the first year of his  
6 life, and medical problems that persisted thereafter.

7           Fortunately, he did not have any  
8 significant problems. The information they wanted from  
9 me was whether or not my son had his appendix out  
10 because as a result of his early medical problems he  
11 had had his gall bladder removed and the scar for the  
12 gall bladder is very close to where a scar for an  
13 appendix would be. They took it upon themselves to  
14 hospitalize the child without having that important bit  
15 of medical history, and a surgeon was ready to cut my  
16 son open because he thought there was an appendicitis,  
17 regardless of whether or not he knew about the scar.  
18 Fortunately, I did alert them to the fact that it was a  
19 gall bladder and indeed he did have an appendix and  
20 this might be a problem. I was very fortunate, the  
21 boy's health stabilized. We were able to get him back  
22 immediately. Even after I had gotten the doctor's  
23 consent to have the boy taken out of the hospital, the  
24 boy's grandparents tried to extend his stay. I wanted  
25 to get him back, checked by our doctors and make sure

1 he was okay. We finally did get him back.

2 After several months passed, the conflict  
3 was very much there. I was actually supportive of my  
4 in-laws, more so than my wife. I had known them  
5 longer. They were very supportive and I was, due to my  
6 experience being emotionally distraught, stressed out,  
7 having my life turned upside-down, I actually supported  
8 my in-laws more emotionally than my wife. I thought  
9 she was being overly sensitive to some of the issues.  
10 The more we talked about it, the more I talked to my  
11 son, the more I realized that the final straw was the  
12 hospitalization, and I just realized that something was  
13 wrong with these people. They had done a completely  
14 irrational thing and I just had to chalk it up to a  
15 grief reaction on their part. So at that point I  
16 wrote them a letter and informed them that I could not  
17 trust their judgment and that I was going to have to  
18 cut off, for a time being, the visitations to Oklahoma.  
19 And then at that point there was a legal suit.

20 You know, there were a number of  
21 questions with previous witnesses as to where the  
22 breakdown is, is it in the law or is it in the judicial  
23 interpretation of the law? My opinion is both. The  
24 law does provide for intact families to be sued. When  
25 we were sued, we actually went to court after the

1 adoption was passed and that didn't stop the suit. I  
2 think one has to understand that I had gone through the  
3 death of my spouse, whom I -- my first spouse, whom I  
4 loved dearly, the near death and subsequent illness of  
5 my son, and then the minute we walked into -- my  
6 current wife and I walked into our house as a married  
7 unit we were attacked, or my son was attacked. And the  
8 law encourages grandparents to file suit. It does not  
9 discourage them. There's nothing mandated in there for  
10 mediation or for counseling. And when we had our day  
11 in court, the Bucks County judge who was to hear our  
12 case refused to hear it. He informed our attorney that  
13 if we did not settle, that he would see to it that the  
14 grandparents got more visitation than they were asking  
15 for, and that he would not allow any restrictions for  
16 us to place on the visitation.

17           And of primary concern to us was due to  
18 my son's respiratory difficulties that were a result of  
19 his early life problems, his grandmother was known to  
20 me as a smoker for all the time I knew her, a very  
21 heavy smoker, and we do not allow nor would we ever  
22 encourage him to be in the presence of a smoker, and at  
23 that point I felt it was absolutely necessary for me to  
24 have some control over the visitation, to see to it  
25 that his grandmother did not smoke in front of him. I

1 had no choice but to settle in what was a very, I  
2 think, inappropriate settlement to protect my son.  
3 That just left the door open and encouraged me to file  
4 suit a second time, which I did.

5           So this is a family, an intact family  
6 that is economically privileged, as I think  
7 educationally privileged, and I can tell you from my  
8 personal experience that this shook me to the core of  
9 my being. That I couldn't imagine that the  
10 grandparents could do this to us. I couldn't imagine  
11 that there was the legislation that would allow it, and  
12 I couldn't imagine that there was the judicial  
13 insensitivity to my reality. All I ever wanted to do  
14 was to provide a supportive, loving, intact family for  
15 my children, and I can say to you that my experience  
16 has shaken me to the core, and I believe that what I'm  
17 doing today is perhaps the most important thing I've  
18 ever done in my life. I consider myself privileged to  
19 be here, and I thank you very, very much for allowing  
20 me this opportunity to testify.

21           Before I conclude, I would just like to  
22 say that I think the most important thing in the  
23 current bill, and I do support Senate Bill 431, but I  
24 think the most important aspect of this bill is the  
25 protection for adoptive families. I believe that the

1 way the legislation is currently written that people in  
2 my situation are less than in the eyes of the law, that  
3 the rights to the grandparents have not been cut off.  
4 The grandparents can continue to attack, and with the  
5 way the current legislation is written,  
6 great-grandparents can continue to attack intact  
7 families who have already been devastated by divorce,  
8 or in my case the death of a spouse. I believe that  
9 newly formed adoptive families need protection, and  
10 that aspect of the law I think is the most important  
11 aspect of the current Senate Bill 431, the protection  
12 for newly formed adoptive parents, cutting off the  
13 grandparents' rights.

14           You know, unfortunately, there are no  
15 responsibilities that grandparents have that are  
16 written in this law. I would like to see some  
17 responsibility for trying to settle matters through  
18 mediation or counseling. That issue is not addressed.  
19 I believe the way the current legislation is written  
20 actually encourages grandparents, in the event of a  
21 dispute, to go to court, and I don't feel that the  
22 answer will be found in the courts. I believe that  
23 parents such as myself need protection, and the  
24 protection needs to come from the law.

25           I don't know that I have anything more to

1 say. I will certainly do my best to answer any  
2 questions that you might have.

3 CHAIRMAN CALTAGIRONE: Thank you.

4 (No response.)

5 CHAIRMAN CALTAGIRONE: Thank you for your  
6 testimony. We certainly appreciate it.

7 We will break for lunch at this time and  
8 be back at 1:00 o'clock.

9 (Whereupon, the proceedings were recessed  
10 at 11:50 a.m., and were resumed at 1:00 p.m.)

11 CHAIRMAN CALTAGIRONE: We'll have Steven  
12 Lees.

13 MR. LEES: Good afternoon.

14 My name is Steven Lees. I'm one of the  
15 fathers that's been involved in a grandparent  
16 visitation lawsuit, so like the gentleman testifying  
17 just before me, I have a horror story to talk about,  
18 and without going into a whole lot of detail because in  
19 the prepared materials, if you choose to take the time,  
20 you can probably write a book based on it, except  
21 nobody would believe it.

22 Essentially, when my daughter Abigail was  
23 13 months olds, my first wife died of complications  
24 from leukemia. And it was a very difficult time for  
25 all of us, and difficulties ensued from that which

1 ultimately resulted in the maternal grandparents suing  
2 my wife Kathy and I for rights under the Grandparent  
3 Visitation Act.

4           Before I get into that, however, I did  
5 want to just briefly address some comments made by  
6 speakers this morning, if I might. The initial speaker  
7 today, I believe, spoke of the, and I'm hopefully close  
8 to quoting, sad disintegration of the family from  
9 within. I respectfully disagree about that. At least  
10 I'm speaking for my family, and I think the other  
11 parents similarly situated here today would disagree  
12 also that the family is not, at least our family is not  
13 and has not been disintegrating from within. It's  
14 being intruded upon, at least we feel, by the State  
15 from without. And it's been very difficult for us.

16           I believe that the first speaker also  
17 assumed that adoption would cut off the grandparents if  
18 the proposed legislation is passed as proposed. I do  
19 not believe that is true. Adoption would place the  
20 grandparents in the same position as the grandparents  
21 of the adopting mother and of the natural father, and I  
22 don't think it's a terrible thing to be in the position  
23 of a normal grandparent, with all due respect.

24           I do support Senate Bill 431, so does my  
25 wife. We hope that you will see that it gets passed,



1 that there will be no dilatory amendments. I think,  
2 and I really believe from my firsthand experience in  
3 this area that the legislation that you have now, if  
4 there has to be legislation, is as close as you're  
5 going to come to perfection, and I do hope that it does  
6 pass.

7 A couple other miscellaneous points.  
8 Throughout the morning we talked about visitation,  
9 visitation, visitation. The truth here is that the  
10 issue is custody, because that's the real intrusion  
11 upon the parents' rights. That's just an issue I  
12 wanted to point out. I'm sure you're already aware of  
13 it. I support, of course, the positions of my brother  
14 attorneys from Montgomery County and Butler County, and  
15 in that regard I've given a photocopy of an article  
16 that I found very interesting, the Kathleen S. Bean,  
17 there's a summary of an article by Kathleen S. Bean,  
18 B-E-A-N, who is a scholar on not only family law but  
19 also constitutional law, and she raises/addresses the  
20 constitutional questions of the Grandparent Visitation  
21 Act in the context of the Pennsylvania statute and  
22 citing both Pennsylvania and United States Supreme  
23 Court law.

24 There are several quotes in here that I  
25 think are very helpful. In the interest of time I will

1 not read you all of the squibs, but I think there's one  
2 that's particularly compelling to me, one or two.

3 One says that according to the author,  
4 Supreme Court cases demonstrate that the constitutional  
5 rights of parents have been, in effect, transferred to  
6 the family. So that when you're talking about the  
7 family unit, the mother and the father, they have a  
8 right of privacy to run the family the way they see fit  
9 as long as they are fit parents, and any undue  
10 intrusion upon that violates the 14th Amendment of the  
11 United States Constitution.

12 The other important quote that I just  
13 wanted to point out and I feel very strongly about is  
14 that the author also contends that judicial intrusion  
15 interferes with family autonomy. The courts are  
16 inappropriate forums for making decisions concerning  
17 the best interests of the child and are incapable of  
18 supervising or making decisions concerning such  
19 interpersonal relationships, and believe me, as one who  
20 has been there, they are incapable of making such  
21 decisions. And that's not the fault of the  
22 legislature, that's not the fault of statute. Quite  
23 frankly, in many cases it's the fault of the judge.

24 I'd like to move on now to the prepared  
25 materials that I have.

1           We appear before you today as victims of  
2 the provisions of the current Grandparent Visitation  
3 Act. The "we" before you today includes not only my  
4 wife and myself, but also our two daughters, Becca and  
5 Abigail.

6           Our daughter Abigail, the subject  
7 grandchild in this case, will be 8 years old eight days  
8 from today. Kathy and I have been married for little a  
9 little over five of those eight years. During that  
10 time, it is only during those few months when I took a  
11 stand with the maternal grandparents refusing to permit  
12 unsupervised overnight visits at their home that we  
13 were able to make any progress in bonding as a nuclear  
14 family. This stance precipitated the litigation,  
15 primarily because the grandparents refused to accept  
16 our offer of ongoing visitation. They wanted more than  
17 visitation, they wanted custody, which has had us in an  
18 emotional roller coaster ever since.

19           Although we have finally freed ourselves  
20 from the choke lock of the Grandparent Visitation  
21 Act-sanctioned court intrusion into our lives, we have  
22 not done so because the statute is either well-drafted  
23 or well-administered. We are instead out of court at  
24 the whim of the grandparents. They apparently did not  
25 want to deal with the issue we raised concerning their

1 constant emotional battering and verbal abuse of our  
2 daughter. Accordingly, they withdrew the case.

3 The critical point here, however, is that  
4 they did not withdraw the case until after enjoying  
5 court-sanctioned custodial and visitation privileges  
6 which gave them license to work their emotional and  
7 verbally abusive "head trips" for another solid year of  
8 our young daughter's life.

9 As a result, my wife and I have had to  
10 put all of our resources, both emotional, physical and  
11 financial, into defending this attack upon our would-be  
12 family. We have irretrievably lost the happy,  
13 innocent, and joyful interaction most parents enjoy  
14 with their children. Kathy may never -- (pause) excuse  
15 me. Kathy and Abby may never bond the way a mother and  
16 daughter normally do. It just may be too late.

17 Under the current act, the grandparents  
18 can reinstate the case at any time. We believe the  
19 proposed legislative changes now before you will serve  
20 the best interests of families such as ours. It is not  
21 my intention to debate who has the greater loss - the  
22 grandparents losing a child -- the parent in this case  
23 -- or the parent losing a spouse. Obviously, it is  
24 devastating from either perspective.

25 In the context of the deceased parent's

1 family, however, the impact upon the nuclear family is  
2 clear: One-half of the parent part of the family has  
3 been obliterated. The family functions at a reactive  
4 subsistence level seeking stability and constructive  
5 community support.

6           When the surviving parent in a family  
7 situation such as this ultimately meets and falls in  
8 love with another parent, as I was fortunate enough to  
9 do, perhaps the biggest challenge known to mankind  
10 faces them - blending families.

11           The proposed amendments before you today  
12 recognize that where a surviving spouse with a child  
13 remarries and the new spouse adopts the child as his or  
14 her own, then the law should throw no impediments in  
15 front of or between the spouses and their child or  
16 children to impede or impair that limited amount of  
17 time available for new parent-child bonding.

18           We have never said nor are we now saying  
19 that grandparents whose child is deceased should have  
20 no rights to see their grandchild. We are simply  
21 saying that they should have no greater rights than the  
22 grandchild's other grandparents, both natural and  
23 adoptive.

24           As each of you can see from the packet in  
25 front of you, my wife and I have assembled documentary

1 information which sets forth in some detail the  
2 chronology of significant events from the time of my  
3 first wife's death in October of 1984 through this past  
4 summer. While I believe it would be invaluable for  
5 each of you or your aides to read these materials in  
6 toto, we recognize your time is precious, and I would  
7 therefore like to take the remainder of my time to  
8 point out the most significant items in the materials,  
9 including excerpts from an audio tape of a conversation  
10 I had with Abby, my daughter, last February 16th, made  
11 only several hours after her last visit with her  
12 maternal grandparents.

13           The first thing I just wanted to point  
14 out, and this gives you an idea of the kind of mind set  
15 problems there can be in terrible devastating  
16 situations like this, and I'm the second one before you  
17 today who's talked about a spouse with a tragic death  
18 and a small child, so I'm sure we're not unusual.

19           At page 6 of the parents' pretrial  
20 memorandum, I found out while we were counseling with  
21 our minister about something that just literally blew  
22 me away, and I'm quoting from page 6, the first full  
23 paragraph, about the middle of it. "During six hours  
24 of counseling, parent Steve was shocked to learn from  
25 Pastor Keppley," that's my minister, "that on the day

1 his late wife died, grandparents had telephoned various  
2 of his parishioners, trying to find someone who had any  
3 'dirt' on parent Steve; they were looking to make a  
4 case that he was an unfit parent so they could adopt  
5 Abigail." So this wasn't something that just evolved  
6 overnight, it had been fomenting for quite some time.

7 As I said, there's a lot of detail here,  
8 and I will skip that in the interest of time. I do  
9 want to point out a statement made by Dr. Vogelson, who  
10 coincidentally was our court-agreed expert. Both  
11 parents agreed to him as an impartial expert, although  
12 the grandparents did not agree to his report, hence the  
13 court hearing. Dr. Vogelson says on page 4 of his  
14 report, the bottom of the page, last paragraph, "I am  
15 concerned about the current state of this child. I  
16 feel that there are a number of developmental issues  
17 which need attention at this time if she is going to  
18 prosper. It is vital that everything be done to foster  
19 the healthy restructuring of her nuclear family." And  
20 this was back in October of 1989.

21 It's been known since that that this has  
22 been a problem, and I think now you know why my voice  
23 quivers when I talk about this. As you will also soon  
24 hear, our child's psychologist, whose name is Ziffer,  
25 Z-I-F-F-E-R, reaches this same conclusion again in

1 March of 1991. The experts all agreed here. Many of  
2 these experts testified before the judge, but the judge  
3 apparently did not hear them, and that is just a  
4 travesty of justice, in my opinion.

5 Moving ahead, there is a document called  
6 "Memo: Abigail S. Lees. Subject: Developments Since  
7 start of visitation/partial custody. Date: 2/27/91."  
8 And I think some of these items are very helpful to see  
9 what developed in this situation.

10 July of 1990, during Churchville visit,  
11 that's our home, the maternal grandfather and the uncle  
12 were yelling at Kathy, my wife, and making a scene on  
13 the lawn out in front of the house. The grandfather  
14 almost hit Kathy. Abby was very scared and crying.

15 December. Abby cried, held onto dad's  
16 leg and begged him not to make her go. She was afraid  
17 she would be kidnapped.

18 February. Teacher gave material and  
19 class picture to make valentine for mom and dad. Abby  
20 makes hers for her grandparents. She cried later,  
21 upset when she realized that she hadn't followed the  
22 instructions. She said while crying, "I just want to  
23 be like the other kids."

24 February 16, this is the one I have a  
25 transcript of and which I would like to play the tape



1 for you from. It's a conversation with me only three  
2 hours after her last visit with the maternal  
3 grandparents, and in particular she expressed a fear of  
4 kidnapping, that the grandfather told her he wanted to  
5 take her away, that the mommy she has now isn't the one  
6 they planned for her to have, et cetera. Fear that  
7 they will never come back if she doesn't do what they  
8 want her to do. And then there are these two dolls  
9 that were her late mother's, a Shirley Temple and  
10 Chatty Cathy that we have in storage, and they told her  
11 that we had sold them because we didn't care about her.  
12 Also telling Abby that her old mommy was smarter and  
13 got better grades than my wife, and attempts to cause  
14 conflicted loyalties.

15 I'll just quickly get to the end of this  
16 and then jump back to that tape.

17 February 24, there was a phone call by  
18 the grandparents. Abby wasn't home. When she came  
19 back home we told her to call them back. She grabbed  
20 my leg again and said, "I'm scared they'll kidnap me."  
21 I assured her that they couldn't grab her through the  
22 phone, and she did call them.

23 February 25, Abby told me that her  
24 girlfriends were talking about their moms at recess on  
25 the playground. Her friend Bonnie asked if any kids

1 had a mom that died. Abby replied that she did, that  
2 her grandma and Pap-Pap said her daddy gave her old  
3 mommy the disease that killed her, but that that was a  
4 lie.

5 Then February 26, Robert Ziffer, Ph.D.,  
6 is and has been Abby's child therapist since August of  
7 1989. He is aware of what has been transpiring since  
8 the resumption of visits last August and is convinced  
9 that such unsupervised visits are unquestionably not in  
10 the best interests of the child. Dr. Ziffer is very  
11 upset about the danger of continuing any unsupervised  
12 visits, that Abby is demonstrating high anxiety about  
13 the visits.

14 Then lastly, I have, and it's one, two,  
15 three, four, five, the sixth page from the bottom on  
16 the back. I apologize for not having these numbered.  
17 It's a letter from Dr. Ziffer to Judge Rufe, who was  
18 the judge who heard this case, and I will just read  
19 highlights of it. I won't read the whole letter.

20 "Dear Judge: I am writing to you to  
21 express my serious concerns about the current  
22 visitation arrangement between Abigail Lees and her  
23 grandparents....

24 "I saw Abigail today in my office and she  
25 relayed to me her fears that her grandparents would not

1 return her after a visit. She stated that during her  
2 last visit with them she was told that they wanted her  
3 to stay with them permanently. She was quite  
4 frightened by this initially, and presently is mildly  
5 afraid, reassured only by the fact that she feels they  
6 would be arrested if they tried. This is not a healthy  
7 source of comfort for a small child. She also stated  
8 that her grandparents tell her things about her parents  
9 that are quite hurtful and confusing. An example she  
10 relayed was that she was told that objects from her  
11 natural mother's childhood were sold at a yard sale  
12 before her death. This causes Abigail significant  
13 distress as it makes her feel that her parents might  
14 not value her natural mother. This can seriously  
15 impact on the bonding between Abigail and Kathy. I  
16 feel that such messages from her grandparents are  
17 detrimental to Abigail's sense of security and  
18 stability and raise questions in my mind about the  
19 current visitation arrangements."

20 The last thing is the last page, and  
21 that's a letter from Dr. Richard P. Kluft, F.A.P.A. I  
22 wish I had a curriculum vitae on this man. He is the  
23 Director of Dissociative Disorders Program of the  
24 Institute of Pennsylvania Hospital. He is a nationally  
25 known expert on multiple personality disorders, and the

1 only one who has done research with children. And he  
2 examined our daughter and has spoken with her and wrote  
3 this letter as a result of reviewing materials and  
4 having talked to our daughter, and I will skip the  
5 first part of the letter down to the fourth paragraph  
6 at the bottom of the first page.

7 "Putting all available information  
8 together, it appears that she was so conflicted by the  
9 pressures put upon her by her grandparents' efforts to  
10 impose a point of view in opposition to the one she  
11 experienced with you," the parents, "that she had used  
12 her dissociative capacity to withdraw into herself in  
13 an attempt to create an alternative self to handle this  
14 turmoil. However, this appears to be in the process of  
15 resolution in the main with the discontinuance of  
16 contact with her grandparents. She seems motivated to  
17 improve her behavior with you and is optimistic about  
18 her future. You and she are hopeful that things will  
19 continue to improve and are taking a 'vacation' from  
20 therapy over the summer.

21 "Your child indeed has dissociative  
22 capacities and indeed may well have had incipient  
23 childhood MPD....In view of the chronic disruptive  
24 nature of the contact with the grandparents, it is easy  
25 to empathize with your preference for no further

1 contact with them. From all that your daughter said,  
2 it appears that the pressures they put on her are very  
3 unfortunate and cause her great inner pain and  
4 conflict."

5                   If you would flip to about the middle of  
6 the document, hopefully you'll find the transcript of  
7 the conversation I had with my daughter. You'll see it  
8 says Steven, Abby, Steven, Abby down the left margin.  
9 And what I would like to do, it's the seventh page down  
10 on the back side. I apologize. Like I said, I just  
11 excerpted because the actual original tape runs  
12 somewhere in the area of 20 minutes. I've cut that  
13 down significantly, you'll be glad to know. I feel  
14 it's very important that you hear this because this is  
15 my daughter speaking, and you can hear in her voice  
16 what all this has done or is doing to her.

17                   It starts the one, two, three, four,  
18 fifth page, the one at the top where it says "Steven:  
19 Did it make you feel angry...." That's the page where  
20 it starts. I'm going to start down at the line for  
21 Abby where it says, "And like, they just, and when they  
22 were about to hit mommy..." that right there. I guess  
23 that's enough of a lead-in to get you going. I hope  
24 everyone will be able to hear this.

25                   (Whereupon, a tape recording was played.)

1           MR. LEES: If you will skip the next one,  
2 two pages to the page where at the top it says "Abby,"  
3 and she's saying "Well..." with a whole bunch of dots  
4 after it. That's where I would like to pick up and  
5 then that would conclude my testimony.

6                           (Whereupon, a tape recording was played.)

7           MR. LEES: Thank you.

8           MS. COOGAN-LEES: Steve has spoken to you  
9 about our situation and the horrors of it all, and I'd  
10 like to talk a little bit about our values and beliefs  
11 about marriage and about myself as an adoptive mother.  
12 I adopted Abby in February of 1987, five months after  
13 we got married. I didn't have to do this. I did this  
14 because I didn't want her growing up feeling like a  
15 tag-along person in this relationship. In our society  
16 there are so many children who have halves and steps and  
17 this and that, it gets mindboggling, and I wanted her  
18 to know that although she hadn't come from my body that  
19 I loved her and that I was making a commitment to her  
20 separate from my commitment to the marriage.

21                           And I'm not unique. Many men and women  
22 in the situation have done the same thing. They've  
23 been willing to assume physical and spiritual and  
24 emotional responsibility for a child they did not bring  
25 into this world but one that they love and they're

1 willing to take on the awesome responsibility of  
2 parenting.

3           When you adopt a child, the birth  
4 certificate is reissued with your name as the parent on  
5 the certificate. I can't tell you what a powerful  
6 feeling it is to open your mail and have the  
7 certificate with your name all of a sudden appearing  
8 that you were somewhere on a certain date giving birth  
9 to someone, you know, and there's a part of you that  
10 goes, no, I wasn't there that day, you know, but it's  
11 very validating of the responsibility you've taken on.  
12 And our whole lifetime that birth certificate is being  
13 asked for. It's a way of saying who this person is and  
14 who was instrumental in how they've become the person  
15 they are today. If the child has problems in school,  
16 if their homework is not done, if they forget their  
17 lunch, if they are having emotional problems, the  
18 parents are called in to answer for this, and often in  
19 our society it's mom who gets called in. If they're  
20 sick, you're on the phone with the doctor, you're up  
21 all night. The job of parenting is an exhausting one  
22 and also one that's very rewarding.

23           With a child like Ab, who has had  
24 emotional problems because of this five years of  
25 torture we've been going through, part of parenting has

1 meant putting aside my full-time career as a clinical  
2 social worker and only taking on part-time professional  
3 responsibilities so that this child could have  
4 consistency. There would be time with mom. She  
5 wouldn't be wondering all the time, because as you can  
6 hear, she's very unsettled now. Five years into this  
7 relationship she still is very confused about who is  
8 what.

9           The reason I've done this, the reason  
10 Steve and I take this responsibility of parenting so  
11 seriously is because we've learned this from the  
12 society we live in. We come from a legal and a moral  
13 tradition in this country that says that a man and a  
14 woman leave their parents, leave their family of origin  
15 and form a new family. There are religious dictates to  
16 this effect that many of us have been raised on. And  
17 when you make that commitment and you come together,  
18 one of the purposes is for parenting. The nuclear  
19 family is formed. And yes, there are grandparents and  
20 aunts and uncles and wonderful people that are part of  
21 their extended family, but that small nucleus is where  
22 it all starts, and that's the primary part of it.

23           We can study society from earliest times  
24 and in each generation parents form a combination of  
25 how they were parented and what the latest theories and



1 opinions of the day are, and that's why in the past all  
2 babies were breast fed, then everybody was bottle fed,  
3 and now we're back to a combination. Each generation,  
4 whatever the subject, whatever is important in  
5 parenting at that time, each generation gets to mull  
6 that over and decide and take into society their views  
7 and their values. There are sitcoms on TV that kind of  
8 poke fun at it because it's prevalent everywhere.

9           And each generation has the right and the  
10 responsibility to find their own answers. Not only for  
11 parent-child relationship but many of us in this day  
12 and age see situations where a spouse is terminally  
13 ill, it's been spoken of a number of times here today,  
14 and that relationship of marriage traditionally and  
15 legally is so considered as one in our society that  
16 when life supports have to be turned off, when  
17 decisions about medical treatment have to be made,  
18 maybe that person who's ill's own parents are still  
19 alive and they certainly have opinions and concerns  
20 about their child's medical care. They may have  
21 children who know what's going on and have opinions.  
22 But the bottom line is the spouse ends up with the  
23 moral and the awesome responsibility of making these  
24 decisions. And we're asking for no less in our family  
25 than being allowed to make decisions for our child, to

1 be able to raise our child in a way that will send her  
2 off into the world with all the stability she can have.

3 Many people spoke about conflict today,  
4 and when there is conflict between parents and  
5 grandparents, it's very unsettling to a child,  
6 especially a child who has had a parent die. No matter  
7 how young they were when the parent dies, they grow up  
8 knowing that they had a parent who died, and all of a  
9 sudden adults who are supposed to be superheroes to  
10 little children and have all the answers to everything  
11 aren't quite as powerful as children need them to be,  
12 so they learn from a real young age that mom and dad  
13 can't do everything. Most children at least get  
14 through preschool before they have to deal with that  
15 reality, but these children who have lost a parent know  
16 from a very young age that there isn't anyone who is in  
17 that total control of life.

18 When grandparents sue for custody rights,  
19 as has been said before, there is conflict, or else it  
20 would have been resolved on their own. Part of the  
21 documents talk about years of us trying to find  
22 resolutions. Meeting with ministers, coming to where  
23 they were meeting with their minister, negotiating,  
24 trying, negotiating, trying. It was not a whim that  
25 led us to decide that this just wasn't working for our

1 child and we had to pull back. Actually, it's one of  
2 those times when as parents we were called in and told,  
3 your child is bright, beautiful, she'll be at the head  
4 of every class; socially and emotionally she will be a  
5 misfit for life and she won't have friends unless you  
6 can start doing something for her. What is going on in  
7 your life that this child is coming to school in this  
8 condition?

9           And God bless that teacher, because she  
10 was willing to go out on a limb and look at our whole  
11 child and not just at her academic work. And that gave  
12 us the impetus and the courage to really start looking  
13 at things and making some decisions.

14           When you think of a child's sense of  
15 stability, this little girl has been told, your daddy  
16 had the disease that killed your mom, and the mom you  
17 have isn't really real. What do you do when you're  
18 that little and the two people you live with day in and  
19 day out really are people who can kill people and who  
20 aren't really real? I mean, children are young. They  
21 don't understand the world and what it does to them in  
22 terms of where they can turn. It's horrifying.

23           And often when children have a new parent  
24 come in like this there's a natural resentment. I  
25 mean, they've had mom or dad alone and all of a sudden

1 there's somebody else on the scene, and who wants to  
2 give up any attention in life? We as adults don't, and  
3 certainly children don't. So when grandparents say  
4 very negative things or do actions that are negative,  
5 the children are ready to buy that, especially in the  
6 beginning because they're not too thrilled to have this  
7 new person anyway. So as an adoptive parent, you do  
8 come in with a couple strikes against, you and I mean  
9 that's okay. You know that's what you're taking on.

10 But for five years now we've been a  
11 victim of the emotional abuse that has been put onto  
12 our child. And she's so unstable. When she's feeling  
13 close to me she tells people that her old mother beat  
14 her with a spoon. She didn't know her old mother. And  
15 I sit down and I explain, no, your old mommy loved you.  
16 She didn't want to die. She had a disease. She'd be  
17 real happy that you have someone to love and take care  
18 of you now. And when she's feeling pulled between the  
19 grandparents, she won't even look me in the face.  
20 There's no eye contact. She won't pass the salt at  
21 dinner. She shuts down totally. And this is the  
22 seesaw this child has been on. And this is the seesaw  
23 we have been on.

24 I think it's an incredible miracle of  
25 life that this marriage is intact, that we're together.

1 I think it's a miracle, as my daughter, who's almost  
2 20, from my first marriage said to me a few years into  
3 this marriage, "You know, Mom, you're lucky that I'm  
4 not an acting outside kid or I'd be pregnant or on  
5 drugs by now because this place is a zoo." And what  
6 could I say but, well, thank you, I'm glad for your  
7 stability. And it's funny, but it's also tragic  
8 because that kid got lost in the shuffle. I'm glad she  
9 was as stable as she was, but I hurt that, you know,  
10 the last few years of her parenting she didn't get all  
11 that she needed, and she certainly didn't get all that  
12 she deserved. But, you know, I've been blessed by  
13 having her around long enough that we've weathered it  
14 and we're doing well with it.

15 I beg of you, when you look at these  
16 bills and look at making these decisions, and you must  
17 feel like Solomon because we have not lightly come to  
18 the point of not letting this child see her  
19 grandparents, but when you try to make these decisions,  
20 I just hope that you'll err in favor of a child if  
21 there has to be any error, because if you grant  
22 grandparents' rights, the best that's going to happen  
23 for our children is they're going to have more people  
24 in their life who love them and want to be with them.  
25 And that's great. It's wonderful to have more. We can

1 all use all the loving people we can get. But at the  
2 worst you'll end up with a child like Abby who has no  
3 innocence, who has not had any sense of stability in  
4 her life, who ends up with specialists in  
5 multipersonality disorders. It's horrifying as a  
6 parent to live with a child and not have control over  
7 their stability like this, to work so hard as parents  
8 to get them to therapy, to get the lawyers to fight all  
9 this and watch years go down and watch the diagnosis  
10 gets worse and worse for this child.

11 So when you look at this amendment, I  
12 hope you'll think about the children and give them a  
13 chance for some healing and a chance for them to have  
14 some security and innocence before it's too late,  
15 because these early years are so formative for them as  
16 individuals, for us as a family.

17 Thank you.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Jan Rodeheaver. And I don't know if  
20 you've gotten Marilyn's testimony.

21 MS. RODEHEAVER: No, I didn't.

22 CHAIRMAN CALTAGIRONE: Okay. We'll  
23 accept Marilyn's testimony. An emergency has come up  
24 and she will not be able to appear here today, but when  
25 we do get it we will transmit it for the official

1 record.

2 MS. RODEHEAVER: Thank you.

3 CHAIRMAN CALTAGIRONE: And if both of you  
4 would please identify yourself for the record here  
5 today.

6 MS. RODEHEAVER: Okay. Good morning, Mr.  
7 Chairman of the Judiciary Committee, ladies and  
8 gentlemen. This is my husband, Dean. My name is Jan  
9 Rodeheaver. I brought along my attorney, my new  
10 attorney, Mrs. Joan Stuart, and also Mark Turetsky you  
11 heard from earlier.

12 The existing grandparent legislation has  
13 taken an unjust toll on my family. That is why I am  
14 here today. To give this committee some insight into  
15 what my family has had to go through, I would first  
16 like this opportunity to tell you about my case and  
17 other cases I have researched that have been touched by  
18 grandparent legislation.

19 In my case, the biological father, not  
20 wanting the responsibility of fatherhood, voluntarily  
21 consented to terminate his parental rights and the  
22 legal father and I were able to adopt my two biological  
23 sons to bring stability and tranquility to our lives.  
24 Due to the past conflicts and circumstances with the  
25 biological father's parents, we, the legal parents,

1 wanted to eliminate the tension and disruption in the  
2 parent-child relationship and family harmony. We were  
3 led to believe after the adoption we would be able to  
4 start our new family without interference. Our new  
5 family consisted of our two sons, a biological  
6 daughter, as well as two sets of loving grandparents  
7 my parents since the children's birth, and my husband's  
8 parents, who love and treat our children as flesh and  
9 blood. There are also aunts, uncles, cousins - the  
10 perfect all-American family.

11 Being adopted myself over 22 years ago at  
12 the age of 6 from Seoul, Korea, I thought I knew the  
13 adoption laws. Unfortunately, the day after the final  
14 adoption, we received a petition for visitation by my  
15 ex-in-laws. Although legally they are strangers to my  
16 husband and I, they were still able to force us into  
17 court under the Grandparents Act, Section 5312, when  
18 parents' marriage is dissolved or parents are  
19 separated. This broadly, undefined written section  
20 does not specify which marriage. Yes, I divorced their  
21 son, but not the legal father of the petitioning  
22 children. To our amazement, the petition had no  
23 mention of adoption, nor included the legal father in  
24 the suit, and the names of the children were wrong.

25 Mark Turetsky, our lawyer at the time,



1       tried to convince the court that there was an adoption.  
2       The new birth certificates with the new names of the  
3       children named my husband and I, the parent since  
4       birth, makes their family a new intact family unit and  
5       the terminating side should not be allowed to  
6       interfere. To no avail, we were bluntly told by the  
7       lower court that we had no rights whatsoever to just  
8       cut off all ties, even though there was an adoption,  
9       due to the existing Grandparents Act.

10               We could not believe how we, the fit  
11       parents, were treated like criminals. This court  
12       shifted the burden of proving best interests from the  
13       third party to the parents. The court treated the  
14       third party as custodial parents after a divorce and  
15       focused the best interests of their needs over the  
16       family unit. Not only were we denied our rights,  
17       concerns, and wishes, the third party was granted  
18       everything they asked. An evaluation was also  
19       requested by my ex-in-laws, which the judge granted.  
20       We were against it only because we could not afford it.  
21       Again we were denied and we were ordered to pay towards  
22       the cost. When the evaluation was completed and the  
23       court felt we paid the \$900 in an unsatisfactory amount  
24       of time, we were found in contempt. Knowing we drained  
25       our children's bank accounts to pay the cost, a week's



1 to the hostility and resentment on both sides being so  
2 high, everything is handled through the attorneys. We  
3 have not spoken directly to each other in years.

4 Another case I have researched in Pennsylvania besides  
5 the Diesinger's case was a case involving a mother and  
6 a child. They fled Pennsylvania to avoid visitation  
7 with her own mother, leaving behind their home, family,  
8 and friends.

9 In other States there have also been  
10 problems with their grandparent legislation. Wisconsin  
11 State Supreme Court on April 20, 1990 decided "Adoption  
12 has the effect of severing all rights of adoptive  
13 child's birth family to child. It was not the intent  
14 of the legislature to allow grandparent visitation  
15 rights after a stepparent adoption. Stepparent  
16 adoption establishes identical status that exists  
17 between natural parent and child. Allowing paternal  
18 grandparents' petition to obtain visitation rights  
19 would be at odds with adoption status purpose of  
20 severing all rights of father and his family to the  
21 child. The mother and the adoptive father, not the  
22 courts, are to determine whether visitation is in the  
23 child's best interests."

24 Another case regarding stepparent  
25 adoption, May 23, 1990, the Supreme Court of Wisconsin

1 held that grandparents have no rights to visitation  
2 privileges following termination and adoption.

3 Finally, my research led me to Illinois.  
4 January 1st of this year the State passed a law  
5 protecting stepparent adoption and a new Grandparents'  
6 Act. Both passed with flying colors. I have enclosed  
7 a copy of the Illinois Bar Legislative Advisory for  
8 your convenience.

9 The consistent similarities in all the  
10 cases that are touched by Grandparents' Act are the  
11 legal costs, taking time and money away from the  
12 children and families. Lower class, however, can get  
13 assistance from the State. The upper class are  
14 financially able to handle the legal costs. But most  
15 families, like ours, are considered middle class and  
16 cannot get State assistance nor can afford it alone.  
17 Due to three long years of litigation, my husband has  
18 to work six to seven days, 60 to 70 hours a week second  
19 shift, that conflicts with our boys' school schedule,  
20 to help pay the legal costs that has escalated to about  
21 \$20,000 so far. We still owe at least \$8,000.

22 We're wondering how much damage and  
23 suffering can a family take before a court considers it  
24 not in the best interests of the children? That is why  
25 I am congratulating Pennsylvania for following the

1 footsteps of other States that have changed its laws on  
2 this issue and are listening to the concerns and  
3 objections of parents who have been forced into  
4 visitation, leaving the families powerless and empty.

5 After studying Senate Bill 431, I feel there are many  
6 benefits that will protect the majority, limiting the  
7 circumstances for forced visitation.

8           However, I urge this distinguished panel  
9 for one final amendment. Section 5314 needs to be  
10 retroactive - legally, morally, and fundamentally  
11 protecting all adoptive families past and present that  
12 have been unfairly affected due to the existing act.  
13 My family and other families should have the same  
14 constitutional protection under this new law if passed.  
15 We should not have to suffer for the rest of our lives.

16 The Senate, having passed this bill 48 to nothing, must  
17 agree that stepparent adoptions should be protected. I  
18 suggest a public notification on all affected parties  
19 be informed of this new law if and when it does pass.  
20 Let these families decide whether or not the next  
21 scheduled visitation will be the final termination. If  
22 so, inform the third party to use that opportunity to  
23 break all ties. It will be used as a final goodbye.  
24 Unfortunately, this is the only way all adoptive  
25 families will be legally protected from interference to

1 start a new life.

2 I understand, in fairness to the  
3 grandparents who have had visitation, this House would  
4 like to amend pending adoptions as an exception as well  
5 as send notification of the pending adoption. As I  
6 told Representative Armstrong, I understand his  
7 intentions to prepare for the final termination, as  
8 long as visitation will not jeopardize or delay the  
9 adoption proceedings in any way, and it is not the  
10 intent of the notification to give access or power to  
11 stop the adoption.

12 I feel grandparent legislation should be  
13 protecting children, not grandparents and/or third  
14 parties. The grandparents lived and raised their  
15 children as they saw fit, so when they petition the  
16 courts for visitation to further their best interests  
17 and benefits is when they abuse their rights.

18 The courts should be preserving the  
19 parent-child relationship whenever possible. The State  
20 registers no gains towards its declared goals when it  
21 separates children from the custody of fit parents.  
22 Children are not a piece of furniture to pass around  
23 and fight over. They need security, stability, and a  
24 sense of belonging. Forced visitation only causes  
25 hostility and resentment. How is this in the best

1 interests of our children?

2 In the event of a divorce or death, it is  
3 traumatic and devastating enough on a family without  
4 having to worry about the consequences and threat of  
5 being sued for visitation by one's own parents. Being  
6 shifted back and forth by the parents and grandparents  
7 is bad enough, and by allowing great-grandparents to  
8 petition for visitation is excessive and unnecessary.  
9 That is why I agree with this House to omit  
10 great-grandparents to this act.

11 The interpretation and language has to be  
12 consistent without contradicting our overpowering  
13 adoption and/or other laws. The family is the basis of  
14 our society and State interference cannot take away  
15 parents' authority in fit families. If so, the United  
16 States Constitution's 14th Amendment due process clause  
17 and the Commonwealth of Pennsylvania's Declaration of  
18 Rights will be denied.

19 Parents are not unsympathetic to  
20 grandparents, but in touching the intact family, the  
21 act has taken away the liberty and property of a  
22 citizen who has not been proven guilty of a crime. The  
23 parents need to have the legal protected right to make  
24 fundamental decisions that affect the family. Parents'  
25 rights are more important than grandparents' rights,

1 with the exception of grandparents whose grandchildren  
2 have been abused, neglected or abandoned. Then the  
3 grandparents need and deserve the right to go to court.

4 In closing, again, I urge this panel to  
5 consider the final amendment to make Section 5314  
6 retroactive, giving families like ours protection that  
7 we were denied by the existing act. I hope the changes  
8 in Senate Bill 431 will end the pain and suffering of  
9 these families. Help stop the forced separation of our  
10 children every time there is a scheduled visitation.  
11 Keep brothers and sisters, parents and children  
12 together. Our 3 1/2-year-old biological daughter would  
13 thank you. Please pass this bill, which is more  
14 appropriate in our free country than the existing act.

15 I thank you for your time, consideration  
16 and opportunity to speak to you today. With special  
17 thanks to Ken Suter; Representative Armstrong; and also  
18 Representative Godshall and his staff; Mrs. Joanne  
19 McGreevy, Senator Jubelirer's staff, who is working  
20 with Senator Pecora; and Elaine of Representative  
21 Robert Wright's office. Thanks to these special  
22 people, I have had the privilege of being informed of  
23 Senate Bill 431 and its progress. Being here is proof  
24 one citizen, no matter who you are, will be heard.

25 Thank you. Oh, may I make one final



1 note?

2 CHAIRMAN CALTAGIRONE: Sure.

3 MS. RODEHEAVER: As I was listening to  
4 the panel ask some of the witnesses questions, the  
5 question kept coming up about courts with the  
6 evaluations, court-ordered evaluations. I would like  
7 to note that court evaluations are nice, but as in my  
8 case, and many other cases that I have heard of, the  
9 court may order evaluations, parents have to pay  
10 towards this evaluation. But in a lot of these cases,  
11 the judge will just totally dismiss it. So I feel as  
12 though that if they are going to order an evaluation,  
13 that they have to use that kind of recommendation or  
14 use some of it. I don't think it's fair that they say,  
15 okay, here, pay \$900 towards this evaluation, but after  
16 reading it it may not like what they see and say, well,  
17 I'm going to totally disregard it. And that is what  
18 has happened in many cases.

19 Thank you.

20 CHAIRMAN CALTAGIRONE: Dave.

21 REPRESENTATIVE HECKLER: Thank you, Mr.  
22 Chairman.

23 BY REPRESENTATIVE HECKLER: (Of Ms. Rodeheaver)

24 Q. Just one question. I'm not sure that I  
25 clearly understood. What is the relationship of the

1 grandparents--

2 A. The third party?

3 Q. --in your particular circumstance who are  
4 asserting the rights under the existing law?

5 A. Yes. The third party are the biological  
6 grandparents before adoption. My ex-husband  
7 voluntarily consented to terminates his parental  
8 rights. He did not want the responsibility of  
9 fatherhood.

10 Q. Um-hum.

11 A. His parents were aware of the pending  
12 adoption before my ex-husband. They waited until the  
13 day after the final adoption, then they petitioned the  
14 court.

15 Q. Okay. Okay. Thank you.

16 A. Thank you.

17 CHAIRMAN CALTAGIRONE: Thank you.

18 MR. SUTER: Thank you.

19 CHAIRMAN CALTAGIRONE: Russell Diesinger.

20 MR. DIESINGER; Mr. Chairman, members of  
21 the committee, ladies and gentlemen. Let me first  
22 apologize to all of you. Most of the public speaking I  
23 do is from my feet, so this is going to be an unusual  
24 experience for me.

25 I'd like to preface my statements by

1 saying that I hope that all of you, as I have, have  
2 heard the stories and the issues that are raised here  
3 today in this public hearing. They are of grave  
4 concern to me, perhaps more than others, because I've  
5 lived through a very similar situation, but I find most  
6 of them to be appalling - appalling as to what they do  
7 to children, appalling as to what they do to families.

8 I'd like to give you a little background  
9 of the case, and that background begins in December of  
10 1986 when my first wife, Shirley, died of liver cancer.  
11 The disease had been diagnosed in September and she  
12 died on December 23, 1986. We had been married for 14  
13 1/2 years. She left me with two girls ages 3 and 5.  
14 They are 7 and 9 now. After an extremely difficult  
15 period of mourning, I was able to pick up the pieces of  
16 my life, so to speak, and move on.

17 In May of 1987, I met my present wife,  
18 and we were married in November. Nine days after our  
19 wedding, my former mother-in-law, Nina Johnson of  
20 Frenchville, Clearfield County, had a conference with  
21 an attorney in King of Prussia, some 225 miles from her  
22 home. I had written to her asking that there be a  
23 brief period without visitation so that we would have  
24 time to settle into our new family situation. My  
25 daughters were not only gaining a mother but two new

1 sisters as well.

2 In January of 1988, the children spent  
3 five days visiting their grandmother. In February,  
4 they spent three days visiting. In March, their  
5 grandmother and her two daughters spent a day at my  
6 home visiting. In April, there were some difficulties  
7 with my new marriage and I phoned the children's  
8 grandmother to reschedule a planned visit. Two weeks  
9 after the phone call I was served papers informing me  
10 that I was being sued because I had denied her access  
11 to the children. On the advice of counsel, I then  
12 stopped all visitation.

13 Several court appearances occurred in the  
14 fall and winter of 1988, but it was not until February  
15 of 1989 that a full hearing took place. In May of that  
16 same year, a court order was issued by the Honorable  
17 Paul W. Tressler, Court of Common Pleas of Montgomery  
18 County. The trial court granted me primary physical  
19 custody with the following partial custody rights being  
20 granted to the maternal grandmother, and I would like  
21 to read through these.

22 What they granted the maternal  
23 grandmother was one weekend a month during the months  
24 of February, March, May, June, September and October  
25 with no contact permitted between the children and

1 their father for these periods. Every Labor Day  
2 extended weekend, every Christmas school vacation from  
3 12/27 to 12/31. Three consecutive weekdays of every  
4 Easter/spring school vacation. The Friday through  
5 Sunday following Thanksgiving each year. Three weeks  
6 during the school summer vacation each year at the  
7 maternal grandmother's discretion. During this period,  
8 the father's telephone access will be restricted to one  
9 call between 7:00 and 8:00 p.m. Sunday evenings.

10 I would simply interject that if this was  
11 the intent of the House of Representatives when it  
12 passed this law, I would be shocked. The problem has  
13 become with the judiciary's interpretation of your  
14 laws. When you say "shall," it becomes "will" with  
15 these people. And they are able to run around and run  
16 amok with no accountability whatsoever.

17 From talking with many, many attorneys --  
18 and trust me, over the last four years I have talked  
19 with attorneys. In fact, I have adopted one. That's a  
20 financial joke, folks. You will get it later. These  
21 people basically got more than I probably as a divorced  
22 parent would have gotten. I mean, it was ridiculous.

23 The order was appealed on June 3, 1989,  
24 with a decision vacating and remanding the order issued  
25 by the Superior Court on April 24, 1991. It is

1 important to note that it took the lower court one year  
2 to write its opinion concerning this case.

3           This thumbnail sketch is the nightmare my  
4 family has lived through since April of 1988, and  
5 obviously I am not alone in that nightmare. The  
6 statute authorizing grandparents' visitation rights as  
7 it exists states explicitly, if a parent of an  
8 unmarried child is deceased, the parent or grandparents  
9 of the deceased parent may be granted reasonable, and I  
10 underscore "reasonable," partial custody or visitation  
11 rights or both to the unmarried child by the court upon  
12 a finding that partial custody or visitation rights, or  
13 both, and I would underscore again, would be in the  
14 best interests of the child. Could anyone consider it  
15 in the best interests of these children to take them  
16 from their home during every holiday and every vacation  
17 that they have the right to share with their family and  
18 their new sisters?

19           With the extensive travel, such as 430  
20 miles in a two-day weekend and frequent nighttime  
21 travel with a senior citizen, my wife's and my concern  
22 for the safety of these children became overwhelming.  
23 And because of the court order, we had no rights to  
24 know the children's whereabouts, nor were they  
25 permitted to contact us. We were forced to make many

1 poor parental decisions because of the restrictions  
2 placed on us by the court. And I would simply add that  
3 because of the attitude of the court, because of the  
4 intimidation by the court, it was not uncommon that we  
5 would send one of our children with 102-degree  
6 temperature away. There were tornado warnings on the  
7 night of June 9th. They were going to travel 4 1/2  
8 hours one direction, and we were forced to leave them  
9 go because it was not our right any longer to make  
10 these decisions.

11 Laura, she's the oldest child, her second  
12 grade teacher requested a conference to inform us that  
13 every child in her class was looking forward to  
14 Christmas but her. The anxiety and stress created in  
15 these children by losing their mother at such an early  
16 age has taken such a toll that I can't even begin to  
17 guess as to the long-term consequences. The stress  
18 created by this court case, the animosity between the  
19 parties involved has created more and more stress.  
20 Mary Kate, the youngest child, has suffered a  
21 regression in her speech development. The oldest seems  
22 to develop a new nervous twitch every day, from tossing  
23 imaginary hair out of her face to pulling constantly on  
24 her clothing, to drawing circles in the area while she  
25 talks to you.

1           Some of you may ask, why we don't get  
2 these children professional help? We have, from time  
3 to time. But their mother's illness took some \$22,000  
4 from the family savings, and now we are well over  
5 \$30,000 paid to lawyers, private investigators, and  
6 court appointed psychologists. We have not ended our  
7 financial commitment to your legal system.

8           I have been told that I will be forced to  
9 sign a promissory note before the next hearing or I  
10 will not have legal representation. At one point I was  
11 accused of being in contempt of court because I was  
12 using call forwarding, and the court order specifically  
13 called for the children to take the call at our  
14 residence. The system worked and the court did not  
15 recognize this allegation as being reasonable. The  
16 contempt proceeding was a legal cost to my family of  
17 \$3,200. Did I win? Did my family win?

18           Ladies and gentlemen of the committee,  
19 and just gentlemen at this point it looks, all that my  
20 children and I wanted after the tragic death of their  
21 mother and my wife was the right to move on with our  
22 lives, the right to re-establish a family unit and to  
23 once again be a whole family. We wanted to do the  
24 things that families do together without the  
25 interference of an angry grandmother. We wanted to be



1 able to plan summer vacations and have my children  
2 spend time with my family and their Christmas gifts, to  
3 attend church and to sing in their choir without being  
4 taken 215 miles away at the whim of the court.

5           When I married Shirley Diesinger in 1972,  
6 I never realized that I married her family. This court  
7 case has been nothing short of a divorce proceeding.  
8 Surely, with the divorce rate as high as it is and with  
9 people in my situation, blended families are becoming  
10 more and more common in this State. It is not an easy  
11 task to blend two families into one, yet it can be  
12 done. The nuclear family is and has been the building  
13 block of our society. Our laws should not interfere  
14 with the establishment of these new families. They  
15 represent a true hope for our children from the  
16 inherent pitfalls of single parent homes, yet the law  
17 as it stands today is a powerful weapon for angry  
18 grandparents to attack a family both emotionally and  
19 financially.

20           And I would interject here as I thought  
21 Dr. Vogelsson's testimony was extremely interesting and  
22 the list of criteria that he made was certainly a very  
23 comprehensive list. I would add one other thing to  
24 that list, and that is that I would hope the courts at  
25 one point would look at motivation when they look at

1 the reason for these lawsuits, because the motivation  
2 here was nothing more than using the children as a  
3 weapon against me, a weapon against me for charges that  
4 were outrageous, simply outlandish from the standpoint  
5 that they were all brought on by unresolved grief by  
6 these parents of my former wife, the children's  
7 maternal grandparents. They blamed me for the death of  
8 her, and she had terminal cancer. Part of that blame  
9 simply came because my wife and I at the time decided  
10 that she wasn't going to die in a hospital, so I  
11 brought her home, got her involved in a hospice program  
12 so that she could spend some time with the children  
13 that it took us over 10 years to conceive.

14 In December of 1988, my present wife,  
15 Jamie, legally adopted my two children. The message  
16 that we hoped to convey to all four of our children by  
17 this adoption was loud and clear: We are a family  
18 unit. We're one family, not two families. And we're  
19 meshed like that and they are our children, not her  
20 children and my children. And I can't make any point  
21 stronger than that. But we've got a right to do that,  
22 and the judicial system does not have a right to come  
23 into our family and just grab those other two children  
24 up and steal them away.

25 I've been sitting here and when I wrote

1 this I tried to stay as calm as I could and as  
2 objective as I could, and I hear these other stories  
3 and damn it, I get angry. I get angry because I know  
4 the intent of the law was probably good. And I say  
5 "probably" because I'll tell you something, in my  
6 opinion, my opinion as a citizen of this State and a  
7 citizen of the United States, there are so many  
8 interest groups, and grandparents have become a very  
9 strong interest group that I don't know which  
10 legislators would have the strength and intestinal  
11 fortitude, for want a better word, for want of a word  
12 that she probably wouldn't print, but anyway, I don't  
13 know which of you would have the intestinal fortitude  
14 to stand up and say, no, this is isn't right.

15 But let me tell you something. My family  
16 has been through hell. It's been through hell  
17 emotionally and it's been through hell financially. My  
18 children's college funds are gone, our personal savings  
19 are gone, and we continue to throw money into an empty  
20 well. My attorney calls, bring a check for \$14,000.  
21 Two months later he calls, you owe me \$1,800. I don't  
22 mean that as an indictment of my attorney. I mean that  
23 really as an indictment of what this entire system does  
24 to families. Someone tell me, what I did wrong? I  
25 simply wanted to get on with my life and try to pick up

1 the pieces after a 35-year-old woman who I had loved  
2 very dearly for 14 1/2 years died. And I should pay  
3 for the wrath of her mother? It's insane. It's  
4 insane.

5 With the passage of Bill 431, I think we  
6 move a step closer to help secure the integrity of the  
7 new families that are being supported in this State.  
8 Give the kids a chance, folks. Give the parents a  
9 chance. Try and put yourself in the position of these  
10 people - Mr. Rodeheaver, some of the others that were  
11 up here, Steve's wife. Think about going into a new  
12 situation with as difficult as it is and then having  
13 all of this thrown at you besides. Let's keep the  
14 divorce rate up.

15 Thank you.

16 CHAIRMAN CALTAGIRONE: Representative  
17 Heckler.

18 REPRESENTATIVE HECKLER: Thank you, Mr.  
19 Chairman. Just a couple of questions.

20 BY REPRESENTATIVE HECKLER: (Of Mr. Diesinger)

21 Q. Was there -- well, I'm sorry, first of  
22 all, what is the age of the two children who are the  
23 subject of this -- I presume it's a present order?

24 A. The order has been appealed -- or the  
25 order was appealed and the Superior Court has ruled on

1 that. It has been vacated and it has been remanded.

2 Q. All right.

3 A. The children are currently 7, and the  
4 oldest child will turn 10 in November.

5 Q. Okay. In the judge's initially entering  
6 this order reaching this particular determination, did  
7 the children have some opportunity to express their  
8 views on this either directly to the court or through  
9 some sort of a counseling process?

10 A. The oldest child did. The judge ruled  
11 that she was coached.

12 Q. Okay, so that her expressions were  
13 contrary at least to the visitation of the consent--

14 A. Yes.

15 Q. --that was ordered.

16 If you know, what was the rationale of  
17 the court's ordering that there be no contact on your  
18 part during these periods, or limited contact, as you  
19 described, in some cases?

20 A. I may have the exact wording. The  
21 rationale was to re-establish a relationship that had  
22 been previously alienated by the conduct of the  
23 appellant.

24 Q. Okay. So the court evidently found that  
25 you had in some way interfered or, again, subverted

1 this relationship?

2 A. Sir, the court found that when I walked  
3 in that there was a problem. In fact, in the Superior  
4 Court's opinion, one of the things they state is that  
5 for some reason the court came to the conclusion that  
6 the grandmother was more worthy than I. And that is  
7 basically all that the court found.

8 The other rationale that the court had  
9 used was simply the fact that while my wife was ill,  
10 actually for the last three weeks of her life and then  
11 about four months after that she stayed in my home and  
12 helped me care for the children. Rather than base the  
13 decision on prior contact with the children on to what  
14 it was like for the 5 1/2 years of the oldest one's  
15 life, which was approximately four times a year they  
16 visited their grandmother, he decided to take that  
17 period where she was living in my home and having  
18 contact with them every day.

19 There are cases of record, and I don't  
20 remember them offhand, but one case of record where the  
21 children have lived with the maternal grandparents for  
22 three years, the visitation granted was three hours, I  
23 think, one Sunday per month.

24 Q. Significantly less, and yours is  
25 obviously a very extensive order.

1 A. Just barely, yeah.

2 Q. Let me ask you also, the -- pardon me,  
3 it's gone right out of my head.

4 I apologize. I had one other point that  
5 I was really interested in finding out about.

6 Oh, I'm sorry. Was there psychological  
7 counseling, evaluation, something on which the judge  
8 had available at the time?

9 A. His Honor sat in his chambers and told me  
10 flat out he didn't believe in it. And that's a direct  
11 quote.

12 Q. Okay. So the court had no -- and it  
13 seems small wonder that it was ultimately reversed.

14 Have you or your counsel reviewed the  
15 specific language of Senate Bill 431? We just heard  
16 from a witness who was concerned that this bill may not  
17 be retroactive and urged further amendment to make it  
18 retroactive. Frankly, I find the language a little bit  
19 ambiguous on that. Makes it clear that in the future  
20 upon adoption the grandparents' rights, even if they  
21 presently exist, would terminate.

22 A. Yes.

23 Q. Have you received an opinion from your  
24 counsel as to whether this language would address your  
25 situation?

1           A.    I am not sure.  I have not received an  
2 opinion from him.  As I said to you, not being a  
3 lawyer, I have read it and it just seems to me that at  
4 least it's one step further.  People trying to form new  
5 families, blended families, and it's becoming more and  
6 more common across this country, need as much  
7 opportunity and as little government interference as  
8 possible.  The nuclear family and the disintegration of  
9 the nuclear family, in my personal opinion, is the  
10 major problem facing America today, not only the  
11 Commonwealth of Pennsylvania, and to further attack it  
12 from, you know, under all of this, I mean, it makes no  
13 sense.  Give these people more of a chance.  What  
14 you've given these grandparents is a weapon.  You know,  
15 it says it right over there, an armed American.  Well,  
16 you've armed them.

17           Q.    Well, thank you.  I'm inclined to agree  
18 with you.  Certainly your testimony has been very  
19 effective and I appreciate your concerns for others.  
20 I, frankly, have some concern for some of the folks who  
21 were here today and you that this legislation not just  
22 gives the court a hint but -- I mean, for one thing,  
23 you and your children should be in no different  
24 position than someone who is, you know, who is going  
25 through this process six months later.  So that is



1 something that I think we need to attend to.

2 Thank you very much.

3 A. Thank you.

4 CHAIRMAN CALTAGIRONE: Nancy Dolfi.

5 MS. DOLFI: My name is Nancy Dolfi, and  
6 I'm President of the Grandparents of Pennsylvania for  
7 Children's Rights. I'm here strictly for love. I hear  
8 a lot of anger and I feel very badly. I want it on  
9 record, please, we did not know anything about this  
10 hearing. Nothing. If we had not heard from a father  
11 in Pittsburgh that you were having it, we wouldn't have  
12 known that you were speaking on our Senate Bill 431.  
13 So I gathered a few together and a few papers. I'd  
14 like a couple of other grandparents to be able to  
15 speak. One grandparent was very ill and she could not  
16 come. If I could just speak for her for a moment.

17 She had a son that died of leukemia who  
18 was married and the spouse married again, which was  
19 perfectly all right with her, which is perfectly all  
20 right with most of we grandparents. All she wanted to  
21 do was try to still see her little granddaughter once  
22 in a while. She could not, so she got a court order  
23 from Ohio just to see her on a Sunday afternoon one  
24 Sunday a month. Then the mother became ill and just  
25 before she died she let that man adopt her

1       granddaughter, against their wishes. And she died.  
2       That left this little granddaughter without a mother or  
3       a daddy, and he married another woman and moved to the  
4       State of Indiana, and she has no -- she's living with  
5       no blood relative, just with this adopted father and  
6       another mother. And the courts in Indiana gave this  
7       grandmother 10 days a year in the summertime to see her  
8       granddaughter.

9                       We don't ask for much, but when you have  
10       a grandchild, she's 10 years old and you've learned to  
11       love this grandchild. We realize these young people  
12       want to go on with their lives. We love them. And  
13       even if they're divorced or separated, that isn't  
14       because we grandparents want them to separate or  
15       divorce. But with such -- and this man, I know he has  
16       heartache. I'm sure he loved his wife. I'm sure he  
17       loves his children. But does anyone stop to realize  
18       that those grandparents loved those children long  
19       before the new wife came in? I don't feel that a  
20       grandparent has the right to interfere with the  
21       grandchildren, but they surely do not deserve to lose  
22       their children and then have a second death by losing  
23       their grandchildren. And this would be a travesty of  
24       justice, in our eyes.

25                       I have, as you can see, I'm here speaking

1 for hundreds of grandparents. I get calls from all  
2 over. I don't even -- only God started this support  
3 group because I was on television one time and it has  
4 grown. There's many grandparents out there that only  
5 want to buy Christmas presents, Easter baskets, give  
6 these children a little bit of love. I haven't seen my  
7 grandson in two years. Now, my case is a little  
8 different, it's divorce, and she's with another man who  
9 forbids her to let us see our grandson. And because of  
10 that we went to court and we were given some visitation  
11 in the summertime. This summer, of course, and last  
12 summer we never saw him because they ran. They keep  
13 running. When we found Jamie, Jamie was living out of  
14 a city bus, an earring in his left ear, 8 years old,  
15 not in school. He was made a ward of the court of  
16 Georgia.

17 But I'm not here to have sympathy for  
18 myself. I'm speaking for a lot of grandparents. I  
19 feel badly that there would be some anger here with  
20 some young folks that want to start a new life. And I  
21 understand, as this one little girl spoke back here,  
22 she was adopted. Many, many years ago I was raised in  
23 an orphanage and I was adopted after a while and I  
24 didn't have anybody, and I really, this child is the  
25 only blood line to go on for me. Our children are

1       losing their stability, their blood lines, their  
2       grandparents. Don't we mean anything? Our husbands  
3       fought in World War II and Korea. They have fought,  
4       they have paid taxes. We deserve some sort of respect.  
5       We only ask to see our grandchildren just now and then.

6                       Now, most of the grandparents that I'm in  
7       connection with only get to have a seeing of their  
8       grandchildren in the summertime. Even if they are  
9       little. I would be thrilled if I would have one  
10      grandparent say that they see their grandchildren all  
11      these different times that this gentleman spoke of.  
12      Maybe that is too much. Maybe it is. But surely, we  
13      deserve, all we grandparents deserve that -- if we  
14      don't love these children, and some of these children  
15      are being abused. Who better -- I'm not saying that  
16      the folks that were here now. I'm sure they dearly  
17      love these children. But there are many grandchildren  
18      out there that are in foster care. I brought a grandma  
19      right here today. They are in foster care because the  
20      child ran away. Who better to monitor the health and  
21      the well-being of these children but a grandparent who  
22      does nothing but love?

23                      I have a two-wheel bike, a little  
24      motorcycle, a stocking in my grandson's little tiny  
25      room. He's yet to see any of this or enjoy it. I have

1 sent an Easter package with clothing and candy and  
2 presents. I've never heard a thing.

3                   Somewhere there's got to be a happy  
4 medium here. I'm not speaking with any anger. I  
5 promise you. And I want you to know, I understand if  
6 they want to go on with their lives. I have not heard  
7 from the other grandparents that these young folks  
8 spoke of, so I cannot judge, and I don't feel you can  
9 judge until you hear from the grandparents' side. I'm  
10 not saying they're fibbing now, don't misunderstand me,  
11 but there surely is two sides to the story.

12                   I hear the other side - the pain, the  
13 tears, the sobbing. My child has died. All I want to  
14 do is see my grandbabies and love them. I'm sorry that  
15 we feel this way, but life does go on. But don't shut  
16 the grandparents out. Don't put them out to pasture.  
17 Don't pretend we don't exist. We do exist.

18                   My husband and I had a second mortgage on  
19 our home to try to just see Jamie, just see him a  
20 couple weeks in the summer. And we're over 65. We're  
21 on Social Security now. We're strapped. We can't hire  
22 any fancy attorneys. And I don't want to.

23                   I would just love to have people love one  
24 other. Unfortunately, that is not what I've heard here  
25 today. I feel badly that I'm ill-prepared. I do

1 apologize. I don't know where the problem was. I  
2 happened to call my Representative and he said, yes,  
3 Mrs. Dolfi, they are hearing it. I've put you on the  
4 agenda. I thank God that you would at least hear us.

5 I'm not going to take much of your time.  
6 I do feel that a couple of other grandparents have a  
7 right to be heard. Please at least try to understand  
8 our pain.

9 Thank you.

10 CHAIRMAN CALTAGIRONE: Thank you

11 BY REPRESENTATIVE HECKLER: (Of Ms. Dolfi)

12 Q. Thank you for your testimony.

13 I am a little bit confused or at least I  
14 think we should make clear for the record where you  
15 personally, perhaps, or if you can speak for your  
16 organization, are with regard to this legislation. You  
17 referred to it at one point as "our bill."

18 A. Well, we went to Senator Pecora.

19 Q. Uh-huh.

20 A. And he presented the bill. This is the  
21 original bill.

22 Q. Right.

23 A. And he presented it to the Senate.

24 Q. Um-hum.

25 A. Now, we are sitting here a bit confused

1 because we understood that the adoption part still  
2 stood that if anyone other than the stepparent adopted  
3 the grandchild, then you lost them. But if a  
4 stepparent adopted the grandchild, you could still see  
5 the grandchild. I don't have, obviously there's  
6 another wording in here that states that if anybody  
7 adopts this child, the grandparents lose them. Is that  
8 true?

9 MR. SUTER: The way the bill was  
10 originally worded I think you're correct, but the bill  
11 that is now before us represents a completely different  
12 bill than the way it was originally printed. It has  
13 been amended and substantially changed.

14 MS. DOLFI: And we were never told.  
15 Because if that's all it is, that all they have to do  
16 is adopt the child, we grandparents lose our children  
17 and then we lose our grandchildren. It's just too  
18 painful to even think of, let alone comprehend. I know  
19 that--

20 CHAIRMAN CALTAGIRONE: If I may, I think  
21 that this is not, by any means, the end of the trail  
22 with this legislation. I have some very dedicated and  
23 hardworking people that are members of this committee  
24 and staff. We certainly will take into consideration  
25 everything that has been said here today. We also have

1 families, and of course we also happen to have  
2 problems.

3 MS. DOLFI: Well, when was it that we  
4 didn't marry a family when you get married?

5 CHAIRMAN CALTAGIRONE: No, I understand  
6 what you're saying, but I think in our best wisdom  
7 collectively, and I have some very, very talented  
8 people that work with me on both sides of the aisle and  
9 staff, we will try to craft the best possible  
10 amendments to take into the consideration the thoughts  
11 and concerns that have been expressed here today. I  
12 think you're right, there are very good grandparents,  
13 and I think that has been stated here by former people  
14 that have testified.

15 MS. DOLFI: Yes.

16 CHAIRMAN CALTAGIRONE: They have by no  
17 stretch of the imagination painted everybody with a  
18 brush to besmirch them. And the same is true of the  
19 children or the parents, however they happen to merge  
20 the families. And I think what we need to do is try to  
21 find some middle ground to correct some of the  
22 injustices and inequities that have occurred. And I  
23 think that you'd be a fool not to be sitting here this  
24 whole day not to believe that there hasn't been some  
25 inequities and gross errors of judgment from the



1       judiciary and others involved in what has been taking  
2       place in this State as it concerns the current law.

3                   MS. DOLFI: Well, we rented a van and got  
4       a few together and came up here, took off work, and I  
5       would like you to hear from the grandma that has her  
6       grandchildren in foster care.

7                   CHAIRMAN CALTAGIRONE: Well, if she wants  
8       to come forward and enter her testimony, please do.

9                   Come forward, please, and enter your name  
10      for the record.

11                  MS. DOLFI: I could leave you all of this  
12      from the other grandparents.

13                  CHAIRMAN CALTAGIRONE: If you would like  
14      to give it to the court reporter, we will certainly  
15      enter it.

16                  And I also want to enter for the record  
17      that T. Johnson from Cambria Springs has submitted  
18      testimony that we will also enter for the record

19                  (See Appendix for submitted testimony.)

20                  CHAIRMAN CALTAGIRONE: if you would like  
21      to state who you are.

22                  MS. FOOSE: Good afternoon. My name is  
23      Sylvia Foose. I'm a member of Grandparents of  
24      Pennsylvania. I live in Armstrong County. My three  
25      grandchildren ages 6, 7, and 8 are presently in foster

1 care in Westmoreland County.

2 It originally started on June 30, 1990,  
3 when my stepson and daughter-in-law were arrested on  
4 drug charges and they were incarcerated at that time  
5 and my husband and I were granted -- well, the three  
6 children came to live with us on June 30th when their  
7 parents were arrested. The Westmoreland County  
8 Children's Bureau came to our home, checked our home  
9 out and the children remained there. And then we had a  
10 hearing in September in front of Judge Marker in  
11 Westmoreland County, who at that point was going to  
12 issue a court order with the Children's Bureau taking  
13 custody of the children placed in our home.

14 At the end of that hearing, Judge Marker  
15 indicated that he would have a court order out in a day  
16 or two. That's a direct quote from Judge Marker. That  
17 was on September 12, 1990. Then on October 27, 1990,  
18 my stepson was released from jail on probation. At  
19 that point, he wanted to have his children returned to  
20 him. They were living with us at the time. He was  
21 arguing back and forth with the Westmoreland County  
22 Children's Bureau that he didn't understand why he  
23 couldn't have his children back. They told him he  
24 needed to go through counseling, that he was a drug  
25 addict, and we wanted him to get some help. We were

1 not trying to keep his children from him, he just  
2 needed help. And so when he realized he couldn't get  
3 anywhere through the Children's Bureau in doing what he  
4 should have been doing, he broke into my home in the  
5 middle of the night as was successfully able to take  
6 two of the children out of my upstairs bedroom window.  
7 The third little boy, who was 6 at the time, came  
8 running down the stairs and came busting into our  
9 bedroom and said, "Grandma, my dad was upstairs and  
10 took Roger and Veronica." And I was like I had just  
11 been woke up, he jumped on top of me and I said to my  
12 husband, I said, "Ronald, you must have had a bad  
13 dream." He said, "No, Grandma." He said, "My dad was  
14 upstairs."

15 So immediately I ran upstairs and the  
16 bedroom window was open, the curtains were flying  
17 because it was storming real bad that night, and the  
18 other two kids were gone. Well, my husband got up and  
19 went outside to see if he could find them, because we  
20 live on a farm in a rural area of Armstrong County, and  
21 he didn't see any trace of them with just the 15  
22 minutes, at the very most, that they were gone. Well,  
23 we immediately called the police and I called the  
24 emergency caseworker on call at the Children's Bureau  
25 and reported that they were gone.

1                   Well, the next day the caseworker had  
2 called me several times during the day, she was going  
3 to try to get a court order giving us custody of  
4 Ronald, the 6-year-old that still remained with us.  
5 Well, at 4:00 o'clock in the afternoon on November 5th  
6 I was informed that I had to take my grandson, age 6  
7 years of age, and place him in a foster home. I  
8 personally, my husband and I took that 6-year-old out  
9 of my home bawling and took him to a foster home in  
10 Greensburg because they feared that the father would  
11 come back and take him and break into my house again  
12 when he realized the child was still there. This  
13 6-year-old was bawling and screaming. And Judge Marker  
14 ordered that if I didn't do this, I was going to be  
15 arrested for contempt. Which I did. My husband, on  
16 the advice of our attorney, and I was assured that when  
17 the other two children were caught that I would have  
18 all three of them back in my home and the parents would  
19 be arrested and try to get the help that they needed.

20                   Well, the two children were caught, the  
21 father was caught in Iowa after he had given the two  
22 children to their mother, who had come back from the  
23 State of Washington on a fugitive warrant, no less.  
24 This woman was on a fugitive warrant running all over  
25 the country. These two children are, Ronald was in a

1 foster home. He turned the two children over to my  
2 daughter-in-law in Iowa. Their car broke down on the  
3 interstate in Iowa. The highway patrol picked them up.  
4 The two children, Roger and Veronica, were placed in  
5 foster care out there pending the arrival of a  
6 caseworker from Greensburg. The two children were  
7 brought back to Greensburg, they immediately had some  
8 kind of a kangaroo court that I wasn't even advised of  
9 and placed all three children in the custody of the  
10 Westmoreland County Children's Bureau in foster care.

11 I have argued and fought to get these  
12 children back in my home. Now I'm allowed to have -- I  
13 was allowed to have two hours every two weeks visit  
14 with my children in McDonald's in Indiana County.  
15 These children have been told in front of me and my  
16 husband, if you cry when you see grandma and grandpa,  
17 you're not going to be allowed to see them anymore.

18 And in the meantime, these three children  
19 are in foster care bawling and screaming to come back  
20 and live with me and my husband. They can't cry when  
21 they see me because if they do, they're not going to be  
22 allowed to anymore. I have a caseworker's name who  
23 said that. She's with Professional Family Care out of  
24 Johnstown who said that right in front of me and my  
25 husband.

1                   In the meantime, my daughter-in-law and  
2 son are fugitives of justice with bench warrants on  
3 them running around all over the west. They're moving  
4 from Washington to Salt Lake City, now they're in  
5 Denver, Colorado, doing as they please. These three  
6 children are in foster care. Now, I want to know why  
7 something can't be done about this particular end of  
8 the law. Why are these children who they are able to  
9 get their hands on being punished? And their parents  
10 don't even care about them. My husband and I have  
11 spent thousands of dollars on attorney's fees and are  
12 not able to do anything. I have wrote letters to Judge  
13 Marker, who never even has the courtesy to answer me.  
14 People don't even want to return my phone calls.

15                   CHAIRMAN CALTAGIRONE: I think what we're  
16 hearing is that there have been injustices on both  
17 sides of the issue. You've suffered as much as some of  
18 these parents that have testified here today.

19                   MS. FOOSE: Yes.

20                   CHAIRMAN CALTAGIRONE: What I'm hearing  
21 you say is not very much different from what they're  
22 saying. I think in these type of cases where there's  
23 drugs or alcohol or those types of abuses, I don't  
24 think you're going to hear any of the parents that have  
25 been testifying not agreeing with you.

1 MS. FOOSE: Thank you.

2 BY REPRESENTATIVE HECKLER: (Of Ms. Foose)

3 Q. If I could, just for a moment, Ma'am,  
4 just so that I could determine what the relationship of  
5 your situation might be to this legislation, you're not  
6 being -- you're not being prevented from asserting a  
7 right to at least visitation based on anything that's  
8 in the law right now, is that correct?

9 A. Um-hum.

10 Q. So that the judge has evidently, rightly  
11 or wrongly, made a determination that the best  
12 interests of the children are served by being in foster  
13 care as opposed to -- I mean, either way, custody is  
14 going to be in the Children's Services.

15 A. Yes.

16 Q. And the question is where the placement  
17 would be with you as opposed to some other foster  
18 arrangement?

19 A. Right.

20 Q. And they've determined, for reasons that  
21 -- I mean, obviously, you're very committed -- reasons  
22 that may be completely backwards or wrongheaded that  
23 that's the appropriate placement for the kids. So that  
24 this law, these children are the natural children of  
25 your stepson?

1 A. Um-hum.

2 Q. And his wife?

3 A. Yes. Um-hum.

4 Q. So that we're not dealing with a divorce?

5 A. Oh, no.

6 Q. Or a death in the family or anything. So  
7 that there is, under the present law, and I'm trying to  
8 figure out I believe under this proposed law if both of  
9 the parents -- okay. This situation kind of -- this  
10 particular bill doesn't really apply to your situation.  
11 It's taken me a while to puzzle that through, but just  
12 so we're clear about that, you've got a situation in  
13 which both of the natural parents of the children are,  
14 you know, in a monogamous relationship and were  
15 parenting the children. The problem is they've got a  
16 whole different problem that interferes with their  
17 being proper parents for the children, and so the court  
18 has interceded. The court could place the kids with  
19 you. The court has made a determination, whether it  
20 has to do with the kidnappings that occurred or  
21 whatever, that that's not going to be the determination  
22 that they're going to make.

23 Okay, what I've described is accurate?

24 A. Yes, that's accurate. But the parents  
25 are together.



1 Q. Right.

2 A. They are not making any attempt to come  
3 back here. They're sort of like just these children  
4 don't exist anymore. They're not willing to say that  
5 they did anything wrong to accept any help from the  
6 counseling or whatever that they are told to go  
7 through.

8 My problem is I don't know what to do now  
9 because I can't get anywhere in the court system. I  
10 have already been through the court system. Nobody  
11 wants to listen to me. I have wrote several people,  
12 I've done everything humanly possible to try to find  
13 out what to do, why I can't have these children. Why  
14 are they going to be growing up heartless, hiding their  
15 feelings? Right now they can't even cry when they see  
16 me because they're told if they do they won't see me  
17 anymore.

18 Q. You know, nobody is going to tell you  
19 that the court system is perfect. The only way that  
20 this committee could make any kind of a realistic  
21 determination of your situation, frankly, is to have,  
22 you know, the caseworker, maybe one of the foster  
23 parents, the judge explain in here sitting where you're  
24 sitting to explain what their thinking is in terms of  
25 the present arrangement for the children. I mean,

1 obviously from your perspective it's not a satisfactory  
2 arrangement.

3 A. No, it isn't. No.

4 Q. But you've got to recognize, and that's  
5 why courts are in existence, because there are two  
6 sides, and maybe what I think is clear from the divorce  
7 hearings that we heard last week and from this hearing  
8 today there are three sides to situations in which two  
9 separate people or able groups of people want some  
10 access to kids. And perhaps the greatest concern is  
11 that that third side, the child side, is not being  
12 adequately dealt with. But that is what the court, I  
13 mean, this hearing deals with a piece of legislation  
14 that's trying to balance the generational equities, if  
15 you will, between the parents, sometimes new adoptive  
16 parents, of children and their grandparents or  
17 great-grandparents. You're dealing with a situation in  
18 which that equity isn't particularly in conflict but  
19 the court is in a position of having custody of the  
20 children and charged with making a determination about  
21 their best interests and they've made the decision that  
22 you don't find satisfactory. I don't think we're in a  
23 position to say the judge is right, the judge is wrong,  
24 you should have further recourse or you shouldn't.  
25 Frankly, and I, you know, it may be that the children

1 would be best with you. Somebody decided that they  
2 wouldn't. But I think that is a separate issue.

3 Thank you.

4 A. Okay, thank you.

5 CHAIRMAN CALTAGIRONE: Is there anybody  
6 else that would care to testify? I know you came from  
7 a distance and if you have something to say, we'll stay  
8 here and hear it.

9 MR. MATTINGLEY: I'm George Mattingley  
10 from Pittsburgh, and of course I didn't come prepared  
11 because we didn't know what was going on. It was  
12 something that hit us suddenly. It was something that  
13 was supposed to happen in October of this year.

14 But now I'm a grandfather. My wife and I  
15 have seven grandchildren total, two of which we don't  
16 see and five of course we do see, and we have very good  
17 relations with the five that we see. We had good  
18 relations with the two that we did see before. This is  
19 a divorce case. We don't see our two grandchildren  
20 because as of March the 4th of 1989 was our last visit  
21 and they visited in my home and stayed overnight at our  
22 home on the 4th and the 5th of March. Before that we  
23 had visitations every other weekend. My son did, by  
24 the way. He had the visitation, so whenever he had the  
25 visitations, we saw our grandchildren.

1           As of the 5th, 4th of March when my son  
2 went to pick up the grandchildren, he was told that he  
3 would never see his grandchildren again. So as the 5th  
4 of March when we would take the grandchildren back, our  
5 two grandchildren back, the crying would start each  
6 time we would take them home, "I do not want to go  
7 home, Pappy. I don't want to go home." And, of  
8 course, this would break my heart. But I would force  
9 the children back home anyway. I would pick her up,  
10 and it's mostly the little girl because she is the  
11 oldest, at the time she was only 6 years old or 7 years  
12 old, I think, at the time. Well, I don't know. Either  
13 one. She's 9 years old at the present moment.

14           But anyway, I would take her and I would  
15 carry her out of the car and carry her into the house.  
16 She would be screaming, "I don't want to go in."  
17 There's a number of times she says, "Can we ride  
18 around? I don't want to go directly home." So I'd  
19 ride around. I said one time when we were in the car,  
20 my son and my new daughter-in-law was in the car and  
21 her brother, I said, "We're lost, Nikki." She says, "I  
22 don't care, Pappy."

23           But, now, on March 8, my son received a  
24 petition for a PFA, which he was to have a hearing on  
25 March the 15th, and the hearing was in front of Judge

1 Strassburger. Now, whenever he went into this hearing  
2 on this PFA it never stated that my son molested or did  
3 anything to my grandchildren. I have the PFA here.  
4 Anyway, it never stated that my son had molested his  
5 daughter, so the judge would not accept that PFA as it  
6 stood. They went out in the hall, her, her new  
7 boyfriend -- well, as of March of 1988 or August of '88  
8 she met this other gentleman, who by the way deals in  
9 drugs. And with her lawyer and John Bollie, who really  
10 told us he had nothing to do with us, he just happened  
11 to be down there. John Bollie is, of course, an  
12 investigator of CYS and he happened to be there at the  
13 time.

14           They stood there for five minutes and  
15 within five minutes thought or realized and decided  
16 that my son had molested his daughter. So this was  
17 okay, the judge accepted that, put my son into support,  
18 and on March 18th the support visitation started under  
19 a Rose Palmer, which is funded by the State. And on  
20 the first visit, my wife and myself got to see our two  
21 grandchildren, which was a three-hour support visit,  
22 and we got to see the grandchildren for two hours. His  
23 new wife and him of course stayed for the full three  
24 hours. On the second visit the wife said that we  
25 weren't allowed to see the grandchildren, only the wife

1 and my son were allowed to see the grandchildren. On  
2 the third visit the mother said and boyfriend said that  
3 only my son was to see the grandchildren. And after  
4 that, the visits were completely cut off.

5 On April 1st, as I said, he had no  
6 further visits with -- this is April the 1st was the  
7 last visit. And then my son was -- we took it back to  
8 court and he went before at this time Judge Kaplan.  
9 Judge Kaplan told them there was no contempt on her  
10 part. In other words, nothing was done, she didn't --  
11 she wasn't in contempt because this child molesting  
12 thing was against my son, so she couldn't be held in  
13 contempt.

14 Now, like I say, I wasn't well prepared  
15 for this. On March 5 or June 5, 1989, my son -- he  
16 wasn't arrested, he was notified by Allegheny County  
17 Police to come in, that he was being charged with child  
18 molesting. So he went in, and on the 15th day of June  
19 he had a hearing before the Magistrate Olasz, which  
20 caused him to be bound over into a trial by jury.

21 Now, on July 10th we went again before  
22 Judge Kaplan on a contempt charge. And on July 18th,  
23 there was a visitation started. My son was the only  
24 one allowed to see his children. Only his son. Not  
25 his daughter. His daughter was not involved in this at

1 all because of the hearing on the child molesting. So  
2 he was going, and then on August 22nd was the last time  
3 that he saw his son. He was not allowed to see his son  
4 again.

5 So we went into contempt on this again  
6 and nothing was done by Judge Kaplan. On July 24, 25,  
7 we had the criminal trial before a jury. The jury  
8 found him not guilty on all three accounts. So on  
9 March 12th of 1990, we decided to take Judge  
10 Strassburger's order which said it reverted back to the  
11 previous visitation before all of this was brought  
12 about, which we were seeing him under before in 1989.

13 We went to Glassport, Pennsylvania, to  
14 see our children, but we took a constable with us at  
15 the time because my son was told to stay out of  
16 Glassport by the Glassport Police and if he came into  
17 Glassport he would be arrested. So we went down to the  
18 constable so there wouldn't be any problems with it.

19 Well, my son never did get to see his  
20 children. The boyfriend met my son at the door. Then  
21 I called the Chief of Police from Glassport on a  
22 Monday, the following Monday, and he told me that he  
23 was not going to get involved. These here court orders  
24 doesn't mean a thing to him. If the judge wants him to  
25 follow a court order, the judge would personally call

1 him. So I just thanked him and hung up and let it go  
2 at that.

3 And on August 14, let's see, when was  
4 that? Okay, on March 12th of 1990 he had a hearing  
5 with Judge Baldwin. Judge Baldwin gave him the  
6 visitation rights at the YWCA in McKeesport. He also  
7 had to go before a Dr. Rosenblum for I guess evaluation  
8 report. Anyway, the 14th of August was his last visit.  
9 Again, she took him from the hearing -- I mean from the  
10 visitation. In April of 1991, on April the 8th we went  
11 into court to try to get visitation for our  
12 grandchildren. It was going as a motion and ended up  
13 as a court hearing all day long. And we come out with  
14 a visitation of one hour every two weeks supervised,  
15 which was supposed to be at the Y at McKeesport.

16 So on the first visitation started on  
17 September the 10th of this year, through the finagling  
18 of the courts, which they were going to go out, they  
19 were going to appeal it, the appeal didn't come off,  
20 the last day they said, no, we're not going to appeal  
21 it. Then something came about but I said, no, we  
22 cannot take it. We will not go along with the court  
23 order. We were not notified by the court itself. I  
24 gave them the court order, they said, no, we cannot  
25 accept it. So we went back into court for motion, and



1 by this time we were already up into the last days of  
2 August, and then the lady from the Y said, oh, yes, I  
3 didn't say I wouldn't take this, I wouldn't accept this  
4 here, even though a letter was given to our attorney  
5 after the hearing, mind you, after the hearing they  
6 walked out and she had given a letter that she wrote,  
7 she said she wrote to the judge, and it stated in there  
8 that they were not accepting the visitation.

9 So we did get our first visitation on  
10 September 10 at \$50 an hour we pay the YWCA to see our  
11 grandchildren. I don't mind the \$50 an hour, but under  
12 the conditions that we are seeing our grandchildren I  
13 do mind because the mother is allowed to stay within  
14 the building, she sits right outside the door, it  
15 intimidates the children, and don't tell me that they  
16 can't be brainwashed because children are brainwashed.  
17 And they go in, she brought the children in that  
18 particular day, the children were not crying, she told  
19 the lady and she walked past the door with the two  
20 children, they were not crying. She said, I have to  
21 take them to the bathroom. As they came out of the  
22 bathroom, the little girl started crying and screaming,  
23 "I don't want to go. I don't want to go."

24 So finally the lady did, at the Y, carry  
25 her in with a book bag on her back -- mind you, this is

1 and 9-year-old little girl, her head was buried under  
2 this woman's arm, and for one hour this little girl  
3 stayed there with her little head buried, the book bag  
4 on her back cutting into her little arms and said  
5 nothing. The little boy, he was cheerful. But each  
6 time -- we had a little gun that would shoot these  
7 little balls and if you bounce them you could catch  
8 them off the walls is what the game was. It would fall  
9 in front of the window, there was a window beside the  
10 door, it would fall in front of this window, the little  
11 boy would come up to that window edge, whenever the  
12 ball was laying against the wall he had to cross it in  
13 his path, the mother was sitting directly across that  
14 window, he would stop and he would peak around to see  
15 if she was looking before he would go over and get that  
16 ball and bring it back.

17 Now, we have never said anything against  
18 these people, even though we know that he deals in  
19 drugs. I told the courts I was willing to work with  
20 him, and I never said anything bad about the mother in  
21 the courtroom. I really haven't said anything bad  
22 about her at any given time. And the boyfriend, as I  
23 was going off the stand, he said to me, "You won't see  
24 those kids," and "Huh, us work together? Like hell."

25 Now, each time my son had a visit he had

1 harassment from the boyfriend. So this is our problem.  
2 But yet these children are our blood line and they are  
3 destroying their minds.

4 Thank you.

5 REPRESENTATIVE HECKLER: Again, if I  
6 could, Mr. Chairman.

7 BY REPRESENTATIVE HECKLER: (Of Mr. Mattingley)

8 Q. Obviously, you have been able to get  
9 visitation under what's authorized for grandparents  
10 under the laws that exist. Your son, I assume, has not  
11 relinquished his parental rights to these children?

12 A. No, and he never will.

13 Q. I'm sure that he won't. And so that  
14 there is no anticipation that these children would ever  
15 be adopted should their natural mother marry this  
16 boyfriend, we're not talking about adoption?

17 A. Oh, by the way, he is married and my son  
18 is supporting. He has to pay their rent. He is paying  
19 50 percent of his wages towards the mother. He is  
20 still paying alimony towards her even though he is  
21 divorced, she is remarried, they are on welfare, and I  
22 don't know.

23 Q. Well, I don't do enough domestic practice  
24 to -- after she's remarried I kind of thought alimony  
25 stopped, but that's another subject.

1           A.    I did, too.  We all thought that, but the  
2 hearing judge said, no, that the children have to have  
3 a place to live.

4           Q.    Well, at any rate, I don't want to get  
5 off the point.  The point that I want to be sure that  
6 we understand and that you folks understand, since  
7 you've obviously had sort of short notice on what's  
8 happening with the legislation, as I read this  
9 legislation, even in the amended form in which it came  
10 to us from the Senate, your situation would not be  
11 affected, at least affected adversely.  It sounds to  
12 me, again, like the courts may not -- you know, there's  
13 an unsatisfactory situation here and it might be that  
14 you would hope that the courts would give you more  
15 extensive visitation and obviously that the mother  
16 would get her head screwed on right about what's in the  
17 best interests of her children, but at least as I read  
18 this legislation, I don't believe if this were enacted  
19 and became law tomorrow your situation would not be  
20 impinged upon.

21           MS. DOLFI:  I would like you to know that  
22 60 percent, at least, of our grandparents in the groups  
23 and the calls that I get are grandparents that their  
24 children have died.  A lot of us here are from divorce.  
25 I raised my grandson until he was 5 years old because

1 this ex-daughter-in-law was running with her boyfriend  
2 on drugs and everything. She came back in as a  
3 rehabilitated mother and got her child back. We were  
4 supposed to have visitations, but of course they ran.  
5 But I want you to know that I'm here to speak for the  
6 grandparents that their children have died and the  
7 spouses have moved on with their lives. This could  
8 kill some of these grandparents. To see a grandchild  
9 10 days a year, and this grandma that's the  
10 secretary-treasurer of our group has her mother still  
11 alive, her husband has like 12 brothers and sisters.  
12 This child has aunts and uncles and cousins galore, and  
13 she's living with 2 people that are not her blood  
14 relatives. I have nothing against them, now, but I  
15 still think that a grandparent should be allowed to  
16 still see their child. I'm speaking for those  
17 grandparents.

18 REPRESENTATIVE HECKLER: Okay. I  
19 understand that there is a certain conflict about this,  
20 and just to respond briefly, at any rate, I would be  
21 more strongly persuaded by, again, we've got three  
22 parties to this, and the well-being of the child,  
23 frankly, and I have some personal awareness in my own  
24 life of what it means to lose a child, it doesn't  
25 matter how much that hurts. If the well-being of the

1 young children, the grandchildren in your case, is not  
2 promoted by involvement with the grandparents -- now,  
3 one would hope in any wholesome situation it would be,  
4 but certainly we've heard, I think, extremely credible  
5 testimony today about situations, and as I say, I can  
6 identify with this, I can understand how it would  
7 happen, in which the grieving grandparents involve the  
8 grandchildren who have already suffered a terrible loss  
9 in losing their mother or their father, in their grief  
10 process in inappropriate ways. If that's happening,  
11 then I would suggest to you that whatever additional  
12 pain is occasioned to grandparents by not having access  
13 to their grandchildren is not -- just doesn't even  
14 begin to tip the scale as over against the well-being  
15 of those grandchildren, the need for them to have a  
16 stable, orderly, reassuring, safe relationship with  
17 adults who are going to be there for them, whether  
18 those adults would be of their blood or of course in an  
19 extraordinary situation that you described a situation  
20 that they won't. We hope courts will be able to make  
21 those determinations. Obviously, judges are human,  
22 like everybody else, and they can only work from the  
23 information they have before them.

24                   But I did want to make the point that the  
25 changes which are being proposed by this bill are

1 fairly narrow in nature. They, in any event, don't --  
2 I mean, one way or another we can't change all of the  
3 things that courts do right or do wrong in this  
4 extremely difficult area.

5 Thank you.

6 MR. MATTINGLEY: Excuse me. Can I read a  
7 letter that was supposedly written by my granddaughter?

8 "I don't want you to send me any more  
9 cards because I don't want them. Mommy said it's up to  
10 me if I want to keep them, but I always say no. Why  
11 did you have to lie in court? If you were there all  
12 the time like you said, you would have seen him do  
13 those bad things to me. I'll never forgive you. That  
14 hurt me very much. Why don't you believe me? I would  
15 not make something up like that because I am too afraid  
16 to lie in court. All the things he said. I'm going to  
17 kill Mommy if you tell. I'm going to take the dog to  
18 the woods and kill her. I'm going to burn the house  
19 down. I'm going to get you to live with me and all  
20 kinds of other things. All the time he said these  
21 things I started to cry. I'm afraid of you because I  
22 thought you loved me. But if you loved me, you would  
23 have believed me. I am really telling the truth. You  
24 could even ask God, and it scares me to think that you  
25 would never believe the important things I say.

1           "When he did those bad things to me, it  
2 made me feel sick inside and made me have bad dreams,  
3 and I still have them. Sometimes I wanted to hide when  
4 he'd come for me because I was very, very scared. All  
5 those times you took me to his house and even though  
6 you knew I was scared and didn't want to go you still  
7 took me. Even the policeman told you I was to stay at  
8 your house. You didn't listen to him. I don't trust  
9 you anymore.

10           "All I want to say, I told the truth in  
11 court. Nobody ever made me say anything. Mommy didn't  
12 even know until I told her. Why do you hate Mommy and  
13 always lie about her? Why should you hate someone when  
14 they are trying to help me? You should be that  
15 someone, not hurt me."

16           Now, on our visitation date we gave our  
17 grandchildren these gifts that we took over there. We  
18 gave it to them, we bought it for their birthdays. My  
19 grandson said, but it's not my birthday. I said, I  
20 know, your birthday is February the 18th, and I know  
21 Nikki's birthday is August the 10th, but these are  
22 birthday gifts that Grandma and Pappy bought for you  
23 and you were not there to receive them.

24           Now, these are some of the checks that  
25 were sent back by her and her new spouse. So. And



1 other ones they have kept. Gifts and cards was never  
2 received by the children, even though the letter so  
3 states.

4 MR. SUTER: I'm still not clear if you  
5 have visitation rights or if your son has visitation  
6 rights, or both?

7 MR. MATTINGLEY: My son has no visitation  
8 rights at the present moment.

9 MR. SUTER: So the supervised visits at  
10 the Y are--

11 MR. MATTINGLEY: At the present time is  
12 our visitation. But like I said, it was April the 8th  
13 we received the visitation rights. On September the  
14 10th was the first time we got to visit. All these  
15 months laid in between, a whole summer. It's for 90  
16 days every other week one hour. And it is under \$50 we  
17 must pay the YWCA. I don't care about the \$50, it  
18 means nothing. Those two children mean more to me than  
19 any money.

20 So I'm not here to take the children away  
21 from the mother. It's not my point to take the  
22 children. I think it's all right for the children to  
23 be with the mother, but I'd like to see them and I  
24 think my son should see them. They are his children,  
25 too. But the way the courts have ruled so far, they

1       could care less.  It's named Family Division, and I  
2       believe that's exactly what they mean, family division.  
3       You're separating the families.

4                       MR. SUTER:  Thank you.

5                       CHAIRMAN CALTAGIRONE:  Thank you very  
6       much for your testimony.  We'll now adjourn the  
7       hearing.  Thank you.

8                       (Whereupon, the proceedings were  
9       concluded at 3:15 p.m.)

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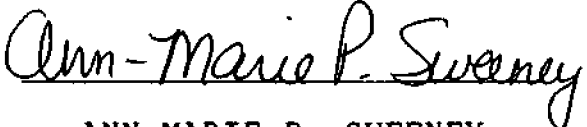
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1 I hereby certify that the proceedings  
2 and evidence are contained fully and accurately in the  
3 notes taken by me during the hearing of the within  
4 cause, and that this is a true and correct transcript  
5 of the same.

6  
7   
8

ANN-MARIE P. SWEENEY

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